

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)

Hearing Date: October 16, 2024 at
9:30 a.m. Eastern time

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (A) AUTHORIZING THE DEBTOR'S USE OF
CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION TO
THE PREPETITION SECURED PARTIES; (C) SCHEDULING FINAL
HEARING; AND (D) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor in possession (the “**Debtor**”) files this motion (the “Motion”) for entry of an interim order pursuant to sections 105, 361, 362, 363, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), substantially in the form attached hereto as Exhibit 1 (the “**Interim Order**”), and following a final hearing to be set by the Court (the “**Final Hearing**”), entry of a proposed final order in a form to be submitted (the “**Final Order**”). Specifically, by this Motion, the Debtor seeks, *inter alia*:

- a. authorization for the Debtor, pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code to use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), and all other

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.



Prepetition Collateral (as defined herein)², in accordance with the terms of the Interim Order and the Budget;

- b. subject to the Carve-Out and any Permitted Prior Liens, to provide Adequate Protection of the liens and security interests (such liens and security interests, the “**Prepetition Secured Liens**”) of the Prepetition Lenders under that certain Loan and Security Agreement, dated as of July 19, 2022, as amended by that certain First Amendment to Loan and Security Agreement, dated March 23, 2023, (and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, (the “**Prepetition Credit Agreement**,” and together with all other related documents, guarantees, and agreements, including, without limitation, security agreements, mortgages, pledge agreements, assignments, financing statements, and other agreements, documents, instruments or certificates executed in connection with the Prepetition Credit Agreement, collectively, the “**Prepetition Financing Documents**”), by and among Debtor as borrower (the “**Prepetition Borrower**”), Hercules Capital, Inc., as lender and agent for itself and the other lenders or entities thereto (in such capacity, the “**Agent**,” and together with the Prepetition Lenders, the “**Prepetition Secured Parties**”), on the terms as more fully set forth in the Interim Order;
- c. that this Court hold an interim hearing (the “**Interim Hearing**”) to consider the relief sought in the Motion and entry of the Interim Order;
- d. that this Court schedule a Final Hearing by no later than November 15, 2024 (unless otherwise agreed by the Debtor and the Agent in writing) to consider entry of a Final Order granting the relief requested in the Motion on a final basis;³ and
- e. waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

In support of this Motion, the Debtor relies upon and refers this Court to (a) the *Declaration of Vassiliki (“Celia”) Economides in Support of the Debtor’s Chapter 11 Petition and First Day Relief* (the “First Day Declaration”) and (b) the *Declaration of Vassiliki (“Celia”) Economides in Support of the Debtor’s Cash Collateral Motion*, incorporated herein by reference.

² Capitalized terms have the meanings ascribed to them in the definitions set forth in this Motion or the Interim Order.

³ The Debtor and the Agent may agree to a further interim hearing and order prior to entry of the Final Order.

The proposed form of Interim Order has the consent and support of the Prepetition Secured Parties.

In further support of this Motion, the Debtor respectfully represents as follows:

JURISDICTION

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 in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, and 507 of title 11 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2.

RELIEF REQUESTED

4. By this Motion, the Debtor seeks the entry of the Interim Order and the Final Order as set forth above.

BACKGROUND

5. 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 a 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.

6. The Debtor is a clinical-stage biotechnology company that aims to develop potent vaccines for oncology and infectious diseases. A detailed description of the Debtor’s business and facts precipitating the filing of the Debtor’s chapter 11 proceeding is set forth in the First Day Declaration.

PREPETITION SECURED OBLIGATIONS

7. *Prepetition Secured Obligations.* As of the Petition Date, the Prepetition Borrower was indebted and liable to the Prepetition Secured Parties under the Prepetition Financing Documents, for (a) an aggregate principal amount of approximately \$40 million, and (b) accrued and unpaid interest, fees (including, without limitation, Agency Fees (as defined therein, if any)), and costs, expenses (including any reasonable attorneys’ and financial advisors’ fees), charges, indemnities, and all other obligations incurred or accrued with respect to the foregoing pursuant to, and in accordance with, the Prepetition Financing Documents (collectively, the “**Prepetition Secured Obligations.**”)

8. *Liens and Collateral.* Subject to the Debtor’s reservation of rights set forth below, the Prepetition Borrower granted to the Agent, for the benefit of the Prepetition Secured Parties,

to secure the Prepetition Secured Obligations, Prepetition Secured Liens on the Collateral (as defined in the Prepetition Credit Agreement), including assets of the Prepetition Borrower as more fully described in the Prepetition Financing Documents, including all of the Prepetition Borrower's right, title, and interest in the Collateral (as defined in the Prepetition Financing Documents, such collateral, collectively, the "**Prepetition Collateral**"), and, as of the Petition Date, such Prepetition Secured Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to liens senior by operation of law or otherwise permitted by the Prepetition Financing Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Secured Liens as of the Petition Date, or valid, non-avoidable, senior priority liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, collectively, the "**Permitted Prior Liens**"). Notwithstanding anything to the contrary herein or in the Interim Order, the Debtor does not acknowledge, affirm, agree or stipulate to, and reserves any and all rights with respect to, the validity, priority, perfection, or enforceability of the asserted liens and security interests of the Prepetition Secured Parties on the Debtor's Intellectual Property (as defined in the Prepetition Financing Documents) and any proceeds or Rights to Payment (also as defined in the Prepetition Financing Documents) relating to such Intellectual Property.

SUMMARY OF PROPOSED INTERIM ORDER AND FINAL ORDER

9. In accordance with Bankruptcy Rules 4001(b) and (d) and Local Rule 4001-(2), below is a summary⁴ of the terms of the proposed use of Cash Collateral and the sections of the

⁴ The summary of the Interim Order, the Final Order, and the terms and conditions for the use of Cash Collateral set forth in this Motion is intended solely for informational purposes to provide the Court and parties in interest

Interim Order or Final Order containing such provisions:

a. **Amount of Cash Collateral to Be Used.** (Interim Order at Exhibit 1 - Budget). The Debtor seeks to use Cash Collateral in an amount consistent with the expenditures described in the budget, the initial form of which is attached to the proposed Interim Order as Exhibit A (the “**Budget**”). Notwithstanding the foregoing, subject to verification by the Agent of employment as of the Petition Date and the amount of payments, the Debtor shall be permitted to pay during the Interim Period, whether set forth in the Budget or not, benefits for ripened paid time off in an aggregate amount not to exceed \$125,000 (hereinafter, “**PTO**”) for employees of the Debtor whose final date of employment is during the Interim Period and as to which (i) the Debtor’s policies require payment, and (ii) applicable non-bankruptcy law requires payment upon termination, and any such payments shall not be taken into account in calculating the Permitted Variances.

b. **Parties with an Interest in Cash Collateral.** The Prepetition Secured Parties assert an interest in the Cash Collateral under the Prepetition Financing Documents (as described above).

c. **Use of Cash Collateral.** (Interim Order at Recital D). The Debtor seeks to use Cash Collateral to, among other things, pay the costs and expenses associated with administering the Chapter 11 Case, continue the orderly operation of the Debtor’s business, maximize and preserve the Debtor’s going concern value, make payroll and satisfy other working capital and general corporate purposes.

d. **Termination Date.** (Interim Order ¶14, ¶15). The Debtor shall be permitted to use the Cash Collateral through the date that is the earliest of: (a) an Event of Default following the EOD Notice Period; or (b) the end of the Interim Period (each (i) and (ii), a “**Termination Date**”). The Debtor’s right, and the right of any other representative of the estate, to use Cash Collateral under the Interim Order shall terminate (other than in respect of the Carve-Out), following three (3) business days’ notice (the “**EOD Notice Period**”) from the Agent that one or more of the following has occurred and is ongoing (each of the following may be waived in writing by the Agent in its sole discretion): (a) the Debtor shall fail to file a motion to approve bid procedures for the sale of substantially all assets (the “**Bid Procedures Motion**”) by October 24, 2024, in a form reasonably acceptable to the Agent; (b) the Court shall not have entered an order approving the Bid Procedures Motion by November 21, 2024, which order shall provide for a bid deadline of December 2, 2024 (the “**Bid Deadline**”); (c) the Debtor shall not have received any qualified bids as contemplated by the Bid Procedures Motion by the Bid Deadline; (d) the Court shall not have entered an order approving the sale of substantially all of the Debtor’s assets by December 12, 2024 (unless a chapter 11 plan has been filed that constitutes a higher and better offer than a proposed sale, the “**Plan**”) and a disclosure statement has been approved, whether conditionally or otherwise, by such date), in a form reasonably acceptable to the Agent; (e) the closing of the sale of substantially all of the Debtor’s assets shall not have occurred by December 30, 2024 (unless the Plan is being solicited by such date); (f) if the Plan is filed, the Court has not entered an order confirming such Plan by January 17, 2025; (g) if the Plan is filed, such Plan has not gone into effect by January 31, 2025; (h) the appointment of a chapter 11 trustee or of an examiner with expanded powers in the Chapter

with an overview of the significant terms governing the Debtor’s use of Cash Collateral. The summary is qualified in its entirety by the Interim Order and the Final Order. In the event that there is any conflict between this Motion and the Interim Order or the Final Order, the Interim Order or the Final Order, as applicable, will control in all respects.

