

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

**MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS: (I) AUTHORIZING THE PAYMENT OF CERTAIN
TAXES AND FEES; AND (II) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “Debtor” or “Gritstone”) in the above-captioned chapter 11 case (the “Chapter 11 Case”) hereby files this Motion (the “Motion”) for the entry of an interim order on an expedited basis, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”) and, following a final hearing to be set by the Court (the “Final Hearing”), the entry of a final order, substantially in the form attached hereto as **Exhibit B** (the “Final Order”): (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees (as defined herein) in the ordinary course of business that are payable or become payable during this Chapter 11 Case (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date); and (b) granting related relief. In support of this Motion, the Debtor relies upon and refers this Court to the *Declaration of Vassiliki (“Celia”) Economides in Support of the Debtor’s Chapter 11 Petition and First Day Relief* (the “First Day Declaration”), incorporated herein by reference.² In further support of the Motion, the Debtor respectfully represents as follows:

¹ The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.

² A capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration.



Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. The Debtor confirms its consent, pursuant to Rule 9013-1(f) of the Local Rules, to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2002-1 and 9013-1.

Background

4. On October 10, 2024 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is managing its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case, and no committees have been appointed or designated.

5. A detailed description of the Debtor’s business and facts precipitating the filing of the Debtor’s chapter 11 proceeding are set forth in the First Day Declaration

Taxes and Fees Overview

6. In the ordinary course of business, the Debtor collects, withholds, and incurs property, franchise, and excise taxes, as well as other governmental taxes, fees, and assessments (collectively, the “Taxes and Fees”).³ The Debtor pays or remits, as applicable, Taxes and Fees to various governmental authorities (each, an “Authority,” and collectively, the “Authorities”) on a periodic basis (quarterly, semi-annually, annually, and on an ad hoc basis depending on the Debtor’s reporting calendar), based on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. A schedule identifying the Authorities is attached hereto as **Exhibit C**.⁴ The Debtor generally pays and remits Taxes and Fees through checks and electronic transfers that are processed through its banks and other financial institutions or service providers.

7. Additionally, the Debtor is and may become subject to routine audit investigations on account of tax returns or tax obligations in respect of prior years (“Audits”) during the Chapter 11 Case. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtor (such additional Taxes and Fees, “Assessments”).⁵ The Debtor seeks authority to pay or remit tax obligations on account of the Audits as they arise in the ordinary course of the Debtor’s business, including as a result of any resolutions of issues addressed in an Audit.

³ This Motion does not seek relief with respect to the Debtor’s collection and remittance of employee-related taxes and withholdings, which are instead addressed in the *Motion for Entry of Interim and Final Orders (I) Authorizing, but Not Directing, the Debtor to (A) Pay Prepetition Employee Wages, Salaries, Other Compensation, and Reimbursable Employee Expenses and (B) Continue Employee Benefits Programs and (II) Granting Related Relief*, filed contemporaneously herewith.

⁴ Although Exhibit C is intended to be comprehensive, the Debtor may have inadvertently omitted Authorities from Exhibit C. The Debtor request relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified in Exhibit C.

⁵ Nothing in this Motion, or any related order, constitutes or should be construed as an admission of liability by the Debtor with respect to any Audit or Assessment. The Debtor expressly reserve all rights with respect to any Audit and the right to contest any Assessments claimed to be due as a result of any Audit.

8. The Debtor seeks authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees, including: (a) where Taxes and Fees accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; (c) where payments made prepetition by the Debtor were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of the Chapter 11 Case. In addition, for the avoidance of doubt, the Debtor seeks authority to pay Taxes and Fees for so-called “straddle” periods.⁶

9. Any failure by the Debtor to pay the Taxes and Fees could materially disrupt the Debtor’s business operations in several ways, including (but not limited to): (a) the Authorities may initiate audits of the Debtor, which would unnecessarily divert the Debtor’s attention from the Chapter 11 Case; (b) the Authorities may attempt to suspend the Debtor’s operations, file liens, seek to lift the automatic stay, or pursue other remedies that will harm the estate; and (c) in certain instances, the Debtor’s directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtor’s restructuring. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both. The Debtor also collects and holds certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtor’s estate. Accordingly, the Debtor seeks authority to pay the Taxes and Fees in the ordinary course as they become due.

