

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**CERTIFICATION OF COUNSEL REGARDING ORDER APPROVING
STIPULATION WITH FIRST-CITIZENS BANK & TRUST COMPANY,
MODIFYING THE AUTOMATIC STAY TO ALLOW APPLICATION OF FUNDS**

The undersigned counsel to SierraConstellation Partners, LLC, acting as Liquidating Trustee (the “**Liquidating Trustee**”) on behalf of the above-captioned debtor and debtor-in-possession (the “**Debtor**”) hereby certifies that:

1. The Debtor and FIRST-CITIZENS BANK & TRUST COMPANY (successor by purchase to the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bridge Bank, N.A. (as successor to Silicon Valley Bank)) (the “**Bank**” and together with the Debtor or Liquidating Trustee, as applicable, the “**Parties**”) are party to, among other agreements, the following:

A. That certain Business Credit Card Application and Agreement dated August 2, 2018 (the “**Credit Card Agreement**”), pursuant to which the Bank granted the Debtor a cash-secured credit card facility (the “**Credit Card Facility**”); and

B. An Application and Agreement for Irrevocable Standby Letter of Credit dated April 18, 2017 (the “**LC Application**”), pursuant to which the Debtor applied for and the Bank issued an Irrevocable Standby Letter of Credit Reference No. XXXXXXXX1839, dated April 27, 2017, in favor of Pacific Gas and Electric Company, Risk Management

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



Department as beneficiary (the “**LC Beneficiary**”), in the face amount of \$119,580.00 with an original expiration date of April 27, 2018 (as amended, the “Letter of Credit,” and together with the LC Application, the “LC Agreement”) to assure the LC Beneficiary of the Debtor’s payment and performance of its obligations owed to the LC Beneficiary.

2. The Debtor delivered its *Bank Services Cash Pledge Agreement* August 2, 2018 to and in favor of the Bank (the “**Credit Card Pledge Agreement**”), pursuant to which the Debtor pledged and granted to the Bank a security interest in and control of the Debtor’s cash deposit account ending in #3389 (the “**Credit Card Collateral Deposit Account**”) and held by the Bank which, as of June 27, 2023, had a cash balance of \$35,000 (the “**Credit Card Cash Security**”), to induce the Bank to grant the Credit Card Facility.

3. The balance owing under the Credit Card Facility was approximately \$2,200 (the “**Credit Card Balance**”) as of the Petition Date.

4. The Debtor delivered its *Bank Services Cash Pledge Agreement* April 20, 2017 to and in favor of the Bank (the “**LC Pledge Agreement**”), pursuant to which the Debtor pledged and granted to the Bank a security interest in and control of the Debtor’s cash deposit account ending in #6206 (the “**LC Collateral Deposit Account**”) and held by the Bank which, as of June 27, 2023, had a cash balance of \$119,580 (the “**LC Cash Security**”), to induce the Bank to issue the Letter of Credit in favor of the LC Beneficiary.

5. Pursuant to its “draft at sight” payment demand dated July 22, 2022 and delivered to the Bank, the LC Beneficiary made demand upon the Bank for payment of \$63,962.70 under the Letter of Credit for amounts due and owing to it from the Debtor.

6. In response to the LC Beneficiary’s demand under the Letter of Credit, the Bank honored its obligation under the Letter of Credit and paid cash in the amount of \$63,962.70 to the LC Beneficiary (the “**LC Beneficiary Pay-Out**”), whereupon, pursuant to the LC

Agreement, the Debtor is obligated to reimburse the Bank in the amount of the LC Beneficiary Pay-Out, plus certain fees, costs, and expenses as set forth in the LC Agreement;

7. Pursuant to the LC Pledge Agreement, upon the Bank's payment of the LC Beneficiary Pay-Out, the Bank is permitted to apply the LC Cash Security against the amount of the LC Beneficiary Pay-Out and the other amounts owed to the Bank under the LC Pledge Agreement and the LC Application (such application amount, collectively, the "**LC Application of Funds**").