11 Case (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code); (i) the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (j) the dismissal of the Chapter 11 Case; (k) after the Interim Period, the filing of a motion, application or other pleading to obtain postpetition financing that has not been consented to by the Prepetition Secured Parties; (l) entry of an order or a judgment by this Court or any other court staying, reversing, vacating, amending, rescinding or otherwise modifying any of the terms of the Interim Order, or filing of a motion, application or other pleading by the Debtor seeking such entry, in each case without the consent of the Prepetition Secured Parties; (m) violation of the Budget, except as expressly permitted in the Interim Order, and any Permitted Variance, or (n) a determination by this Court that a material violation or breach (other than by the Prepetition Secured Parties), of any of the provisions of the Interim Order has occurred (each, an “**Event of Default**,” collectively, the “**Events of Default**”).

e. **Adequate Protection Liens.** [Interim Order ¶11(a)] As adequate protection for the Prepetition Secured Parties for the Prepetition Secured Liens, the Agent, in accordance with sections 361 and 363(e) of the Bankruptcy Code, will be granted, for the benefit of the Prepetition Secured Parties, additional and replacement valid, binding, enforceable, non-avoidable, and perfected postpetition security interests and liens (the “**Adequate Protection Liens**”) upon all present and after-acquired property and assets of any nature whatsoever, whether real or personal, tangible, or intangible, wherever located, of the Debtor and its estate, specifically including without limitation (i) the Debtor’s Intellectual Property (as defined in the Prepetition Financing Documents), (ii) all of the Debtor’s machinery and equipment, if any, that was not subject to a lien as of the Petition Date, (iii) the Debtor’s leasehold interests (to the maximum extent possible), and (iv) subject to the rights of any landlord, any cash or assets securing the Debtor’s obligations under any leasehold interest wherever located, including without limitation cash and assets securing letters of credit issued for the benefit of any landlords or contract counterparties (collectively, the “**Postpetition Collateral**”), in each case to secure (i) subject to entry of a Final Order, all of the Prepetition Secured Obligations (the “**Final Order Liens**”); provided that the Final Order Liens shall be without prejudice to the rights of any third party, including, without limitation, any Committee, to seek an appropriate remedy from the Court upon a successful Challenge, solely in accordance with and to the extent set forth in Paragraph 9 and (ii) from and after the Petition Date, the aggregate Diminution in Value, if any, in the value of the Prepetition Collateral, *provided, however*, the Postpetition Collateral shall not include Avoidance Actions, but shall upon entry of the Final Order include the proceeds or property recovered from Avoidance Actions, whether by judgment, settlement or otherwise. The Adequate Protection Liens will be subject and subordinate only to (A) the Carve-Out, and (B) the Permitted Prior Liens. The Adequate Protection Liens shall be enforceable against and binding upon the Debtor, its estate, and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Chapter 11 Case, or any successor case.

f. **Adequate Protection Superpriority Claims.** [Interim Order ¶11(b)] The Prepetition Secured Parties and the Agent, for the benefit of the Prepetition Secured Parties, will be granted, solely to the extent of the aggregate Diminution in Value, if any, in the value of the Prepetition Collateral, an allowed administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (each, a “**Section 507(b) Claim**”) with super-priority over all other administrative expenses and all other claims against the Debtor or its estate of any kind or nature whatsoever, but in all cases subject and subordinate to the Carve-Out and the Permitted Prior Liens. The Section 507(b) Claims shall be payable from and have recourse to all Prepetition and Postpetition Collateral, except the proceeds or property recovered from Avoidance Actions pending the entry of the Final Order.

g. **Adequate Protection Payments.** [Interim Order ¶11(c)] As additional adequate protection, (i) upon entry of the Interim Order, the Debtor shall wire to the Agent the sum of **\$4.0 million** to reduce the balance of the Prepetition Secured Obligations and (ii) upon entry of a Final Order, the Debtor shall wire to the Agent the additional sum of **\$2.0 million** to reduce the balance of the Prepetition Secured Obligations; *provided that* the foregoing payments shall be without prejudice to the rights of any third party, including, without limitation, any Committee, to seek an appropriate remedy from the Court upon a successful Challenge, solely in accordance with and to the extent set forth in Paragraph 9. Except as set forth in the foregoing sentence, the Debtor shall not be obligated to pay, as adequate protection, any other fees or expenses of the Prepetition Secured Parties, including attorneys' fees, under the Interim Order or the Final Order. Notwithstanding the foregoing, the Prepetition Secured Parties are not waiving any right to receive fees, expenses or similar charges as provided for in the Prepetition Financing Documents to the extent such fees, expenses and similar charges are allowable under the Bankruptcy Code.

h. **Carve-Out.** [Interim Order ¶6(a)] The Prepetition Secured Liens, the Prepetition Secured Obligations, the Adequate Protection Liens, and the Section 507(b) Claims (as defined herein) of the Prepetition Secured Parties, shall be subject to the payment of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the "**Carve-Out**") from the Cash Collateral or proceeds resulting from liquidation or disposition of Prepetition Collateral or Postpetition Collateral:

(i) the fee and expense claims of the respective retained professionals and/or advisory firms of the Debtor and the Committee, if any, that have been approved by this Court at any time during the Chapter 11 Case pursuant to retention applications filed pursuant to sections 327, 330, and/or 331 or a motion filed pursuant to section 363 of the Bankruptcy Code (collectively, the "**Retained Professionals**"), including any interim approval as set forth in any procedures approved by this Court relating to the interim approval of fees and expenses of the Retained Professionals, not to exceed the amounts set forth for each of the Retained Professionals as encompassed in the Budget, the reasonable expenses of members of the Committee, if any (the "**Committee Member Expenses**," which shall not include legal fees and expenses of Committee members) which were incurred (A) on and after the Petition Date and before the Carve-Out Trigger Date (as defined in the Interim Order), provided that the Carve-Out shall be reduced dollar-for-dollar by any payments of fees and expenses to the applicable Retained Professional, and (B) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding \$25,000.00 subject to an increase in such amount upon entry of the Final Order, for all Retained Professionals, and the amount in subsection (ii) below for Raymond James & Associates, Inc., to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise;

(ii) any transaction or success fees and expenses payable to the Debtor's investment banker (Raymond James & Associates, Inc.) that have been approved by this Court at any time during the Chapter 11 Case or any successor case pursuant to a retention application filed pursuant to sections 327, 328, 330, and/or 331 or a motion filed pursuant to section 363 of the Bankruptcy Code;

(iii) the unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code plus statutory interest, if any, imposed under 31 U.S.C. § 3717. There is no limitation on the obligations of the Debtor and its estate with respect to unpaid fees

payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code;

(iv) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code;

(v) accrued but unpaid administrative expenses reflected in the approved Budget until the Termination Date and up to the amount set forth therein on and after the Carve-Out Trigger Date

(vi) subject to verification by the Agent of employment as of the Petition Date and the amount of payments, PTO, severance wages, and associated taxes owed for employees terminated postpetition through November 15, 2024 in an amount not to exceed \$800,000 (including severance wages and associated taxes owed for the thirty-day period period thereafter), and other similar ripened statutory employee liabilities as to which (i) the Debtor's policies require payment and (ii) applicable non-bankruptcy law requires payment upon termination;⁵ and

(vii) contingent upon approval of the Final Order Liens (defined in paragraph 11(a) below), the reasonable expenses set forth in the approved Budget for the Debtor's Key Employee Incentive Plan if approved by the Court and the wind-down costs of the estate in an amount that may be mutually agreed pursuant to a wind-down budget. Until entry of the Final Order, nothing contained in the Interim Order shall be deemed a pre-approval by the Agent of (i) the retention terms or reasonableness the fees of the Debtor's investment banker and (ii) the Debtor's Key Employee Incentive Plan.

i. **Funding of Segregated Account.** [Interim Order ¶12] The amounts set forth in the Budget for the payment of the fees and expenses of Retained Professionals shall be deposited by the Debtor, at the times identified in the Budget, into a trust account of the Debtor's general bankruptcy counsel or other segregated account ("**Segregated Account**") for the exclusive purpose of subsequently paying such amounts on the date of their allowance by the Court (or when otherwise authorized to be paid pursuant to a customary order of the Court pursuant to section 331 of the Bankruptcy Code). The adequate protection liens and claims set forth in the Interim Order shall be subject and subordinate to all amounts deposited in the Segregated Account. So long as any portion of the Prepetition Secured Obligations remain outstanding, any amounts in the Segregated Account as to which fees and costs are not allowed nor earned shall be preserved and returned to the Debtor subject to the liens securing the Prepetition Secured Obligations. The amounts deposited into the Segregated Account shall not be deemed earned until approved by the Court.

j. **Plan Milestone.** See above Events of Default.

k. **Provision Prohibiting Use of Estate Funds to Investigate Liens.** [Interim Order ¶10] The investigation budget for the Committee to investigate the liens and claims of the Prepetition Secured Parties is \$25,000. Except for the foregoing, Cash Collateral

⁵ For any employees terminated by the Debtor after November 15, 2024, the Debtor and the Agent shall negotiate in good faith an appropriate Carve-Out for purposes of the Final Order for any liabilities associated with such employee termination and the Debtor reserves the right to seek to use Cash Collateral for the purpose of satisfying such liabilities.

may not be used to investigate or pursue any claims against the Prepetition Secured Parties, and no such fees or expenses are included in the Carve-Out.

l. **Stipulations Subject to Challenge.** [Interim Order ¶9] The Debtor's stipulations in favor of Prepetition Secured Parties are subject to challenge by no later than the earlier of seventy-five (75) days following entry of the Interim Order or three (3) business days prior to the hearing on a motion to approve the sale of substantially all of the Debtor's assets (the "**Challenge Deadline**"), as such date may be extended in writing from time to time in the reasonable discretion of the Prepetition Secured Parties or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline. Further, the filing of a motion seeking standing to file a Challenge Action before the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period with respect to that party until two (2) business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion.⁶

m. **Provisions That Modify or Terminate the Automatic Stay to Allow Lender to Exercise Remedies Without Five (5) Days' Notice.** [Interim Order ¶16] Upon the occurrence of an Event of Default, and following the EOD Notice Period, in each case without further notice, motion or application to, order of, or hearing before, this Court, the Prepetition Secured Parties will be granted leave to, including without limitation, cease making financial accommodations to the Prepetition Borrower, accelerate any or all of the Prepetition Secured Obligations, and declare such Prepetition Secured Obligations to be immediately due and payable in full, in cash. Upon the Termination Date, and after providing five (5) business days' prior notice (the "**Remedies Notice Period**") to the Debtor, the U.S. Trustee, and counsel to the Committee, if any, the Prepetition Secured Parties shall be entitled, unless otherwise ordered by this Court upon application made within the Remedies Notice Period, to exercise all of their rights and remedies under the Interim Order and the Prepetition Financing Documents, including, without limitation, foreclosing upon the Prepetition Collateral or Postpetition Collateral or otherwise enforcing the Prepetition Secured Obligations, the Adequate Protection Liens and, upon entry of a Final Order, the Final Order Liens, and any or all of the Prepetition Collateral, and/or to exercise any other default-related remedies under the Prepetition Financing Documents, the Interim Order, or applicable law in seeking to recover payment of the Prepetition Secured Obligations.

n. **Provisions Granting Immediate Liens on Avoidance Actions.** [Interim Order ¶11(a)] Lien on proceeds of Avoidance Actions effective only upon entry of the Final Order.

o. **Provisions Immediately Waiving Debtor's Rights Under Section 506(c).** [Interim Order ¶7] Section 506(c) waiver in favor of the Prepetition Secured Parties is effective upon entry of the Final Order.

p. **Equities of the Case Provisions.** [Interim Order ¶7] Waiver in favor of the Prepetition Secured Parties effective upon entry of the Final Order.

⁶ Notwithstanding anything to the contrary in the Interim Order, the Debtor does not acknowledge, affirm, agree or stipulate to, and reserves any and all rights with respect to, the validity, priority, perfection, or enforceability of the asserted liens and security interests of the Prepetition Secured Parties on the Debtor's Intellectual Property (as defined in the Prepetition Financing Documents) and any proceeds or Rights to Payment (also as defined in the Prepetition Financing Documents) relating to such Intellectual Property

q. **Marshalling Provisions.** [Interim Order ¶21] Subject to entry of the Final Order, the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to any Prepetition Collateral.