⁶ The Debtor reserves its rights with respect to the proper characterization of any “straddle” Taxes and Fees and to seek reimbursement of any portion of any payment made that ultimately is not entitled to administrative or priority treatment.

A. Property Taxes

10. The Debtor incurs property taxes (the “Property Taxes”) owed to certain state and local Authorities in connection with real and personal property owned or leased by the Debtor. The Debtor typically pays Property Taxes annually or semi-annually depending on how the relevant tax is assessed. As of the Petition Date, the Debtor estimates that the aggregate amount of accrued and unremitted Property Taxes is approximately \$150,000.00. The Debtor does not believe that any accrued Property Taxes will become due during the interim period but requests authority to pay any accrued but unremitted Property Taxes in the ordinary course as they become due.

B. Franchise Taxes

11. The Debtor is required to pay franchise taxes (the “Franchise Taxes”) to certain Authorities to operate its business in the applicable taxing jurisdictions. Certain states may refuse to qualify a company to do business in a state or recognize a name change, merger, or other activity if franchise taxes have not been paid. The Debtor typically pays Franchise Taxes annually or quarterly depending on the jurisdiction. As of the Petition Date, the Debtor estimates that the aggregate amount of accrued and unremitted Franchise Taxes is approximately \$80,000.00. The Debtor does not believe that any accrued Franchise Taxes will become due during the interim period but requests authority to pay any accrued but unremitted Franchise Taxes in the ordinary course as they become due.

C. Excise Taxes

12. In certain states, the Debtor is required to pay an excise tax (the “Excise Taxes”) in connection with grants it receives. The Debtor remits the required amounts for the Excise Tax on a quarterly basis. As of the Petition Date, the Debtor believes it is current on payments of all

Excise Taxes. The Debtor also does not believe that any accrued Excise Taxes will become due during the interim period but requests authority to pay any accrued but unremitted Excise Taxes in the ordinary course as they become due.

D. Business Licenses, Permits, and Other Fees

13. The Debtor is required to pay various taxes and fees for business licenses, annual reports, various permits, and other similar types of taxes and fees (the “Business Fees”) in order to continue conducting its business pursuant to state and local laws. The Debtor remits the required amounts for the Business Fees on a monthly, quarterly, or annual basis, depending on the requirements of the particular Authority. As of the Petition Date, the Debtor believes it is current on payments of all Business Fees. The Debtor also does not believe that any accrued Business Fees will become due during the interim period but requests authority to pay any accrued but unremitted Business Fees in the ordinary course as they become due.

Relief Requested

14. By this Motion, the Debtor seeks entry of the Interim Order and Final Order: (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during the Chapter 11 Case (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date);⁷ and (b) granting related relief.⁸

15. The Debtor also requests that all banks and other financial institutions on which checks to third parties are drawn or electronic payments are made pursuant to this Motion be

⁷ The Debtor requests authority to reissue any amounts paid by check prepetition that have not cleared as of the Petition Date and are dishonored.

⁸ Nothing in this Motion shall be deemed to constitute an admission to any asserted liability or obligation with respect to any tax. The Debtor reserves any and all rights to contest any tax asserted against them by any Authority.

authorized to receive, process, honor, and pay any and all such checks (whether issued or presented prior to or after the Petition Date) and electronic payments, and to rely on the representations of the Debtor as to which checks are authorized to be paid.⁹

16. In addition, the Debtor requests that the Court schedule a final hearing within approximately thirty-five (35) calendar days of the commencement of the Chapter 11 Case to consider approval of this Motion on a final basis.

Basis for Relief

17. The Court should grant the relief requested herein because: (a) the Authorities or the parties who ordinarily collect the Taxes and Fees may file liens, initiate audits, or otherwise proceed against the Debtor for unpaid Taxes and Fees, and such actions will result in unnecessary expense and distraction from the Debtor's efforts to maximize the value of its estate; (b) portions of the Taxes and Fees are entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code; (c) failure to pay Business Fees may adversely affect current operations; and (d) section 105(a) of the Bankruptcy Code and the Court's general equitable powers permit the Court to grant such relief.

