

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER (I) WAIVING THE REQUIREMENT TO FILE A LIST OF EQUITY SECURITY HOLDERS AND MODIFYING NOTICE REQUIREMENTS TO EQUITY SECURITY HOLDERS, AND (II) AUTHORIZING THE DEBTOR TO REDACT CERTAIN PERSONALLY IDENTIFIABLE INFORMATION FOR INDIVIDUAL CREDITORS AND PARTIES IN INTEREST

The above-captioned debtor and debtor-in-possession, (the “**Debtor**”) submits this motion (the “**Motion**”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 1007 and 2002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), (i) waiving the requirement to file a list of equity security holders of the Debtor (the “**Equity List**”) and modifying notice requirements to equity security holders of the Debtor, and (ii) authorizing the Debtor to redact certain personal identifiable information for the Debtor’s individual creditors and parties in interest. In support of this Motion, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this

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



district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that the Court lacks authority under Article III of the United States Constitution to enter such final order or judgment absent consent of the parties.

Background

3. On June 1, 2022 (the “**Petition Date**”), the Debtor commenced this case (the “**Case**”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Court.

4. The Debtor continues to operate its business and manage its property as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner or official committee of unsecured creditors has been appointed in the Debtor’s chapter 11 case.

5. Additional information regarding the Debtor’s business and operations, as well as the events precipitating the commencement of this case, is set forth in the *Declaration of Steven Lo in Support of the Debtor’s Chapter 11 Petition and Requests for First Day Relief* (the “**First Day Declaration**”), filed on or shortly following the Petition Date and incorporated herein by reference.

Relief Requested

6. By this Motion, the Debtor respectfully requests entry of the Proposed Order waiving the requirement to file the Equity List and modifying the notice requirements to all holders

of equity interests in the Debtor, and authorizing the Debtor to redact certain personal identifiable information for the Debtor's individual creditors and parties in interest.

Basis for Relief Requested

A. Cause Exists to Waive the Requirements to File the Equity List and Modify Notice Requirements to Equity Security Holders.

7. Bankruptcy Rule 1007(a)(3) provides that “unless the court orders otherwise,” a debtor must file a list of equity security holders within 14 days after the petition date. Under Bankruptcy Rule 2002(d), unless otherwise ordered by the Court, a debtor is required to give notice of the order for relief to all equity security holders. The Court has authority to modify or waive the filing and notice requirements under the express provisions of both rules. Fed. R. Bankr. R. 2002(d); Fed. R. Bankr. R. 1007(a)(3); *see also* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

8. The Debtor is a NASDAQ listed public company with, as of the Petition Date, almost 5 million shares of issued and outstanding publicly held common stock. Given the number of shares outstanding and with the stock actively being traded on the public market, beneficial ownership of the common stock is widely dispersed and constantly changing. The Debtor does not maintain a list of its equity security holders and therefore must obtain the names and addresses of their shareholders from transfer agents and brokerage firms. Preparing a list of the Debtor's equity security holders with last known addresses and sending notices to all those holders will be expensive, burdensome and time consuming, and will serve little or no beneficial purpose.

9. Further, equity security holders likely will know of this chapter 11 case through the Debtor's reporting with the SEC and the financial press, as well as through information disseminated by the Debtor and the publication of case filings being made available on the website established by Kurtzman Carson Consultants LLC, the Debtor's proposed claims and noticing

agent(the “**Claims Agent**”).² In addition, the Debtor filed with its petition a list of known significant holders of its outstanding stock.

10. The Debtor also proposes that the notice of commencement of this chapter 11 case (the “**Notice of Commencement**”) be served on the list of registered holders, the transfer agent and all banks, brokers, intermediaries, other nominees or their mailing agents (collectively, the “**Nominees**”) that hold Zosano Stock in “street name” for the beneficial holders of the Zosano Stock, as applicable, and in a manner consistent, with the equity transfer procedures notice. Contemporaneously with the filing of this Motion, the Debtor is filing the *Motion of the Debtor for Entry of Interim and Final Orders Establishing (I) Notification, Objection and Hearing Procedures for Transfers of Equity Securities and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtor’s Estate* (the “**Equity Trading Procedures Motion**”). As set forth in the Equity Trading Procedures Motion, the Debtor requests that notice of entry of the interim order granting the relief requested therein, including the procedures for transferring equity securities (the “**Equity Trading Procedures Notice**”), be provided to all registered holders and transfer agents for any class of equity interests in the Debtor.