NEED FOR THE CONTINUED USE OF CASH COLLATERAL

10. Pursuant to Local Rule 4001-2(a)(i), a debtor in possession seeking authority to use cash collateral or obtain financing must disclose the presence and location of certain provisions contained in the documentation evidencing the cash collateral usage or financing. The debtor in possession must also justify the inclusion of certain such provisions. Set forth below are the disclosures required in accordance Local Bankruptcy Rule 4001-2(a)(i)(A)-(X) (many of which are also disclosed in Paragraph 9 of this Motion as set forth above):

a. Local Bankruptcy Rule 4001-2(a)(i)(A) requires a debtor to disclose the amount of cash collateral the debtor seeks permission to use or the amount of credit the debtor seeks to obtain under the proposed loan agreement, including the committed amount of the proposed loan agreement and the amount of new funding that will actually be available for borrowing by the debtor.

Cash Collateral in the amount set forth in the Budget would be used by the Debtor.

b. Local Bankruptcy Rule 4001-2(a)(i)(B) require the disclosure of pricing and economic terms, including letter of credit fees, commitment fees, and any other fees, provided that when any such terms are sought to be filed under seal, they shall not be disclosed in the Financing Motion itself, but shall be set forth in a separate document filed pursuant to the procedures set forth in Local Bankruptcy Rule 9018-1(d), the filing of which shall be disclosed in the Financing Motion.

None.

c. Local Bankruptcy Rule 4001-2(a)(i)(C) requires the disclosure of provisions that specifically limit the Court’s power or discretion to enter future orders in the case.

None.

d. Local Bankruptcy Rule 4001-2(a)(i)(D) requires disclosure of provisions that provide for the funding of non-debtor affiliates with cash collateral or proceeds of the loan, as applicable, and the approximate amount of such funding.

None.

e. Local Bankruptcy Rule 4001-2(a)(i)(E) requires disclosure of material conditions to closing and borrowing, including budget provisions.

None.

f. Local Bankruptcy Rule 4001-2(a)(i)(F) requires disclosure of any carve-outs from liens or superpriority claims, including the material terms of any professional fee carve-out.

The provisions of the Carve-Out are disclosed in paragraph 6(a) of the proposed Interim Order.

g. Local Bankruptcy Rule 4001-2(a)(i)(G) requires disclosure of provisions that provide for postpetition liens on unencumbered assets, including the identification of such assets.

The Adequate Protection Liens cover all unencumbered assets to the extent set forth in paragraph 11(a) of the proposed Interim Order.

h. Local Bankruptcy Rule 4001-2(a)(i)(H) requires disclosure of provisions that establish any sale or plan milestones.

The applicable sale and plan milestones are disclosed in paragraph 14 of the Interim Order.

i. Local Bankruptcy Rule 4001-2(a)(i)(I) requires disclosure of provisions that provide for a prepayment penalty or other provisions that affect the Debtor's right or ability to repay the financing in full during the course of the chapter 11 case.

None.

j. Local Bankruptcy Rule 4001-2(a)(i)(J) requires disclosure of provisions, in jointly administered cases, that govern joint liability of the debtors, including any provisions that would cause one jointly administered debtors to become liable for the prepetition debt of another jointly administered debtors for which it was not previously subject to.

None.

k. Local Bankruptcy Rule 4001-2(a)(i)(K) requires disclosure of provisions that require the debtor to pay an agent's or lender's expenses and attorneys' fees in connection with the proposed financing or use of cash collateral, without any notice or review by the Office of the United States Trustee, the committee appointed under section 1102 of the Bankruptcy Code (if formed) or, upon objection by either of the foregoing parties, the Court.

No payment of lender fees under the proposed Interim Order.

l. Local Bankruptcy Rule 4001-2(a)(i)(L) requires disclosure of provisions that prohibit the use of estate funds to investigate the liens and claims of the prepetition lender.

There is an investigation budget of \$25,000 for this purpose as set forth in paragraph 10 of the proposed Interim Order.

m. Local Bankruptcy Rule 4001-2(a)(i)(M) requires disclosure of any termination or default provisions concerning the use of cash collateral or the availability of credit.

The default and termination provisions are disclosed in paragraphs 14 through 16 of the proposed Interim Order.

n. Local Bankruptcy Rule 4001-2(a)(i)(N) requires disclosure of any provisions that grant cross-collateralization protection or elevate prepetition debt to administrative expense (or higher) status or that secure prepetition debt with liens on postpetition assets (which liens the creditor would not otherwise have by virtue of the prepetition security agreement or applicable law).

Subject to entry of the Final Order, the full amount of the Prepetition Secured Obligations will be secured by the Debtor's unencumbered assets and postpetition assets that are unencumbered as of the Petition Date, excluding Avoidance Actions themselves.

o. Local Bankruptcy Rule 4001-2(a)(i)(O) requires disclosure of any provisions that apply the proceeds of postpetition financing to pay, in whole or in part, prepetition debt or which otherwise have the effect of converting (or "rolling up") prepetition debt to postpetition debt.

There are provisions for the paydown of the Prepetition Secured Obligations as set forth in paragraph 11(c) of the Interim Order.

p. Local Bankruptcy Rule 4001-2(a)(i)(P) requires disclosure of any provisions that immediately prime valid, perfected and non-avoidable liens existing immediately prior to the petition date or that are perfected subsequent to the petition date as permitted by section 546(b) of the Bankruptcy Code, in each case that are senior to the lender's prepetition liens under applicable law, without the consent of the affected secured creditors, and the proposed notice to be provided to such affected secured creditors.

None.

q. Local Bankruptcy Rule 4001-2(a)(i)(Q) requires disclosure of any provisions or findings of fact that (i) bind the estate or other parties in interest with respect to the validity, perfection or amount of the secured creditor's prepetition lien or the waiver of claims against the secured creditor without first giving parties in interest, including, but not limited to, any official committee appointed in these cases,

at least seventy-five (75) days from the entry of the initial interim order to investigate such matters or (ii) limit the Court's ability to grant relief in the event of a successful challenge.

The customary challenge period is provided as set forth in paragraph 9 of the proposed Interim Order.

r. Local Bankruptcy Rule 4001-2(a)(i)(R) requires disclosure of any provisions that immediately approve all terms and conditions of the underlying loan agreement (provided that provisions in the order that provide that the debtor is authorized to enter into and be bound by the terms and conditions of such loan agreement do not need to be summarized).

None.

s. Local Bankruptcy Rule 4001-2(a)(i)(S) requires disclosure of any provisions that modify or terminate the automatic stay or permit the lender to enforce remedies following an event of default that do not require at least five (5) days' written notice to the trustee or debtor in possession, the Office of the United States Trustee and each committee appointed under sections 1102 and 1114 of the Bankruptcy Code (the "Remedies Notice Period"), prior to such modification or termination of the automatic stay or the enforcement of the lender's remedies.

The applicable remedies provisions are disclosed in paragraph 16 of the proposed Interim Order.

t. Local Bankruptcy Rule 4001-2(a)(i)(T) requires disclosure of any provisions that seek to limit what parties in interest (other than the debtor) may raise at any emergency hearing scheduled during the Remedies Notice Period.

None.

u. Local Bankruptcy Rule 4001-2(a)(i)(U) requires disclosure of any provisions that immediately grant to the prepetition secured creditor liens on the Debtor's claims and causes of action arising under sections 544, 545, 547, and 548 of the Bankruptcy Code or, in each case, the proceeds thereof.

Liens on the proceeds of Avoidance Actions are effective only upon entry of the proposed Final Order.

v. Local Bankruptcy Rule 4001-2(a)(i)(V) requires disclosure of any provisions that immediately waive the Debtor's rights under section 506(c) of the Bankruptcy Code.

These provisions are subject to entry of the proposed Final Order.

w. Local Bankruptcy Rule 4001-2(a)(i)(W) requires disclosure of any provisions that immediately seek to affect the Court's power to consider the equities of the case doctrine under section 552(b)(1) of the Bankruptcy Code.

These provisions are subject to entry of the proposed Final Order.

x. Local Bankruptcy Rule 4001-2(a)(i)(X) requires disclosure of any provisions that immediately shield the lender from the equitable doctrine of "marshalling" or any similar doctrine.

These provisions are subject to entry of the proposed Final Order.

NEED FOR THE CONTINUED USE OF CASH COLLATERAL

11. The Debtor has an urgent and immediate need for the use of Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to preserve its assets or to effectuate an orderly reorganization and sale process that will maximize value for creditors.

12. The Debtor has a workforce of employees who possess the requisite knowledge to maintain the Debtor's going concern value and continued business operations. Without immediate access to Cash Collateral, the Debtor would be forced to terminate staff, abandon certain assets, and cease operations, causing immediate and irreparable harm to this estate. Specifically, the Debtor has an ongoing Phase 2 clinical trial evaluating its individualized immunotherapy that needs to be funded. The trial is treating patients with metastatic colorectal cancer where the prognosis is very poor – most patients die within two to three years of their diagnosis. In order to preserve and maximize the value of the Debtor's assets, the Debtor urges the Court to approve this Motion.

13. Notably, the Prepetition Secured Parties have consented to the proposed Interim Order and will be adequately protected by the adequate protection thereunder to avoid any risk in

the diminution in the value of the Prepetition Collateral.

BASIS FOR RELIEF

14. Without immediate access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value from its ongoing sale process for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations, including funding the ongoing clinical trial referenced above. The Debtor believes that the Budget sets forth a reasonable projection of the administrative expenses and other payments that the Debtor will be required to fund in the coming weeks.

15. The Motion proposes a paydown of \$4 million initially and then an additional \$2 million payable to the Prepetition Secured Parties. The Debtor projects having sufficient cash in the Budget in order to fund its sale process through December 2024, even after taking into account such proposed paydowns. Such paydowns are a necessary component of obtaining the Prepetition Secured Parties' consent to the proposed form of Interim Order.

16. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially impair recoveries by creditors and negatively impact recoveries from the Debtor's going concern business operations. Hence, the relief sought in this Motion should be granted.

A. The Debtor Has an Immediate Need to Use Cash Collateral

17. Bankruptcy Rule 4001(b) permits a court to approve a debtor's request for use of cash collateral during the 14-day period following the filing of a motion requesting authorization

for such use, “only . . . as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Bankruptcy Rule 4001(b)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Simasko Production Co.*, 47 B.R. 444, 449 (D. Colo. 1985); *see also In re Ames Dep’t Stores Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990). After the 14-day period, the request for use of cash collateral is not limited to those amounts necessary to prevent harm to the debtor’s business.