8. In consideration of the foregoing, the Parties have agreed to entry of an order approving the terms and conditions of a Stipulation attached as Exhibit A to the proposed order attached hereto, granting the Bank relief from the automatic stay for the purpose of authorizing the Bank to, as more fully set forth therein: (a) immediately (upon entry of the Stipulation Order (as defined therein)) debit from the Credit Card Collateral Deposit Account the Credit Card Balance plus any accrued legal fees and expenses related thereto up to \$6,000 (the "**Credit Card Legal Fees**"), and subsequently close the Credit Card Facility and the Credit Card Collateral Deposit Account and return any excess cash collateral in the Credit Card Collateral Account (if any) to the Debtor after the application of amounts from the Credit Card Collateral Deposit Account sufficient to pay the Credit Card Balance and the Credit Card Legal Fees; (b) exercise and effect the LC Application of Funds against the LC Cash Security; and (c) apply the LC Cash Security against any future draws (including any fees, costs, and expenses related thereto) under the Letter of Credit without further approval from the Bankruptcy Court.

9. Attached hereto as Exhibit A is a proposed order approving the Stipulation.

10. The Debtor therefore requests that the Court enter the proposed order attached hereto as Exhibit A at its earliest convenience. Counsel is available at the request of the Court.

Dated: July 6, 2023

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

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Counsel for the Liquidating Trustee

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No.

**ORDER APPROVING STIPULATION WITH FIRST-CITIZENS BANK & TRUST
COMPANY, MODIFYING THE AUTOMATIC STAY
TO ALLOW APPLICATION OF FUNDS**

This matter coming before the Court upon the *Stipulation with First-Citizens Bank & Trust Company, Modifying the Automatic Stay* (the “**Stipulation**”), and the Court having reviewed the Stipulation, IT IS HEREBY ORDERED THAT:

1. The Stipulation attached hereto as **Exhibit A** is approved.
2. The automatic stay is modified in favor of First-Citizens Bank & Trust Company, as set forth in the Stipulation.
3. The Parties to the Stipulation are authorized to take all action necessary or appropriate to implement the Stipulation.
4. This Court shall retain jurisdiction to resolve any and all disputes arising from or related to this Order.
5. This Stipulation shall become effective immediately upon entry of this Order.

Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**STIPULATION WITH FIRST-CITIZENS BANK & TRUST COMPANY MODIFYING
THE AUTOMATIC STAY TO ALLOW APPLICATION OF FUNDS**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”), through SierraConstellation Partners, LLC as Liquidating Trustee (the “**Liquidating Trustee**”), and FIRST-CITIZENS BANK & TRUST COMPANY (successor by purchase to the Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bridge Bank, N.A. (as successor to Silicon Valley Bank)) (the “**Bank**” and, together with the Debtor or Liquidating Trustee, as applicable, the “**Parties**”), hereby stipulate and agree (this “**Stipulation**”) as follows:

RECITALS

WHEREAS, on June 1, 2022 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”), and continues to operate its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Debtor and the Bank are party to, among other agreements, the following:

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

A. That certain *Business Credit Card Application and Agreement* dated August 2, 2018 (the “**Credit Card Agreement**”), pursuant to which the Bank granted the Debtor a cash-secured credit card facility (the “**Credit Card Facility**”); and

B. An Application and Agreement for Irrevocable Standby Letter of Credit dated April 18, 2017 (the “**LC Application**”), pursuant to which the Debtor applied for and the Bank issued an *Irrevocable Standby Letter of Credit Reference No. XXXXXXXX1839*, dated April 27, 2017, in favor of Pacific Gas and Electric Company, Risk Management Department as beneficiary (the “**LC Beneficiary**”), in the face amount of \$119,580.00 with an original expiration date of April 27, 2018 (as amended, the “**Letter of Credit**,” and together with the LC Application, the “**LC Agreement**”) to assure the LC Beneficiary of the Debtor’s payment and performance of its obligations owed to the LC Beneficiary.

WHEREAS, the Debtor delivered its *Bank Services Cash Pledge Agreement* August 2, 2018 to and in favor of the Bank (the “**Credit Card Pledge Agreement**”), pursuant to which the Debtor pledged and granted to the Bank a security interest in and control of the Debtor’s cash deposit account ending in #3389 (the “**Credit Card Collateral Deposit Account**”) and held by the Bank which, as of June 27, 2023, had a cash balance of \$35,000 (the “**Credit Card Cash Security**”), to induce the Bank to grant the Credit Card Facility;

WHEREAS, the balance owing under the Credit Card Facility was approximately \$2,200 (the “**Credit Card Balance**”) as of the Petition Date;

WHEREAS, the Debtor delivered its *Bank Services Cash Pledge Agreement* April 20, 2017 to and in favor of the Bank (the “**LC Pledge Agreement**”), pursuant to which the Debtor pledged and granted to the Bank a security interest in and control of the Debtor’s cash deposit account ending in #6206 (the “**LC Collateral Deposit Account**”) and held by the Bank which, as

of June 27, 2023, had a cash balance of \$119,580 (the “**LC Cash Security**”), to induce the Bank to issue the Letter of Credit in favor of the LC Beneficiary;