A. Payment of the Taxes and Fees Will Avoid Unnecessary Distractions

18. Any regulatory dispute or delinquency that impacts the Debtor's ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtor's business operations and restructuring efforts. Specifically, the Debtor's failure to remit the Taxes and Fees could adversely affect the Debtor's remaining business operations because, among other

⁹ Contemporaneously herewith, the Debtor has filed the *Motion for Entry of Interim and Final Orders Authorizing the Debtor to (A) Continue Operating Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Granting Related Relief* (the "Cash Management Motion"). Details regarding accounts used by the Debtor to pay all obligations in the ordinary course, including taxes, are described in the Cash Management Motion.

things: (a) the Authorities could initiate audits of the Debtor or prevent the Debtor from continuing its business and administering its estate, which, even if unsuccessful, would unnecessarily divert the Debtor's attention from the process of maximizing the value of its estate; (b) the Authorities could attempt to suspend the Debtor's operations, file liens, seek to lift the automatic stay, and pursue other remedies that will harm the Debtor's estates; and (c) certain directors, officers, and persons might be subject to personal liability—even if such a failure to remit such Taxes and Fees was not a result of malfeasance on their part—which would undoubtedly distract these key employees from their duties related to the Debtor's restructuring. In fact, the Authorities may take such actions regardless of this chapter 11 filing. *See, e.g.*, 11 U.S.C. § 362(b)(9) (permitting tax audits and assessments); 11 U.S.C. § 362(b)(18) (allowing the creation or perfection of liens for property taxes).

19. Accordingly, the Debtor respectfully requests the authority to remit the Taxes and Fees as they become due to ensure that the Debtor remains focused on its business operations and restructuring efforts.

B. Certain of the Taxes and Fees May Constitute Priority Claims

20. The Debtor submits that authorizing the payment of the Taxes and Fees is in the best interest of the Debtor's creditors and estates because certain of the Taxes and Fees constitute priority claims that would be paid in full in the Chapter 11 Case in any event. Moreover, to the extent that such claims are entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the respective Authorities may attempt to assess interest and penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

21. Further, the failure to pay certain of the Taxes and Fees may adversely affect the Debtor's ability to maintain its good standing to operate in the jurisdictions in which it does

business, to conduct business in those jurisdictions, and to administer its estate for the benefit of its creditors.

22. In sum, payment of the Taxes and Fees is in the best interest of the Debtor and its estate, will not harm unsecured creditors and other parties in interest, and will reduce harm and administrative expense to the Debtor's estate.

23. Similar relief is routinely granted by courts in this district and elsewhere. *See, e.g., In re Amyris, Inc. et al.*, No. 23-11131 (THM) (Bankr. D. Del. Sept. 8, 2023) (authorizing the debtor, on a final basis, to pay prepetition taxes and fees in the ordinary course of business up to an aggregate amount); *In re GigaMonster Networks, LLC*, No. 23-10051 (JKS) (Bankr. D. Del. Feb. 9, 2023) (authorizing the debtor to pay prepetition taxes and fees in the ordinary course of business); *In re Medly Health Inc.*, No. 22-11257 (Bankr. D. Del. Jan. 6, 2023) (same); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Sept. 22, 2022) (same); *In re RTI Holding Co., LLC*, No. 20-12456 (JTD) (Bankr. D. Del. Nov. 17, 2020) (same); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019) (same); *In re iPic-Gold Class Entm't LLC*, No. 19-11739 (LSS) (Bankr. D. Del. Sept. 10, 2019) (same, on a final basis); *In re Z Gallerie, LLC*, No. 19-10488 (LSS) (Bankr. D. Del. Apr. 9, 2019) (same); *In re Things Remembered, Inc.*, No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019) (same).

C. Payment of the Taxes and Fees is Warranted Under the Doctrine of Necessity

24. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay or provide special treatment for certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtor may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v.*

James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code.