18. As previously noted, in order to address its working capital needs and fund other costs and expenses associated with its reorganization and sale efforts, the Debtor requires immediate access to Cash Collateral. The use of Cash Collateral will provide the Debtor with the necessary capital with which to maintain its assets, including funding the Debtor’s obligations to employees. Access to Cash Collateral will: (a) preserve the Debtor’s going concern value and continued business operations, (b) allow the Debtor to maintain employees, and (c) maximize the value of the Debtor’s assets while the Debtor pursues a going concern sale. The Debtor does not have adequate available sources of working capital or financing without the use of Cash Collateral.

19. Further, the alternative in this case is “to force the debtor to close down its operations and thus doom any effort at reorganization which will hopefully extract the maximum value of the assets involved to the benefit of *all* classes of creditors and other constituencies involved in this case.” *In re Dynaco Corp.*, 162 B.R. 389, 396 (Bankr. D.N.H. 1993). Because this result would be at fundamental odds to the rehabilitative purposes of chapter 11, approval of this Motion is warranted. *Id.* at 394 (noting that “it is apparent that the Congress intended business

under reorganization to proceed in as normal a fashion as possible”) (quoting *In re Prime, Inc.*, 15 B.R. 216, 219 (Bankr. W.D. Mo. 1981)).

B. Section 363 of the Bankruptcy Code Authorizes the Debtor’s Use of Cash Collateral

20. Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may not use cash collateral unless (i) each entity that has an interest in such cash collateral provides consent, or (ii) the court approves the use of cash collateral after notice and a hearing. *See* 11 U.S.C. § 363(c). Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used . . . by the [debtors in possession], the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e).

21. Here, the Prepetition Secured Parties’ interests in the Debtor’s assets are adequately protected for the following reasons.

22. First and foremost, the Prepetition Secured Parties consent to the relief requested in this Motion in accordance with the provisions of the proposed Interim Order.

23. Second, access to Cash Collateral will maximize the value of the Debtor’s assets through the knowledge and expertise of the Debtor’s employees by maintaining the going concern value of the Debtor’s business operations.

24. Third, the Prepetition Secured Parties are further protected by adequate postpetition liens and superpriority claims, plus \$6 million of adequate protection payments (\$4 million under the Interim Order and \$2 million under the Final Order), that are fair and reasonable and compensate the Prepetition Secured Parties for any possible diminution in value of the Debtor’s assets. The Debtor

believes that it can afford to make the proposed paydowns of the Prepetition Secured Obligations and such paydowns are necessary to obtain the consent of the Prepetition Secured Parties to the proposed form of Interim Order. *See In re Codiak Biosciences, Inc.*, Case No. 23-10350 (MFW), Docket No. 29 at p. 19 (Bankr. D. Del. Mar. 30, 2023) (interim cash collateral order authorizing paydown of \$7.5 million of prepetition secured debt). The proposed paydown of the Prepetition Secured Obligations is subject to the challenge rights of any committee and other parties in interest. Given the significant value that the Debtor stands to lose in the event that it is denied access to continued use of Cash Collateral, such protections are wholly appropriate and justified.

C. The Carve-Out is Appropriate

25. The Adequate Protection Liens and the Section 507(b) Claim are subject and subordinate to the Carve-Out. The Carve-Out contains similar terms to others that courts in this District have found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from their advisors. Without the Carve-Out, the Debtor's estate may be deprived of possible rights and powers if the services for which professionals may be compensated are restricted. *See In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of these cases by ensuring that assets remain for the payment of the U.S. Trustee fees and professional fees, notwithstanding the grant of superpriority claims and liens as part of the adequate protection of the Prepetition Secured Parties' interests in the Prepetition Collateral.

Accordingly, the Carve-Out is appropriate and should be approved.

PROPOSED INTERIM ORDER AND FINAL HEARING

26. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court set a date for the Final Hearing that is as soon as practicable, but no later than November 15, 2024 (unless otherwise agreed by the Debtor and the Agent in writing) and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

27. The urgent need to preserve the Debtor's business, and avoid immediate and irreparable harm to the Debtor's estate, makes it imperative that the Debtor is authorized to use Cash Collateral, pending the Final Hearing, in order to continue its business and administer this Chapter 11 Case. Without the ability to use Cash Collateral, the Debtor would be unable to meet its postpetition obligations or fund its working capital needs, thus causing irreparable harm to the value of the Debtor's estate and effectively ending the Debtor's reorganization and going concern sale efforts. Accordingly, the Debtor respectfully requests that, pending the hearing on a proposed Final Order, the proposed Interim Order be approved in all respects and that the terms and provisions of the proposed Interim Order be implemented and be deemed binding and that, after the Final Hearing, the proposed Final Order be approved in all respects and the terms and provisions of the proposed Final Order be implemented and be deemed binding.

SATISFACTION OF BANKRUPTCY RULE 6003

28. Bankruptcy Rule 6003 empowers a court to grant certain relief within the first 21 days after the petition date only "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtor believes an immediate and orderly

transition into chapter 11 is critical to the viability of its operations, and the failure to receive the requested relief during the first 21 days of this Chapter 11 Case would severely disrupt the Debtor's operations at this important juncture. The requested relief is necessary for the Debtor to operate its business in the ordinary course, preserve the ongoing value of its operations, and maximize the value of its estate for the benefit of all stakeholders. The Debtor has demonstrated that the requested relief is "necessary to avoid immediate and irreparable harm," as contemplated by Bankruptcy Rule 6003, and the Court should grant the requested relief.

RESERVATION OF RIGHTS

29. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtor under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise 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, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estate; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtor or any other party in

interest against any person or entity under the Bankruptcy Code or any other applicable law.

WAIVER OF BANKRUPTCY RULE 6004(H)

30. To implement the relief sought in this Motion and to the extent necessary, the Debtor seeks a waiver of the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NOTICE

31. The Debtor will provide notice of this Motion to the following parties or their respective counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) the parties included on the Debtor's list of twenty largest unsecured creditors; (c) all known parties asserting a lien against any of the Debtor's assets, including the Prepetition Secured Parties; and (d) all parties entitled to notice pursuant to Local Rule 9013-1(m)(iii). As the Motion is seeking "first day" relief, within two business days after the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered respecting the Motion as required by 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

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

WHEREFORE, based upon the foregoing, the Debtor requests entry of the proposed Interim Order and the Final Order under sections 105, 361, 362, 363, and 507 of the Bankruptcy Code, Bankruptcy Rule 4001, and Local Rule 4001-2: (a) authorizing the Debtor to use Cash Collateral; (b) providing adequate protection to the Prepetition Secured Parties; and (c) modifying the automatic stay.

Dated: October 14, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ James E. O'Neill

Debra I. Grassgreen (*Pro Hac Vice* pending)

John W. Lucas (*Pro Hac Vice* pending)

Maxim B. Litvak (*Pro Hac Vice* pending)

Malhar S. Pagay (*Pro Hac Vice* pending)

James E. O'Neill (DE Bar No. 4042)

919 North Market Street, 17th Floor

P.O. Box 8750

Wilmington, Delaware 19899-8705

Tel: 302-652-4100

Fax: 302-652-4400

Email: dgrassgreen@pszjlaw.com

jlucas@pszjlaw.com

mlitvak@pszjlaw.com

mpagay@pszjlaw.com

joneill@pszjlaw.com

*Proposed Counsel to the
Debtor and Debtor in Possession*

EXHIBIT 1

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 to Docket No. ____

**INTERIM ORDER (A) AUTHORIZING THE DEBTOR'S USE OF
CASH COLLATERAL; (B) GRANTING ADEQUATE PROTECTION TO
THE PREPETITION SECURED PARTIES; (C) SCHEDULING FINAL
HEARING; AND (D) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “**Motion**”) of the above-captioned debtor in possession (the “**Debtor**”) in the above-referenced chapter 11 case (the “**Chapter 11 Case**”), for entry of an interim order (the “**Interim Order**”) pursuant to sections 105, 361, 362, 363, 506(c), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), seeking, *inter alia*:

- a. authorization for the Debtor, pursuant to sections 105, 361, 362, 363, and 507 of the Bankruptcy Code to use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (“**Cash Collateral**”), and all other Prepetition Collateral (as defined herein)², in accordance with the terms of this Interim Order and the Budget;
- b. subject to the Carve-Out and any Permitted Prior Liens, to provide Adequate Protection of the liens and security interests (such liens and security interests, the “**Prepetition Secured Liens**”) of the Prepetition Lenders under that certain Loan and Security Agreement, dated as of July 19, 2022, as amended by that certain First Amendment to Loan and Security

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 Capitalized terms have the meanings ascribed to them in the definitions set forth in this Interim Order below or in the Motion.

Agreement, dated March 23, 2023, (and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time, (the “**Prepetition Credit Agreement**,” and together with all other related documents, guarantees, and agreements, including, without limitation, security agreements, mortgages, pledge agreements, assignments, financing statements, and other agreements, documents, instruments or certificates executed in connection with the Prepetition Credit Agreement, collectively, the “**Prepetition Financing Documents**”), by and among Debtor as borrower (the “**Prepetition Borrower**”), Hercules Capital, Inc., as lender and agent for itself and the other lenders or entities thereto (in such capacity, the “**Agent**,” and together with the Prepetition Lenders, the “**Prepetition Secured Parties**”), on the terms as more fully set forth in this Interim Order;

- c. that this Court hold an interim hearing (the “**Interim Hearing**”) to consider the relief sought in the Motion and entry of the Interim Order;
- d. that this Court schedule a final hearing by no later than November 15, 2024 (unless otherwise agreed by the Debtor and the Agent in writing) (the “**Final Hearing**”) to consider entry of a final order (the “**Final Order**”) granting the relief requested in the Motion on a final basis;³ and
- e. waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)).

and pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, due and sufficient notice of the Motion and the relief sought at the Interim Hearing having been given under the particular circumstances by the Debtor; and this Court having considered the Motion and all pleadings related thereto, including the record made by the Debtor at the Interim Hearing and all objections, if any, to the relief requested in the Motion on an interim basis having been withdrawn, resolved, or overruled by this Court; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

³ The Debtor and the Agent may also agree to a further interim hearing and order prior to entry of the Final Order.

THIS COURT HEREBY FINDS AS FOLLOWS:

A. On October 10, 2024 (the “**Petition Date**”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing to operate its business and manage its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. No official committee of unsecured creditors (“**Committee**”), as provided for under section 1102 of the Bankruptcy Code, has been appointed as of yet in the Chapter 11 Case.