WHEREAS, pursuant to its “draft at sight” payment demand dated July 22, 2022 and delivered to the Bank, the LC Beneficiary made demand upon the Bank for payment of \$63,962.70 under the Letter of Credit for amounts due and owing to it from the Debtor;

WHEREAS, in response to the LC Beneficiary’s demand under the Letter of Credit, the Bank honored its obligation under the Letter of Credit and paid cash in the amount of \$63,962.70 to the LC Beneficiary (the “**LC Beneficiary Pay-Out**”), whereupon, pursuant to the LC Agreement, the Debtor is obligated to reimburse the Bank in the amount of the LC Beneficiary Pay-Out, plus certain fees, costs, and expenses as set forth in the LC Agreement;

WHEREAS, pursuant to the LC Pledge Agreement, upon the Bank’s payment of the LC Beneficiary Pay-Out, the Bank is permitted to apply the LC Cash Security against the amount of the LC Beneficiary Pay-Out and the other amounts owed to the Bank under the LC Pledge Agreement and the LC Application (such application amount, collectively, the “**LC Application of Funds**”); and

WHEREAS, the Parties have agreed to entry of an order approving the terms and conditions of this Stipulation, and granting the Bank relief from the automatic stay for the purpose of authorizing the Bank to (a) immediately (upon entry of the Stipulation Order (as defined below)) debit from the Credit Card Collateral Deposit Account the Credit Card Balance plus any accrued legal fees and expenses related thereto up to \$6,000 (the “**Credit Card Legal Fees**”), and subsequently close the Credit Card Facility and the Credit Card Collateral Deposit Account and return any excess cash collateral in the Credit Card Collateral Account (if any) to the Debtor after the application of amounts from the Credit Card Collateral Deposit Account sufficient to pay the

Credit Card Balance and the Credit Card Legal Fees; (b) exercise and effect the LC Application of Funds against the LC Cash Security; and (c) apply the LC Cash Security against any future draws (including any fees, costs, and expenses related thereto) under the Letter of Credit without further approval from the Bankruptcy Court.

NOW, THEREFORE, subject to the approval of the Bankruptcy Court, in order to avoid the costs, risks and delays of litigation, the Parties hereby stipulate and agree as follows:

1. The Bankruptcy Court may enter an order in the form annexed hereto pursuant to Section 362(d) of the Bankruptcy Code (the “**Stipulation Order**”) granting the Bank relief from the automatic stay for limited purpose of authorizing the Bank to (a) immediately (upon entry of the Stipulation Order) debit from the Credit Card Collateral Deposit Account the Credit Card Balance plus the Credit Card Legal Fees, and subsequently close the Credit Card Facility and the Credit Card Collateral Deposit Account and return any excess cash collateral in the Credit Card Collateral Account (if any) to the Debtor after the application of amounts from the Credit Card Collateral Deposit Account sufficient to pay the Credit Card Balance and the Credit Card Legal Fees; (b) exercise and effect the LC Application of Funds against the LC Cash Security in accordance with the terms set forth in this Stipulation; and (c) apply the LC Cash Security against any future draws (including any fees, costs, and expenses related thereto) under the Letter of Credit without further approval from the Bankruptcy Court, each in accordance with the terms set forth in this Stipulation.

2. This Stipulation is entered into solely to reflect the agreement of the Parties with respect to the subject matter herein, and neither this Stipulation nor the fact of its execution will constitute any admission or acknowledgment on the part of any Party, except with respect to the subject matter of this Stipulation.

3. Each Party is duly authorized and empowered to execute this Stipulation.

4. The Bankruptcy Court shall retain exclusive jurisdiction to resolve any disputes or controversies arising from or related to this Stipulation.

5. All of the recitals set forth above are incorporated by reference as if fully set forth herein. This Stipulation constitutes the complete express agreement of the Parties concerning the subject matter hereof, and no modification or amendment to this Stipulation shall be valid unless it is in writing, signed by the Party or Parties to be charged and approved by the Bankruptcy Court.

6. Each Party has participated in and jointly consented to the drafting of this Stipulation and any claimed ambiguity shall not be construed for or against either Party on account of such drafting.

7. Notwithstanding the applicability of Bankruptcy Rule 4001(a)(3), the terms and conditions of this Stipulation shall be immediately effective and enforceable upon its entry.

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Dated: July 6, 2023

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