25. Consistent with a debtor's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See, e.g., Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 of the Bankruptcy Code as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

26. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court and empowers it to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit payments of prepetition obligations when such payments are essential to the continued operation of the debtor's business, and in particular where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtor's business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtor's successful reorganization), *rev'd on other grounds*, 173 B.R. 149 (N.D. Ill. 1994); *Ionosphere Clubs*, 98 B.R. at 177 (recognizing that section 105 of the Bankruptcy Code empowers bankruptcy courts to authorize

payments of prepetition debts when such payments are needed to facilitate the rehabilitation of the debtor).

27. In addition to the authority granted to a debtor in possession under sections 105(a) and 363(b) of the Bankruptcy Code, courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization. See *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations). The Third Circuit recognized the doctrine in *In re Lehigh & New England R. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

28. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. See *id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also *In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. at 824–25 (noting that debtor may pay prepetition claims that are essential to the continued operation of their business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

29. The necessity of payment doctrine is designed to foster the rehabilitation of a debtor in reorganization cases, which courts have recognized is “the paramount policy and goal of

Chapter 11.” *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (noting that “payment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but also observing that “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of toolmakers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (finding that it is appropriate to provide for the “unequal treatment of pre-petition debts when [such treatment is] necessary for rehabilitation”); 2 Collier on Bankruptcy ¶ 105.02[4][a] (16th ed. 2024) (discussing cases in which courts have relied upon the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

30. Here, the Debtor’s payment of the Taxes and Fees is an exercise of sound business judgment, is vital to the Debtor’s restructuring efforts, and is necessary to maximize the value of the Debtor’s estates for the benefit of its creditors. If the Debtor does not continue paying the Taxes and Fees when they come due on a timely basis, it is possible that Authorities or those parties who ordinarily collect the Taxes and Fees may seek to interfere with the Debtor’s business and the efficient administration of the Debtor’s estate.

**D. Cause Exists to Authorize the Debtor's
Financial Institutions to Honor Checks and Electronic Fund Transfers**

31. In connection with the payment of the Taxes and Fees, the Debtor also requests that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment and to honor all electronic payment requests made by the Debtor related to the prepetition obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtor further requests that all such banks and financial institutions be authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved pursuant to this Motion. The Debtor intends to pay all tax and regulatory obligations in a timely manner in accordance with its ordinary business practices and as authorized by the Order approving this Motion.

32. The Debtor has made or will make arrangements to identify checks or wire transfer requests as relating to an authorized payment in respect of the Taxes and Fees. Accordingly, the Debtor believes that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently, and the Court should authorize all applicable financial institutions, when requested by the Debtor, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

33. The Debtor believes that it is entitled to immediate authorization for the relief contemplated by this Motion. Pursuant to Bankruptcy Rule 6003, "[e]xcept 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." To the

extent that the requirements of Bankruptcy Rule 6003 are applicable to the relief requested in the Motion, the Debtor submits that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm. For reasons discussed above and in the First Day Declaration, the relief requested herein is integral to the Debtor's administrative activities in this Chapter 11 Case and necessary to preserve the value of its business and maximize the value of its estate for the benefit of all stakeholders. Failure to receive such authorization and other relief during the first twenty-one (21) days of this Chapter 11 Case would severely disrupt the administration of the Debtor's estate at this critical juncture. Accordingly, the Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

34. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any prepetition claim against the Debtor; (b) a waiver of the Debtor's or any other party in interest's rights to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay a prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

Waiver of Bankruptcy Rule 6004

35. The Debtor seeks a waiver of any stay of the effectiveness of any order granting 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.” As set forth in the Motion, the relief requested herein is essential to prevent immediate and irreparable harm to the Debtor’s business operations. Accordingly, the Debtor submits that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

Notice

36. The Debtor will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the District of Delaware, 844 King Street, Suite 2207, Lock Box 35, Wilmington, Delaware, 19801; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) counsel to the Prepetition Secured Lenders; (d) the United States Attorney’s Office for the District of Delaware; (e) the state attorneys general for all states in which the Debtor conducts business; (f) the Securities Exchange Commission; and (g) any party that requests service pursuant to Bankruptcy Rule 2002. As this Motion is seeking “first day” relief, within two business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered in respect to this Motion as required by Local Rule 9013-1(m).