C. In requesting the use of Cash Collateral, and in exchange for and as a material inducement to the consent of the Prepetition Secured Parties to the use of their Cash Collateral, subject to Paragraph 9 below, the Debtor, for itself, its estate, and all representatives of such estate, acknowledges, stipulates, and agrees that:

(1) *Prepetition Secured Obligations.* As of the Petition Date, the Prepetition Borrower was indebted and liable to the Prepetition Secured Parties under the Prepetition Financing Documents, for (a) an aggregate principal amount of approximately \$40 million, and (b) accrued and unpaid interest, fees (including, without limitation, Agency Fees (as defined therein, if any)), and costs, expenses (including any reasonable attorneys’ and financial advisors’ fees), charges, indemnities, and all other obligations incurred or accrued with respect to the foregoing pursuant to, and in accordance with, the Prepetition Financing Documents (collectively, the “**Prepetition Secured Obligations.**”)

(2) *Liens and Collateral.* Subject to the Debtor’s reservation of rights set forth below, the Prepetition Borrower granted to the Agent, for the benefit of the Prepetition Secured Parties, to secure the Prepetition Secured Obligations, Prepetition Secured Liens on the

Collateral (as defined in the Prepetition Credit Agreement), including assets of the Prepetition Borrower as more fully described in the Prepetition Financing Documents, including all of the Prepetition Borrower's right, title, and interest in the Collateral, (as defined in the Prepetition Financing Documents, such collateral, collectively, the "**Prepetition Collateral**"), and, as of the Petition Date, such Prepetition Secured Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to liens senior by operation of law or otherwise permitted by the Prepetition Financing Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Prepetition Secured Liens as of the Petition Date, or valid, non-avoidable, senior priority liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, collectively, the "**Permitted Prior Liens**").

(3) *Validity of Prepetition Secured Liens and Prepetition Secured Obligations.* Subject to the Debtor's reservation of rights set forth below, the Prepetition Secured Liens are (a) valid, binding, perfected, duly recorded, and enforceable liens on, and security interests in, the Prepetition Collateral, and (b) not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, set-off, offset, recoupment, counterclaim, defense, "claim" (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind. Notwithstanding anything to the contrary in this Interim Order, the Debtor does not acknowledge, affirm, agree or stipulate to, and reserves any and all rights with respect to, the validity, priority, perfection, or enforceability of the asserted liens and security interests of the Prepetition Secured Parties on the Debtor's Intellectual Property (as defined in the

Prepetition Financing Documents) and any proceeds or Rights to Payment (also as defined in the Prepetition Financing Documents) relating to such Intellectual Property.

(4) *Adequate Protection for the Prepetition Secured Parties.* The Prepetition Secured Parties are entitled to receive adequate protection pursuant to sections 361, 362, and 363 of the Bankruptcy Code for any diminution in the value, from and after the Petition Date, of their interests in the Prepetition Collateral (including Cash Collateral equal to the amount of all disbursements of cash by the Debtor from and after the Petition Date) to the fullest extent permitted under the Bankruptcy Code (each such diminution value, a “**Diminution in Value**”).

D. As of the time of the Motion and without prejudice to the rights and arguments of the Prepetition Secured Parties, the Debtor has an immediate and critical need to use Cash Collateral to, among other things, pay the costs and expenses associated with administering the Chapter 11 Case, continue the orderly operation of the Debtor’s business, maximize and preserve the Debtor’s going concern value, make payroll and satisfy other working capital and general corporate purposes. Without access to the use of Cash Collateral on an interim basis, the Debtor and its estate would suffer immediate and irreparable harm. The Debtor does not have sufficient available sources of working capital and financing to operate its business or maintain its property in the ordinary course of business without the authorized use of Cash Collateral. The Debtor requires the use of Cash Collateral on an interim basis under the terms of this Interim Order to satisfy its postpetition liquidity needs.

E. The Prepetition Secured Parties have consented to the Debtor’s use of Cash Collateral solely in accordance with and subject to the Budget and the Permitted Variances (both as defined herein) and on the terms and conditions set forth in this Interim Order. Accordingly, after considering all of their practical alternatives, the Debtor has concluded, in an exercise of its

sound business judgment, that the consensual use of Cash Collateral represents the best source of funding currently available to the Debtor.

F. Furthermore, the Prepetition Secured Parties agree that the Adequate Protection granted to the Prepetition Secured Parties in this Interim Order is reasonable and calculated to protect the interests of the Prepetition Secured Parties.

G. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(b). In particular, the authorization granted herein for the Debtor to continue using the Prepetition Collateral, including Cash Collateral, is necessary to avoid immediate and irreparable harm to the Debtor and its estate. Entry of this Interim Order is in the best interest of the Debtor, its estate, and its creditors. The terms of the Debtor's use of the Prepetition Collateral (including Cash Collateral), the terms of Adequate Protection to be granted to the Prepetition Secured Parties hereunder, and the Cash Collateral arrangements described herein pursuant to this Interim Order are fair and reasonable under the circumstances, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and are supported by reasonably equivalent value and fair consideration for the Prepetition Secured Parties' consent thereto.

H. The Debtor and the Prepetition Secured Parties have negotiated the terms and conditions of the Debtor's use of the Prepetition Collateral (including Cash Collateral) as contemplated by this Interim Order in good faith and at arm's length, and the Prepetition Secured Parties' consent to the Debtor's use of Cash Collateral shall be deemed to have been made in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

I. Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:⁴

1. Jurisdiction and Venue. Consideration of the Motion constitutes a “core proceeding” as defined in 28 U.S.C. § 157(b)(2). This Court has jurisdiction over this proceeding and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue for the Chapter 11 Case and the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Notice. The Debtor filed the Motion with this Court and, pursuant to Bankruptcy Rules 2002, 4001, and 9014, and the Local Rules, the Debtor provided notice of the Motion by electronic mail, facsimile, hand delivery, or overnight delivery to the following parties and/or to their counsel as indicated below: (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) the Debtor’s twenty (20) largest unsecured creditors on a consolidated basis; (c) counsel to the Agent; (d) all other known parties with liens of record on assets of the Debtor as of the Petition Date; (e) the local office for the Internal Revenue Service; and (f) any party having filed requests for notice in the Chapter 11 Case (collectively, the “**Notice Parties**”). Given the nature of the relief sought in the Motion, the form, scope, and timing of the foregoing notice was sufficient and adequate under the circumstances and complies with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any other applicable law, and no further notice relating to the Interim Hearing or Motion is necessary or required.

3. The Budget.

(a) The use of proceeds of the Prepetition Collateral (including Cash Collateral) during the Interim Period is subject to a an operating budget setting forth the projected

⁴ Pursuant to Bankruptcy Rule 7052, findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact.

financial operations of the Debtor, substantially in the form annexed hereto as **Exhibit A** (the “**Initial Budget**,” and as may be amended and extended from time to time by agreement of the Debtor and the Agent, the “**Budget**”) subject to an unfavorable variance with respect to cash disbursements of no more than 20% (other than restructuring professional fees and payments to the U.S. Trustee set forth in the Budget for which no variance shall be permitted), applicable on a line item basis tested on a rolling four-week basis, subject to a variance modification pursuant to subsequent agreement and/or Order (with respect to each line item, a “**Permitted Variance**,” and collectively, the “**Permitted Variances**”) *provided further that*, any variance that is not a Permitted Variance may waived in writing by the Agent in its sole discretion. Notwithstanding the foregoing, subject to verification by the Agent of employment as of the Petition Date and the amount of payments, the Debtor shall be permitted to pay during the Interim Period, whether set forth in the Budget or not, benefits for ripened paid time off in an aggregate amount not to exceed \$125,000 (hereinafter, “**PTO**”) for employees of the Debtor whose final date of employment is during the Interim Period and as to which (i) the Debtor’s policies require payment, and (ii) applicable non-bankruptcy law requires payment upon termination, and any such payments shall not be taken into account in calculating the Permitted Variances.

(b) The Debtor shall provide the Prepetition Secured Parties with a variance report no less than weekly after the entry of this Interim Order (each such report, the “**Variance Report**”).

4. Use of Prepetition Collateral (including Cash Collateral). Immediately upon entry of this Interim Order, the Debtor is authorized to use Cash Collateral to fund working capital requirements and operating and administrative expenses of the Debtor, in accordance with and subject to the Budget and Permitted Variances, from the date of entry of this Interim Order

through November 15, 2024, or such other date as the Debtor and the Agent may agree in writing (the “**Interim Period**”) in accordance with the terms of this Interim Order.

5. Amendments. The Debtor is expressly authorized and empowered to enter into amendments, supplements, extensions, or other modifications of this Interim Order from time to time in any manner as to which the Debtor and the Prepetition Secured Parties must mutually agree in writing; *provided, that* notice of any material modification or amendment shall be provided by the Debtor with an accompanying proposed order to the U.S. Trustee and counsel to the Committee, if any, which parties may object to such modification or amendment, in writing, within five (5) business days from the date of the transmittal of such notice (which, to the extent such contact information for such parties is known to the Debtor, shall be transmitted by fax or e-mail, and, if not known, by overnight mail); *provided, however,* that if no objection is interposed, the Debtor may request entry of the proposed order without further notice or a hearing, and *provided, further,* that if such objection is timely provided, then such modification or amendment shall be permitted only pursuant to an order of this Court, the entry of which may be sought on an expedited basis.

6. Carve-Out.

(a) Generally. The Prepetition Secured Liens, the Prepetition Secured Obligations, the Adequate Protection Liens, and the Section 507(b) Claims (as defined herein) of the Prepetition Secured Parties, shall be subject to the payment of the following fees and expenses (the amounts set forth below, together with the limitations set forth therein, collectively, the “**Carve-Out**”) from the Cash Collateral or proceeds resulting from liquidation or disposition of Prepetition Collateral or Postpetition Collateral:

(i) the fee and expense claims of the respective retained professionals and/or advisory firms of the Debtor and the Committee, if any, that have been approved by this Court at any time during the Chapter 11 Case pursuant to retention applications filed pursuant to sections 327, 330, and/or 331 or a motion filed pursuant to section 363 of the Bankruptcy Code (collectively, the “**Retained Professionals**”), including any interim approval as set forth in any procedures approved by this Court relating to the interim approval of fees and expenses of the Retained Professionals, not to exceed the amounts set forth for each of the Retained Professionals as encompassed in the Budget, the reasonable expenses of members of the Committee, if any (the “**Committee Member Expenses**,” which shall not include legal fees and expenses of Committee members) which were incurred (A) on and after the Petition Date and before the Carve-Out Trigger Date (as defined herein), *provided that* the Carve-Out shall be reduced dollar-for-dollar by any payments of fees and expenses to the applicable Retained Professional, and (B) on and after the Carve-Out Trigger Date in an aggregate amount not exceeding \$25,000.00 subject to an increase in such amount upon entry of the Final Order, for all Retained Professionals, and the amount in subsection (ii) below for Raymond James & Associates, Inc., to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise;

(ii) any transaction or success fees and expenses payable to the Debtor’s investment banker (Raymond James & Associates, Inc.) that have been approved by this Court at any time during the Chapter 11 Case or any successor case pursuant to a retention application filed pursuant to sections 327, 328, 330, and/or 331 or a motion filed pursuant to section 363 of the Bankruptcy Code;