11. Accordingly, the Debtor requests that the requirement to file a list of and to provide notice directly to all of the Debtor’s equity security holders be waived and that, instead, the Debtor be authorized to combine service of the Notice of Commencement with the Equity Trading Procedures Notice in a manner approved by the Court in connection with the Equity Trading Procedures Motion. The Debtor further submits that, to the extent it is determined that equity security holders are entitled to distributions from the Debtor’s estate, those parties will be provided

² Pleadings and motions filed in this Case may be accessed via the Claims Agent website at <http://www.kccllc.net/ZosanoPharma>.

with notice of the bar date and will then have an opportunity to assert their interests. Equity security holders will, therefore, not be prejudiced by the relief requested herein.

12. Courts in this District have granted similar relief to that requested herein in other chapter 11 cases. *See, e.g., In re AAC Holdings, Inc., et al.*, Case No. 20-11648 (JTD) (Bankr. D. Del. June 23, 2020) (waiving the requirement to file a list of equity holders and the requirement to provide notice directly to equity security holders); *In re Southcross Energy Partners, L.P.*, Case No. 19-10772 (MFW) (Bankr. D. Del. April 3, 2019) (waiving the requirement to file a list of equity security holders); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Apr. 11, 2019) (same); *In re Ciber, Inc.*, Case No. 17-10772 (BLS) (Bankr. D. Del. April 28, 2017) (same).

13. In light of the foregoing, the Debtor submits that the present circumstances warrant similar relief in this chapter 11 case and provide ample cause for the Court to waive the requirement under Bankruptcy Rule 1007(a)(3) to file the Equity List for the Debtor and to modify the provision of notice of the order for relief under Bankruptcy Rule 2002(d).

B. The Court Should Authorize the Debtor to Redact Certain Personally Identifiable Information for Individual Creditors and Parties in Interest.

14. Section 107(c) of the Bankruptcy Code provides that the Court “for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual[:] . . . [a]ny means of identification . . . contained in a paper filed, or to be filed in a case under” the Bankruptcy Code. 11 U.S.C. § 107(c)(1)(A).

15. The Debtor submits cause exists to authorize the Debtor to redact from any paper filed or to be filed with the Court in this chapter 11 case personally identifiable information, including home addresses, of the Debtor’s individual creditors and parties in interest—the majority of whom are the Debtor’s current or former employees—because such information could be used,

among other things, to perpetrate identity theft or for other unlawful purposes. The Debtor proposes to provide an unredacted version of the creditor matrix and any other applicable filings to the Court, the U.S. Trustee, counsel to any official committee of unsecured creditors appointed in this chapter 11 Case (if any), and other parties in interest upon reasonable request.

16. Courts in this District have granted similar relief to that requested herein in other chapter 11 cases. *See, e.g., In re Art Van Furniture, LLC*, No. 20-10553 (CSS) (Bankr. D. Del. Mar. 10, 2020) (authorizing the debtors to redact personally identifiable information, including home address information, of the debtors' individual creditors and interest holders on the creditor matrix and similar documents filed with the court); *In re Melinta Therapeutics, Inc.*, No. 19-12748 (LSS) (Bankr. D. Del. Feb. 7, 2020) (authorizing the debtors to file under seal the portions of the creditor matrix, the schedules and statements, and any related affidavits of service containing the home addresses of the debtors' current employees); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Feb. 4, 2020) (authorizing the debtors to redact personal identification information, including home address information, of all individuals on documents filed with the court); *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019) (same); *In re THG Holdings, LLC*, No. 19-11689 (JTD) (Bankr. D. Del. Aug. 22, 2019) (same).