No Prior Request

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

Conclusion

WHEREFORE, the Debtor respectfully requests entry of the Interim Order and Final Order, substantially in the forms attached hereto respectively as Exhibit A and Exhibit B: (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during the Chapter 11 Case (including any obligations subsequently determined upon audit or otherwise to be owed for periods

prior to the Petition Date); (b) granting related relief; (c) scheduling a final hearing; and (d) granting such other relief as is just and proper.

Dated: October 10, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen, (*Pro Hac Vice* forthcoming)

John W. Lucas, (*Pro Hac Vice* forthcoming)

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Proposed Counsel to the

Debtor and Debtor in Possession

EXHIBIT A
(Proposed Interim Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Related Docket No.

**INTERIM ORDER: (I) AUTHORIZING THE PAYMENT OF
CERTAIN TAXES AND FEES; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor-in-possession (the “Debtor”), for the entry of an interim order (this “Interim Order”): (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees; and (b) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the “Hearing”); and upon the Debtor’s representation that the amounts authorized to be paid pursuant to this Interim Order are consistent with the Debtor’s debtor-in-possession financing budget; and this Court having determined that

¹ The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.

² A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth in this Interim Order.
2. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2024, at __:__.m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion shall be filed with the Court, and served so as to be received by the following parties, by no later than 4:00 p.m. (prevailing Eastern Time) on _____, 2024: (i) proposed counsel to the Debtor, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Courier 19801), Attn: Debra I. Grassgreen (dgrassgreen@pszjlaw.com), John W. Lucas (jlucas@pszjlaw.com), Malhar S. Pagay (mpagay@pszjlaw.com), James E. O’Neill (joneill@pszjlaw.com), and Brooke E. Wilson (bwilson@pszjlaw.com); (ii) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801; (iii) counsel to the Prepetition Secured Lenders; and (iv) counsel for any official committee of unsecured creditors appointed in the Chapter 11 Case. In the event that no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. The Debtor is authorized, but not directed, on an interim basis, to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy, the Taxes and Fees that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of the Chapter 11 Case at such time when the Taxes and Fees are payable, provided that such payments shall not exceed \$80,000 pending entry of the Final Order;

and (b) negotiate, pay, and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to Audits, or paying any Taxes and Fees arising as a result of Audits.

4. All applicable banks and other financial institutions are authorized to receive, process, honor, and pay any and all prepetition checks or by automated clearinghouse payment issued by the Debtor for the payment of Taxes and Fees approved herein, whether prior to or after commencement of the Chapter 11 Cases.

5. The Debtor is authorized, consistent with this Interim Order, to issue postpetition checks or to effect postpetition automated clearinghouse requests in replacement of any checks or automated clearinghouse requests relating to taxes that were dishonored or rejected.

6. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

7. Nothing in the Motion, this Interim Order, or the Debtor's payment of any claims pursuant to this Interim Order, shall be construed as: (i) an admission as to the validity of any claim against any Debtor or the existence of any lien against the Debtor's property; (ii) a waiver of the Debtor's or any other party in interest's rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Interim Order. Nothing contained herein or in the Motion shall be deemed to

increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent that it is not paid.

8. Nothing contained in this Interim Order shall be construed to accelerate payments that are not otherwise due and payable.

9. Nothing herein shall impair any right of the Debtor or any other party in interest to dispute or object to any taxes asserted as owing to the Taxing Authorities or those parties who ordinarily collect the Prepetition Tax Obligations as to amount, liability, classification, or otherwise.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004, the terms and conditions of this Interim Order shall be immediately effective and enforceable. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion. To the extent the 14-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Order, such stay is hereby waived.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and Local Rule 9013-1(m) are satisfied by such notice.

12. To the extent that the Debtor has overpaid any Taxes and Fees, the Debtor is authorized to seek a refund or credit.

13. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

14. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Interim Order.

EXHIBIT B
(Proposed Final Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

GRITSTONE BIO, INC.,¹

Debtor.

Chapter 11

Case No. 24-12305 (KBO)

Related Docket Nos.