(iii) the unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code plus statutory interest, if any, imposed under 31 U.S.C. § 3717. There is no limitation on the obligations of the Debtor and its estate with respect to unpaid fees payable to the U.S. Trustee and Clerk of the Bankruptcy Court pursuant to section 1930 of Title 28 of the United States Code;

(iv) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code;

(v) accrued but unpaid administrative expenses reflected in the approved Budget until the Termination Date and up to the amount set forth therein on and after the Carve-Out Trigger Date;

(vi) subject to verification by the Agent of employment as of the Petition Date and the amount of payments, PTO, severance wages, and associated taxes owed for employees terminated postpetition through November 15, 2024 in an amount not to exceed \$800,000 (including severance wages and associated taxes owed for the thirty-day period period thereafter), and other similar ripened statutory employee liabilities as to which (i) the Debtor's policies require payment and (ii) applicable non-bankruptcy law requires payment upon termination;⁵ and

(vii) contingent upon approval of the Final Order Liens (defined in paragraph 11(a) below), the reasonable expenses set forth in the approved Budget for the Debtor's Key Employee Incentive Plan if approved by the Court and the wind-down costs of the estate in an amount that may be mutually agreed pursuant to a wind-down budget. Until entry of

⁵ For any employees terminated by the Debtor after November 15, 2024, the Debtor and the Agent shall negotiate in good faith an appropriate Carve-Out for purposes of the Final Order for any liabilities associated with such employee termination and the Debtor reserves the right to seek to use Cash Collateral for the purpose of satisfying such liabilities.

the Final Order, nothing contained herein shall be deemed a pre-approval by the Agent of (i) the retention terms or reasonableness the fees of the Debtor's investment banker and (ii) the Debtor's Key Employee Incentive Plan.

(b) Carve-Out Trigger Date. As used herein, the term “**Carve-Out Trigger Date**” means the date on which the Prepetition Secured Parties provide written notice to the Debtor, the U.S. Trustee, and counsel to the Committee, if any, that the Carve-Out is invoked, which notice may be delivered only on or after the expiration of the EOD Notice Period (as defined herein) under this Interim Order or upon the Termination Date.

(c) No Direct Obligation to Pay Allowed Professional Fees. Neither the Prepetition Secured Parties nor the Agent shall be responsible for the payment or reimbursement of any fees or disbursements of any Retained Professional incurred in connection with this Chapter 11 Case or any successor case under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Secured Parties or Agent to pay compensation to, or to reimburse expenses of, any Retained Professional or to guarantee that the Debtor has sufficient funds to pay such compensation or reimbursement. Nothing herein, including the inclusion of line items in the Budget for Retained Professionals, shall be construed as consent to the allowance of any particular professional fees or expenses of the Debtor, the Committee, if any, or of any other person or shall affect the right of the Prepetition Secured Parties and the Agent to object to the allowance and payment of such fees and expenses.

7. Waiver of Right to Surcharge. Subject to entry of a Final Order, in light of (a) the consent of the Prepetition Secured Parties to the current payment of administrative expenses of the Debtor's estate in accordance with the Budget, (b) the agreement of the Prepetition Secured Parties to permit the Prepetition Secured Liens, the Prepetition Secured Obligations, the Adequate

Protection Liens, and Section 507(b) Claims to be subordinated to the Carve-Out, and (c) the agreement of the Prepetition Secured Parties to permit the use of Cash Collateral for payments made in accordance with the Budget, the Prepetition Secured Parties are entitled to a waiver of (i) the provisions of section 506(c) of the Bankruptcy Code and (ii) any “equities of the case” claims or other claims under sections 105(a) or 552(b) of the Bankruptcy Code. Upon entry of a Final Order, no costs or expenses of administration or other charge, lien, assessment, or claim incurred at any time (including, without limitation, any expenses set forth in the Budget) by any Debtor or any other person or entity shall be imposed or charged against any or all of the Postpetition Collateral, the Prepetition Collateral, and the Prepetition Secured Parties or their claims or recoveries under the Bankruptcy Code, including sections 506(c) or 552(b) thereof, or otherwise, and the Debtor, on behalf of its estate, waives any such rights.

8. Automatic Perfection.

(a) The Adequate Protection Liens granted pursuant to this Interim Order to the Prepetition Secured Parties shall be valid, enforceable, and perfected by operation of law upon entry of this Interim Order by this Court without any further action by any party. The Prepetition Secured Parties in respect of the Adequate Protection Liens shall not be required to enter into or to obtain any control agreements, landlord waivers (unless required by law or contract), mortgagee waivers, bailee waivers, or warehouseman waivers or to give, file, or record any UCC-1 financing statements, mortgages, deeds of trust, leasehold mortgages, notices to account debtors or other third parties, notices of lien or similar instruments in any jurisdiction (including filings with the United States Patent and Trademark Office, the United States Copyright Office, or any similar agency in respect of trademarks, copyrights, trade names, or patents with respect to intellectual property) (collectively, the “**Perfection Documents**”), or obtain consents

from any licensor or similarly situated party in interest (unless required by law or contract), or take any other action to validate, record, or perfect the Adequate Protection Liens granted under this Interim Order and approved hereby, all of which are automatically and immediately perfected by the entry of this Interim Order. If the Prepetition Secured Parties, in their reasonable discretion, choose to obtain, enter into, give, record, or file any Perfection Documents, (x) all such Perfection Documents shall be deemed to have been obtained, entered into, given, recorded, or filed, as the case may be, as of the Petition Date, (y) no defect in any such act shall affect or impair the validity, perfection, priority, or enforceability of the Adequate Protection Liens, and (z) such liens shall have the relative priority set forth herein notwithstanding the timing of filing of any such Perfection Documents. In lieu of optional recording or filing any Perfection Documents, the Agent and the Prepetition Secured Parties may, in each of their reasonable discretion, choose to record or file a true and complete copy of this Interim Order in any place that any Perfection Document would or could be recorded or filed (which may include a description of the collateral appropriate to be indicated in a recording or filing at such place of recording or filing), and such recording or filing by the Agent or the Prepetition Secured Parties shall have the same effect as if such Perfection Document had been filed or recorded as of the Petition Date.

9. Effect of Stipulations on Third Parties.

(a) Generally. The admissions and stipulations set forth in Paragraph C above of this Interim Order (collectively, the “**Prepetition Lien and Claim Matters**”) are and shall be binding on the Debtor, its estate, and any successors thereto, any subsequent trustee (including any chapter 7 trustee), responsible person, examiner with expanded powers, any other estate representative, and all parties-in-interest and all of their successors-in-interest and assigns, including, without limitation, the Committee, if any, *unless*, and solely to the extent that, a party-

in-interest with standing and requisite authority (i) has timely filed the appropriate pleadings, and timely commenced the appropriate proceeding required under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules, challenging the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing a proceeding or other contested matter, a “**Challenge**”) by no later than the earlier of seventy-five (75) days following entry of this Interim Order or three (3) business days prior to the hearing on a motion to approve the sale of substantially all of the Debtor’s assets (the “**Challenge Deadline**”), as such date may be extended in writing from time to time in the reasonable discretion of the Prepetition Secured Parties or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline, and (ii) this Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding and any such judgment has become a final judgment that is not subject to any further review or appeal.

(b) Binding Effect. To the extent any Prepetition Lien and Claim Matters are not subject to a Challenge timely and properly commenced by the Challenge Deadline, or to the extent any Challenge does not result in a final and non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion, or application to, order of, or hearing before, this Court and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall, pursuant to this Interim Order, become binding, conclusive, and final on the Debtor, its estate, all creditors, any person, entity, or party-in-interest in the Chapter 11 Case, and its successors and assigns, and in any successor case for all purposes and shall not be subject to challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with

expanded powers or other representative of the Debtor's estate. More specifically, as to (i) any parties in interest, including the Committee, if any, who fails to file a Challenge within the Challenge Deadline, or if any such Challenge is filed and overruled, or (ii) any and all Prepetition Lien and Claim Matters that are not expressly the subject of a timely Challenge: (A) any and all such Challenges by any party (including, without limitation, any Committee, any chapter 11 trustee, any examiner, or any other estate representative appointed in the Chapter 11 Case, or any chapter 7 trustee, any examiner or any other estate representative appointed in any successor case, shall be deemed to be forever waived and barred, and (B) all of the findings, Debtor's stipulations and admissions hereunder with respect to the Prepetition Liens and Claim Matters, shall be of full force and effect and forever binding upon the Debtor's estate, all creditors and interest holders, and other parties in interest in the Chapter 11 Case and any successor case. Notwithstanding anything to the contrary herein, the Prepetition Lien and Claim Matters shall nonetheless remain binding unless a Challenge is successful pursuant to an order or judgment that is final and no longer subject to appeal or further review.

(c) No Standing. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any claim or cause of action belonging to the Debtor and/or its estate, including, without limitation, any Challenge with respect to the Prepetition Financing Documents, the Prepetition Secured Liens, and/or the Prepetition Secured Obligations. The filing of a motion seeking standing to file a Challenge Action before the Challenge Period, which attaches a proposed Challenge, shall extend the Challenge Period with respect to that party until two (2) business days after the Court approves the standing motion, or such other time period ordered by the Court in approving the standing motion.

10. Limitation on Use of Proceeds. Notwithstanding anything in this Interim Order to the contrary, no portion or proceeds of the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no disbursements set forth in the Budget shall be used for the payment of professional fees, disbursements, costs, or expenses incurred in connection with: (a) objecting, contesting or raising any defense to the validity, perfection, priority, or enforceability of, or any amount due under, the Prepetition Financing Documents or any security interests, liens or claims granted under this Interim Order or the Prepetition Financing Documents to secure such amounts; (b) asserting any Challenges, claims, actions, or causes of action, including any claims and causes of action arising under sections 544, 545, 547, 548, and 550 of the Bankruptcy Code or any other similar state or federal law (collectively, the “**Avoidance Actions**”), against any of the Prepetition Secured Parties or any of their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys, or advisors; or (c) contesting the Prepetition Lien and Claim Matters; *provided that* no more than \$25,000 in the aggregate of the proceeds of the Postpetition Collateral, Prepetition Collateral, the Cash Collateral, and the Carve-Out may be used by the Committee, if any, solely to investigate (but not prosecute or Challenge) Prepetition Lien and Claim Matters.

11. Adequate Protection. The Prepetition Secured Parties agree, and this Court finds, that the adequate protection provided in this Interim Order (the “**Adequate Protection**”), including, without limitation, in this Paragraph 11, is reasonable and calculated to protect the interests of the Prepetition Secured Parties. Notwithstanding any other provision hereof, the grant of Adequate Protection to the Prepetition Secured Parties pursuant hereto is without prejudice to the right of the Prepetition Secured Parties to seek adequate protection or to seek modification of a grant of Adequate Protection provided in this Interim Order so as to provide different or

additional adequate protection, and without prejudice to the right of the Debtor or any other party in interest to contest any such request.