17. Recently, in addition to granting the requested relief, courts in this district have also expounded on the importance of authorizing debtors to redact individual creditors' personally identifiable information, including home addresses in particular. In *Art Van Furniture*, Judge Sontchi noted that the proposed redaction is not a "burden of proof" issue so "much as a common sense issue." Hr'g Tr. at 25:6-7, *In re Art Van Furniture, LLC*, No. 20-10533 (CSS) (Bankr. D. Del. Mar. 10, 2020) [Docket No. 82]; *see also* Hr'g Tr. at 24:21-25, 25:9-10, *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 22, 2020) [Docket No. 146] (noting that redacting personal information "is common sense"). Judge Sontchi found that "at this point and

given the risks associated with having any kind of private information out on the internet, [redaction] has really become routine [and] I think obvious relief.” *Id.* at 25:13–16.

Notice

18. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) creditors holding the twenty (20) largest unsecured claims against the Debtor; (c) the Office of the United States Attorney for the District of Delaware; (d) the Internal Revenue Service; (e) the Securities & Exchange Commission; (f) the Delaware Secretary of State; (g) the Delaware State Treasury; (h) registered holders of the Debtor’s stock; (i) the transfer agent Computershare Limited; (j) Five Narrow Lane LP; (k) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (l) any other party entitled to notice pursuant to Local Rule 9013-1(m)(iii). As the Motion is seeking “first day” relief, within two (2) business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered with respect to the Motion in accordance with Local Rule 9013-1(m)(iv). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Signature on Next Page]

Conclusion

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting the relief requested herein and such other and further relief as is just and proper.

Dated: June 2, 2022

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

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No.

**ORDER WAIVING THE REQUIREMENT TO FILE A LIST OF
EQUITY SECURITY HOLDERS AND MODIFYING NOTICE
REQUIREMENTS TO EQUITY SECURITY HOLDERS**

Upon consideration of the motion (the “**Motion**”)² of the above captioned debtor and debtor-in-possession (the “**Debtor**”), pursuant to section 105(a) the Bankruptcy Code and Bankruptcy Rules 1007 and 2002, seeking entry of an order waiving the requirement to file a list of equity security holders of the Debtor and providing the manner for giving notice of the order for relief to all equity security holders; and upon the First Day Declaration; and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and it appearing that this Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Debtor having consented to the Court entering an order in the event this matter is deemed a non-core proceeding; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given

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

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. The requirement under Bankruptcy Rule 1007(a)(3) to file the Equity List for the Debtor is hereby waived.
3. The Debtor is authorized to serve the Notice of Commencement on registered equity security holders in the Debtor and the transfer agent along, and in a manner consistent, with the notice provided to equity security holders under any order granting the Equity Trading Procedures Motion, including the Equity Trading Procedures Notice. All registered holders of equity interests in the Debtor (including brokerages, nominees and intermediaries) shall be required to serve the Notice of Commencement on any holder for whose benefit such registered holder holds such interest.
4. The Debtor is authorized to redact to redact certain personal identification information for individual creditors, employees and equity interest holders from publicly viewable version of the creditor matrix and any other paper filed or to be filed with the Court in this chapter 11 case; *provided* that the Debtor shall provide an unredacted version of the creditor matrix to (a) the Clerk's Office, (b) Kurtzman Carson Consultants LLC, as the Debtor's claims and noticing agent (the "**Claims Agent**"), (c) the U.S. Trustee, (d) counsel to the official committee of unsecured creditors appointed in this chapter 11 case (if any), and (e) other parties in interest upon reasonable request.
5. When serving any document in this case on an individual whose personally identifiable information is sealed or redacted pursuant to this Order, the Claims Agent shall use

such parties' residential addresses for service unless (a) the Debtor's books and records reflect a non-residential address for such notice party, or (b) such notice party has requested to receive notice at another address.

6. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order.

7. Notwithstanding any applicable Bankruptcy Rule, this Order shall be effective and enforceable immediately upon entry hereof.

8. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order.