**FINAL ORDER: (I) AUTHORIZING THE PAYMENT OF
CERTAIN TAXES AND FEES; AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtor and debtor-in-possession (the “Debtor”), for the entry of a final order (this “Final Order”): (a) authorizing the Debtor to remit and pay (or use tax credits to offset) Taxes and Fees; and (b) granting related relief all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at an interim hearing before this Court (the “Hearing”); and upon the Debtor’s representation that the amounts authorized to be paid pursuant to this Final Order are consistent with the Debtor’s budget; and this Court having determined that the legal and factual bases set

¹ The Debtor’s mailing address is 4698 Willow Road, Pleasanton, CA 94588, and the last four digits of the Debtor’s federal tax identification number is 9534.

² A capitalized term used but not defined herein have the meaning ascribed to it in the Motion.

forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth in this Final Order.
2. The Debtor is authorized, but not directed, to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy, the Taxes and Fees that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of this Chapter 11 Case at such time when the Taxes and Fees are payable, in an aggregate amount not to exceed \$230,000 unless otherwise ordered by this Court; and (b) negotiate, pay, and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to Audits or paying any Taxes and Fees arising as a result of Audits.
3. All applicable banks and other financial institutions are authorized to receive, process, honor, and pay any and all prepetition checks or by automated clearinghouse payment issued by the Debtor for the payment of Taxes and Fees approved herein, whether prior to or after commencement of the Chapter 11 Case.
4. The Debtor is authorized, consistent with this Final Order, to issue postpetition checks or to effect postpetition automated clearinghouse requests in replacement of any checks or automated clearinghouse requests relating to taxes that were dishonored or rejected.

5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

6. Nothing in the Motion, this Final Order, or the Debtor's payment of any claims pursuant to this Final Order, shall be construed as: (i) an admission as to the validity of any claim against the Debtor or the existence of any lien against the Debtor's property; (ii) a waiver of the Debtor's or any other party in interest's rights to dispute any claim or lien on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an allowed claim; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code; or (vi) a limitation on the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to this Final Order. Nothing contained herein or in the Motion shall be deemed to increase, decrease, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent that it is not paid.

7. Nothing contained in this Final Order shall be construed to accelerate payments that are not otherwise due and payable.

8. Nothing herein shall impair any right of the Debtor or any other party in interest to dispute or object to any taxes asserted as owing to the Taxing Authorities or those parties who ordinarily collect the Taxes and Fees as to amount, liability, classification, or otherwise.

9. Notwithstanding the possible applicability of Bankruptcy Rules 6003 and 6004, the terms and conditions of this Final Order shall be immediately effective and enforceable. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the Motion. To the extent the

14-day stay of Bankruptcy Rule 6004(h) may be construed to apply to the subject matter of this Final Order, such stay is hereby waived.

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and Local Rule 9013-1(m) are satisfied by such notice.

11. To the extent that the Debtor has overpaid any Taxes and Fees, the Debtor is authorized to seek a refund or credit.

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

13. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Final Order.

EXHIBIT C

(Authorities)

Authorities

Tax Type	Jurisdiction	Tax Authority	Address
Franchise	California	State of California Franchise Tax Board	Return Processing Branch P.O. Box 942879 Sacramento, CA 94279-6001
Business License	City of Pleasanton, CA	City of Pleasanton Community Development Department	P.O. BOX 102413 Pasadena, CA 91189-2413
Franchise	Delaware	Delaware Division of Revenue	820 N. French Street Wilmington, DE 19801
Property	Alameda County, CA	Alameda County Tax Assessor	1221 Oak Street, Rm. 131 Oakland, CA 94612-4285
Property	Alameda County, CA	Alameda County Tax Assessor	1221 Oak Street, Rm. 131 Oakland, CA 94612-4285
Property	City of Cambridge, MA	City of Cambridge Real Estate Tax	795 Massachusetts Avenue Cambridge, MA 02139
Business License	City of Pleasanton, CA	City of Pleasanton Finance Department	Business License PO Box 520 Pleasanton, CA 94566-0802
Business License	City of Emeryville, CA	City of Emeryville Business Licensing Department	8839 N Cedar Ave #212 Fresno, CA 93720
Excise	Washington	Washington State Department of Revenue	2101 4th Ave., Suite 1400 Seattle, WA 98121
Property	City of Boston, MA	City of Boston Tax Collection	P.O. Box 55808 Boston, MA 02205-5808