(a) Prepetition Secured Party Adequate Protection Liens and Additional Liens to Secure the Prepetition Secured Obligations. As adequate protection for the Prepetition Secured Parties for the Prepetition Secured Liens, the Agent, in accordance with sections 361 and 363(e) of the Bankruptcy Code, is hereby granted, for the benefit of the Prepetition Secured Parties, additional and replacement valid, binding, enforceable, non-avoidable, and perfected postpetition security interests and liens (the “**Adequate Protection Liens**”) upon all present and after-acquired property and assets of any nature whatsoever, whether real or personal, tangible, or intangible, wherever located, of the Debtor and its estate, specifically including without limitation (i) the Debtor’s Intellectual Property (as defined in the Prepetition Financing Documents), (ii) all of the Debtor’s machinery and equipment, if any, that was not subject to a lien as of the Petition Date, (iii) the Debtor’s leasehold interests (to the maximum extent possible), and (iv) subject to the rights of any landlord, any cash or assets securing the Debtor’s obligations under any leasehold interest wherever located, including without limitation cash and assets securing letters of credit issued for the benefit of any landlords or contract counterparties (collectively, the “**Postpetition Collateral**”), in each case to secure (i) subject to entry of a Final Order, all of the Prepetition Secured Obligations (the “**Final Order Liens**”); *provided that* the Final Order Liens shall be without prejudice to the rights of any third party, including, without limitation, any Committee, to seek an appropriate remedy from the Court upon a successful Challenge, solely in accordance with and to the extent set forth in Paragraph 9 and (ii) from and after the Petition Date through entry of the Final Order, the aggregate Diminution in Value, if any, in the value of the Prepetition Collateral, *provided, however*, the Postpetition Collateral shall not include Avoidance Actions, but

shall upon entry of the Final Order include the proceeds or property recovered from Avoidance Actions, whether by judgment, settlement or otherwise. The Adequate Protection Liens are subject and subordinate only to (A) the Carve-Out, and (B) the Permitted Prior Liens. The Adequate Protection Liens shall be enforceable against and binding upon the Debtor, its estate, and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Chapter 11 Case, or any successor case.

(b) Section 507(b) Claims. Notwithstanding the provision of Adequate Protection hereunder, the Prepetition Secured Parties and the Agent, for the benefit of the Prepetition Secured Parties, are hereby each granted, solely to the extent of the aggregate Diminution in Value, if any, in the value of the Prepetition Collateral, an allowed administrative expense claim pursuant to section 507(b) of the Bankruptcy Code (each, a “**Section 507(b) Claim**”) with super-priority over all other administrative expenses and all other claims against the Debtor or its estate of any kind or nature whatsoever, but in all cases subject and subordinate to the Carve-Out and the Permitted Prior Liens. The Section 507(b) Claims shall be payable from and have recourse to all Prepetition and Postpetition Collateral, except the proceeds or property recovered from Avoidance Actions pending the entry of the Final Order.

(c) Adequate Protection Payments. As additional adequate protection, (i) upon entry of this Interim Order, the Debtor shall wire to the Agent the sum of **\$4.0 million** to reduce the balance of the Prepetition Secured Obligations and (ii) upon entry of a Final Order, the Debtor shall wire to the Agent the additional sum of **\$2.0 million** to reduce the balance of the Prepetition Secured Obligations; *provided that* the foregoing payments shall be without prejudice to the rights of any third party, including, without limitation, any Committee, to seek an appropriate remedy from the Court upon a successful Challenge, solely in accordance with and to the extent set forth

in Paragraph 9. Except as set forth in the foregoing sentence, the Debtor shall not be obligated to pay, as adequate protection, any other fees or expenses of the Prepetition Secured Parties, including attorneys' fees, under this Interim Order or the Final Order. Notwithstanding the foregoing, the Prepetition Secured Parties are not waiving any right to receive fees, expenses or similar charges as provided for in the Prepetition Financing Documents to the extent such fees, expenses and similar charges are allowable under the Bankruptcy Code.

(d) Disposition of Prepetition Collateral. The Debtor shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the Prepetition Collateral outside the ordinary course of business without the prior written consent of the Prepetition Secured Parties (and no such consent shall be implied, from any other action, inaction or acquiescence by the Prepetition Secured Parties) to such disposition and the terms thereof, unless otherwise approved by the Court. Moreover, the Debtor and its advisors shall regularly communicate with the Prepetition Secured Parties regarding any sale or banking process, communications and offers by prospective investors or buyers, including without limitation providing copies of letters of intent and indications of interest to the Prepetition Secured Parties and the terms of any stalking horse protections that the Debtor proposes to afford a purchaser of the Debtor's assets.

(e) Further Adequate Protection Reservation. Notwithstanding anything to the contrary set forth herein, the adequate protection granted by this Interim Order is without prejudice to the Prepetition Secured Parties' right to seek additional adequate protection from this Court. The use of Cash Collateral pursuant to the terms and conditions of this Interim Order and in accordance with the Budget shall not be deemed to be a consent by the Prepetition Secured Parties to any other or further use of Cash Collateral or to the use of any Cash Collateral in any amount or for any purpose in excess of the amount set forth in the Budget for each such

type of disbursement. Nothing herein shall prevent the Agent from objecting to the further use of Cash Collateral after the Interim Period.

12. Funding of Segregated Account. The amounts set forth in the Budget for the payment of the fees and expenses of Retained Professionals shall be deposited by the Debtor, at the times identified in the Budget, into a trust account of the Debtor's general bankruptcy counsel or other segregated account ("Segregated Account") for the exclusive purpose of subsequently paying such amounts on the date of their allowance by the Court (or when otherwise authorized to be paid pursuant to a customary order of the Court pursuant to section 331 of the Bankruptcy Code). The adequate protection liens and claims set forth in this Interim Order shall be subject and subordinate to all amounts deposited in the Segregated Account. So long as any portion of the Prepetition Secured Obligations remain outstanding, any amounts in the Segregated Account as to which fees and costs are not allowed nor earned shall be preserved and returned to the Debtor subject to the liens securing the Prepetition Secured Obligations. The amounts deposited into the Segregated Account shall not be deemed earned until approved by the Court.

13. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to: (a) permit the Debtor to grant Adequate Protection as set forth herein; (b) permit the Debtor to perform such acts as reasonably requested by the Prepetition Secured Parties to assure the perfection and priority of the Adequate Protection Liens and Final Order Liens granted herein; and (c) authorize the Debtor to make, and the Agent to retain and apply, payments in accordance with the terms of this Interim Order.

14. Events of Default. The Debtor's right, and the right of any other representative of the estate, to use Cash Collateral under this Interim Order shall terminate (other

than in respect of the Carve-Out), following three (3) business days' notice (the "**EOD Notice Period**") from the Agent that one or more of the following has occurred and is ongoing (each of the following may be waived in writing by the Agent in its sole discretion): (a) the Debtor shall fail to file a motion to approve bid procedures for the sale of substantially all assets (the "**Bid Procedures Motion**") by October 24, 2024, in a form reasonably acceptable to the Agent; (b) the Court shall not have entered an order approving the Bid Procedures Motion by November 21, 2024, which order shall provide for a bid deadline of December 2, 2024 (the "**Bid Deadline**"); (c) the Debtor shall not have received any qualified bids as contemplated by the Bid Procedures Motion by the Bid Deadline; (d) the Court shall not have entered an order approving the sale of substantially all of the Debtor's assets by December 12, 2024 (unless a chapter 11 plan has been filed that constitutes a higher and better offer than a proposed sale, the "**Plan**") and a disclosure statement has been approved, whether conditionally or otherwise, by such date), in a form reasonably acceptable to the Agent; (e) the closing of the sale of substantially all of the Debtor's assets shall not have occurred by December 30, 2024 (unless the Plan is being solicited by such date); (f) if the Plan is filed, the Court has not entered an order confirming such Plan by January 17, 2025; (g) if the Plan is filed, such Plan has not gone into effect by January 31, 2025; (h) the appointment of a chapter 11 trustee or of an examiner with expanded powers in the Chapter 11 Case (having powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code); (i) the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (j) the dismissal of the Chapter 11 Case; (k) after the Interim Period, the filing of a motion, application or other pleading to obtain postpetition financing that has not been consented to by the Prepetition Secured Parties; (l) entry of an order or a judgment by this Court or any other court staying, reversing, vacating, amending, rescinding or otherwise modifying any of the terms of this

Interim Order, or filing of a motion, application or other pleading by the Debtor seeking such entry, in each case without the consent of the Prepetition Secured Parties; (m) violation of the Budget, except as expressly permitted herein, and any Permitted Variance, or (n) a determination by this Court that a material violation or breach (other than by the Prepetition Secured Parties), of any of the provisions of this Interim Order has occurred (each, an “**Event of Default**,” collectively, the “**Events of Default**”).

15. Termination of Use of Cash Collateral. Notwithstanding anything in this Interim Order to the contrary, the Debtor shall be permitted to use the Cash Collateral pursuant to this Interim Order through the date that is the earliest of: (a) an Event of Default following the EOD Notice Period; or (b) the end of the Interim Period (each (i) and (ii), a “**Termination Date**”).

16. Prepetition Secured Parties Remedies. Upon the occurrence of an Event of Default, and following the EOD Notice Period, in each case without further notice, motion or application to, order of, or hearing before, this Court, the Prepetition Secured Parties are granted leave to, including without limitation, cease making financial accommodations to the Prepetition Borrower, accelerate any or all of the Prepetition Secured Obligations, and declare such Prepetition Secured Obligations to be immediately due and payable in full, in cash. Upon the Termination Date, and after providing five (5) business days’ prior notice (the “**Remedies Notice Period**”) to the Debtor, the U.S. Trustee, and counsel to the Committee, if any, the Prepetition Secured Parties shall be entitled, unless otherwise ordered by this Court upon application made within the Remedies Notice Period, to exercise all of their rights and remedies under this Interim Order and the Prepetition Financing Documents, including, without limitation, foreclosing upon the Prepetition Collateral or Postpetition Collateral or otherwise enforcing the Prepetition Secured Obligations, the Adequate Protection Liens and, upon entry of a Final Order, the Final Order Liens,

and any or all of the Prepetition Collateral, and/or to exercise any other default-related remedies under the Prepetition Financing Documents, this Interim Order, or applicable law in seeking to recover payment of the Prepetition Secured Obligations.

17. Successors and Assigns. This Interim Order shall be binding upon all parties in interest in the Chapter 11 Case, including any subsequently appointed trustee, responsible individual, examiner with expanded powers, or other estate representative.

18. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive the entry of any subsequent order, and the rights, remedies, powers, privileges, liens and priorities of the Prepetition Secured Parties provided for in this Interim Order and any Prepetition Financing Document shall not be modified, altered or impaired in any manner without their consent (which consent shall not be unreasonably withheld) by any order, including any order (a) confirming any plan of reorganization or liquidation in any of the Chapter 11 Case, (b) converting any of the Chapter 11 Case to a chapter 7 case, (c) dismissing any of the Chapter 11 Case, or (d) any superseding case under the Bankruptcy Code. The terms and provisions of this Interim Order as well as the Adequate Protection granted pursuant to this Interim Order shall continue in full force and effect notwithstanding the entry of any such order, and such rights, claims and liens shall maintain their priority as provided by this Interim Order and the Prepetition Financing Documents and to the maximum extent permitted by law until all of the Prepetition Secured Obligations are indefeasibly paid in full, in cash.

19. Subsequent Reversal or Modification. The reversal or modification on appeal of any or all of the provisions of this Interim Order will not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith,

whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

20. Order Governs. In the event of any conflict between the provisions of this Interim Order and the Motion, or any supporting documents, the provisions of this Interim Order shall control and govern to the extent of such conflicts.

21. No Marshaling. Subject to entry of the Final Order, none of the Prepetition Secured Parties or Prepetition Collateral shall be subject to the doctrine of marshaling or any similar doctrine or law of any jurisdiction requiring the recovery upon or application to any indebtedness of any collateral or proceeds in any particular order or action.

22. Immediate Effect of Order. This Interim Order shall take effect immediately upon execution hereof, and, notwithstanding anything to the contrary contained in Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3), there shall be no stay of execution of effectiveness of this Interim Order. All objections to the entry of this Interim Order have been withdrawn or overruled, and the Motion is approved on an interim basis on the terms and conditions set forth herein. The Debtor shall promptly mail copies of this Interim Order to the Notice Parties and counsel to the Committee, if any.

23. Application of Proceeds. All proceeds of the Prepetition Collateral payable by the Debtor to the Agent under the provisions of this Interim Order, or otherwise, and received by the Agent may be applied or deemed to be applied by the Agent in accordance with this Interim Order and the Prepetition Financing Documents.

24. Final Hearing. The Final Hearing is scheduled for November ___, 2024, at __:00 __.m. (prevailing Eastern Time) (unless otherwise agreed by the Debtor and Agent) before this Court. Any objections by creditors or other parties in interest to any provisions of a Final Order

shall be deemed waived unless timely filed and served in accordance with this Paragraph 24. The Debtor shall promptly serve a notice of entry of this Interim Order and of the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid, facsimile, electronic mail or overnight mail upon the Notice Parties. The notice of the entry of this Interim Order and the Final Hearing shall state that objections to the entry of a Final Order shall be filed with this Court by no later than 4:00 p.m. (prevailing Eastern Time) on November ___, 2024, with copies to: (a) counsel for the Debtor, Pachulski Stang Ziehl & Jones LLP, One Sansome Street, Suite 3430, San Francisco, CA 94104, Attn: Debra Grassgreen, and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn: James E. O'Neill; (b) counsel for the Agent, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, NJ 07601, Attn: Stuart Komrower, and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 1980, Attn: Stacy Newman; (c) the U.S. Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: Timothy J. Fox; and (d) counsel to the Committee, if any.

EXHIBIT A

Exhibit A

GRITSTONE BIO, INC.

Weekly Cash Flow Forecast

Week No.:	1	2	3	4	5	Total
(\$ in thousands)	14-Oct	21-Oct	28-Oct	4-Nov	11-Nov	
Receipts						
Receipts	2,138	-	-	-	-	2,138
Total Receipts	2,138	-	-	-	-	2,138
Payments						
AP Disbursements	(150)	(350)	(350)	(350)	(350)	(1,550)
Payroll & Benefits	-	-	-	-	(1,100)	(1,100)
Insurance	-	(110)	-	-	-	(110)
Rent	-	-	(261)	-	-	(261)
Subtotal Payments	(150)	(460)	(611)	(350)	(1,450)	(3,021)
Total Operating Cash Flow	1,988	(460)	(611)	(350)	(1,450)	(883)
Financing cash flows						
Loan Repayment / Interest	(4,000)	-	-	-	(2,000)	(6,000)
Total financing cash flows	(4,000)	-	-	-	(2,000)	(6,000)
Restructuring costs						
Employee Separation Costs	-	-	(20)	-	-	(20)
UST / Court / Deposit Fees	(15)	(100)	-	-	-	(115)
Professional Fees	(320)	(320)	(250)	(295)	(360)	(1,545)
Total Restructuring Costs	(335)	(420)	(270)	(295)	(360)	(1,680)
Net Cash Flow	(2,347)	(880)	(881)	(645)	(3,810)	(8,563)
Cash Roll-Forward						
Beginning Cash	20,814	18,467	17,587	16,706	16,061	20,814
(+) / (-) Net Cash Flow	(2,347)	(880)	(881)	(645)	(3,810)	(8,563)
Ending Cash	18,467	17,587	16,706	16,061	12,251	12,251

**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)

**DECLARATION OF VASSILIKI (“CELIA”) ECONOMIDES IN SUPPORT OF
THE DEBTOR’S CASH COLLATERAL MOTION**

I, Vassiliki (“Celia”) Economides, hereby declare under penalty of perjury that the following is true to the best of my knowledge, information, and belief:

1. I am the Chief Financial Officer (“**CFO**”) and an Executive Vice President (“**EVP**”) of the above-captioned debtor and debtor in possession, Gritstone bio, Inc., formerly known as Gritstone Oncology, Inc. (the “**Debtor**”), and have served in these capacities since June 2021.

2. Previously, I served as Senior Vice President, Strategy and External Affairs at Kezar Life Sciences, Inc., a public company targeting immune-mediated diseases and cancer. Prior to joining Kezar in 2019, I served as Vice President, Corporate Affairs at Aurinia Pharmaceuticals, Inc., a public company that delivered the first FDA-approved oral treatment (an immunotherapy) for lupus nephritis. Previously, I served as Director of Global Medical Affairs and Director of Clinical Operations at BioMarin Pharmaceutical, Inc., after the company’s acquisition of Prosensa where I led Investor Relations and Corporate Communications. Earlier in my career, I led Investor Relations and Program Development at the Biotechnology Innovation Organization and worked at a healthcare-focused hedge fund and in financial services focusing on the biotech sector.

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.

3. I received a B.A. from McGill University and an M.P.H. in Health Policy and Management from Columbia University.

4. On October 10, 2024 (the “**Petition Date**”), the Debtor commenced a case (the “**Chapter 11 Case**”) by filing a 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**”).

5. I submit this declaration in support of the *Debtor’s Motion for Interim and Final Orders (A) Authorizing the Debtor’s Use of Cash Collateral; (B) Granting Adequate Protection to the Prepetition Secured Parties; (C) Scheduling Final Hearing; and (D) Granting Related Relief* (the “**Motion**”).² I am over the age of 18, competent to testify, and authorized to submit this declaration on behalf of the Debtor.

6. As a result of my roles as CFO and EVP, I am familiar with the Debtor’s businesses, financial affairs, and day-to-day operations. Except as otherwise noted, I have personal knowledge of the matters set forth herein. All facts set forth in this declaration are based on my personal knowledge, my discussions with other members of the Debtor’s senior management and the Debtor’s employees, my review of relevant documents, and/or my opinion based on my experience and knowledge of the Debtor’s operations and financial condition. In making this declaration, I have relied in part on information and materials that the Debtor’s personnel and advisors have gathered, prepared, verified, and provided to me, in each case under my ultimate supervision, at my direction,

² Capitalized terms have the meanings ascribed to them in the definitions set forth in the Motion.

and/or for my benefit in preparing this declaration. If I were called to testify as a witness in this matter, I could and would testify competently to the facts set forth herein.

NEED FOR CASH COLLATERAL ACCESS

7. The Debtor has an urgent and immediate need for the use of Cash Collateral. The Debtor has not obtained postpetition financing and, without the use of Cash Collateral, the Debtor will not be able to preserve its assets or to effectuate an orderly reorganization and sale process that will maximize value for creditors.

8. The Debtor has a workforce of employees who possess the requisite knowledge to maintain the Debtor's going concern value and continued business operations. Without immediate access to Cash Collateral, the Debtor would be forced to terminate staff, abandon certain assets, and cease operations, causing immediate and irreparable harm to this estate. Specifically, the Debtor has an ongoing Phase 2 clinical trial evaluating its individualized immunotherapy that needs to be funded. The trial is treating patients with metastatic colorectal cancer where the prognosis is very poor – most patients die within two to three years of their diagnosis. In order to preserve and maximize the value of the Debtor's assets, I urge the Court to approve the Motion.

9. Absent access to Cash Collateral, the repercussions to the Debtor's restructuring efforts will be catastrophic and likely irreparable, ending its ability to maximize value from its ongoing sale process for the benefit of all constituents. The Debtor needs to fund, among other things, payroll obligations, payments to vendors for ongoing goods, services, and rent, and other administrative obligations, including funding the ongoing clinical trial referenced above.

10. The Budget was prepared by staff under my direction and control. I believe that the Budget sets forth a reasonable projection of the administrative expenses and other payments that the Debtor will be required to fund in the coming weeks.

11. The Motion proposes a paydown of \$4 million initially and then an additional \$2 million payable to the Prepetition Secured Parties. The Debtor projects having sufficient cash in the Budget in order to fund its sale process through December 2024, even after taking into account such proposed paydowns. I understand that such paydowns are a necessary component of obtaining the Prepetition Secured Parties' consent to the proposed form of Interim Order.

12. If the Motion is not approved, the Debtor's only alternative would be a piecemeal liquidation that would substantially impair recoveries by creditors and negatively impact recoveries from the Debtor's going concern business operations. Hence, I believe that the relief sought in the Motion should be granted.

13. The urgent need to preserve the Debtor's business, and avoid immediate and irreparable harm to the Debtor's estate, makes it imperative that the Debtor is authorized to use Cash Collateral as soon as possible in order to continue its business and administer this Chapter 11 Case. Without the ability to use Cash Collateral, the Debtor would be unable to meet its postpetition obligations or fund its working capital needs, thus causing irreparable harm to the value of the Debtor's estate and effectively ending the Debtor's reorganization and going concern sale efforts.

14. I have reviewed the proposed form of Interim Order granting the Motion, which order was negotiated in good faith and at arms' length with the Prepetition Secured Parties. I believe that

the terms of the Interim Order are fair and reasonable from the perspective of the Debtor's estate under the circumstances.

15. Based on the foregoing, I urge the Court to grant the Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Dated: October 14, 2024

/s/ Vassiliki Economides

Vassiliki Economides
Chief Financial Officer