

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Ref. Docket No. 12

INTERIM ORDER (A) PROHIBITING UTILITY PROVIDERS FROM DISCONTINUING, ALTERING OR REFUSING SERVICE, (B) DEEMING UTILITY PROVIDERS ADEQUATELY ASSURED OF FUTURE PERFORMANCE, (C) ESTABLISHING AND APPROVING PROCEDURES FOR DETERMINING ASSURANCE OF PAYMENT, AND (D) GRANTING RELATED RELIEF

Upon consideration of the motion (the “**Motion**”)² filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”), pursuant to sections 105(a) and 366 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004(h), seeking entry of interim and final orders (a) prohibiting Utility Providers from discontinuing, altering or refusing to provide the Debtor with the Utility Services, (b) authorizing the Proposed Adequate Assurance, (c) establishing and approving the Adequate Assurance Procedures, (d) setting a Final Hearing, and (e) granting related relief; 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 the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and 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 it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Debtor having consented to the Court

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).

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



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entering an order in the event this matter is deemed a non-core proceeding; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and in accordance with the Bankruptcy Rules and Local Rules 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 on an interim basis as set forth herein.
2. Subject to the Adequate Assurance Procedures set forth below, and until such time that a final order is entered by the Court, all Utility Providers are prohibited from discontinuing, altering or refusing service to, discriminating against, or requiring payment of a deposit or receipt of any other security for continued service to, the Debtor on account of any unpaid prepetition charges, as a result of the Debtor's commencement of this chapter 11 case or any perceived inadequacy of the Proposed Adequate Assurance, other than as set forth in the Motion, provided the Debtor is in compliance with the terms of this Interim Order.
3. The Proposed Adequate Assurance constitutes adequate assurance of future payments as required under section 366 of the Bankruptcy Code.
4. The following Adequate Assurance Procedures are hereby approved on an interim basis:
 - A. The Debtor will serve or cause to be served a copy of the Motion and this Interim Order granting the relief requested herein, which include the Adequate Assurance Procedures, on each Utility Provider listed on the Utility Providers List within 48 hours after the Court's entry of the Interim Order;
 - B. The Debtor will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within fourteen (14) days after the entry of the Interim Order.
 - C. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtor, the Utility Provider must serve a request for additional adequate assurance (the "**Additional Adequate Assurance Request**") so that it is actually received by the following parties (collectively, the "**Notice Parties**"):

- the Debtor, 34790 Ardentech Court, Fremont, California 94555, Attn: Steven Lo;
 - proposed counsel to the Debtor, (a) Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, Delaware 19801, Attn: Dennis A. Meloro, Esq. (Melorod@gtlaw.com), (b) Greenberg Traurig, LLP, 3333 Piedmont Road NE, Suite 2500 Atlanta, Georgia 30305, Attn: John D. Elrod, Esq. (Elrodj@gtlaw.com), and (c) Greenberg Traurig, LLP 333 S.E. Second Ave, Suite 4400 Miami, Florida 33131, Attn: Ari Newman (Newmanar@gtlaw.com);
 - counsel to any statutory committee appointed in this chapter 11 case; and
 - the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph F. Cudia (joseph.cudia@usdoj.gov).
- D. An Additional Adequate Assurance Request must: (i) be in writing; (ii) set forth the amount and form of additional assurance of payment requested; (iii) set forth the type of Utility Services provided, (iv) set forth the location(s) at which the Utility Services are provided and any associated account number(s); (v) set forth whether the Utility Provider holds any deposit(s), prepayments or other security, and if so, in what amount(s); and (vi) set forth why the Utility Provider believes the Proposed Adequate Assurance is insufficient;
- E. Unless and until a Utility Provider serves an Additional Adequate Assurance Request on the Notice Parties, such Utility Provider shall be (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code, and (ii) prohibited from discontinuing, altering or refusing service to, or discriminating against, the Debtor on account of the commencement of this chapter 11 case, any unpaid prepetition charges or requiring additional assurance of payment other than the Proposed Adequate Assurance;
- F. In the event the Debtor receives an Additional Adequate Assurance Request in compliance with the Adequate Assurance Procedures, the Debtor shall have twenty-one (21) calendar days from the receipt of such Additional Adequate Assurance Request (the “**Resolution Period**”) to negotiate with the requesting Utility Provider to resolve its Additional Adequate Assurance Request; *provided that* during the Resolution Period, such Utility Providers may not terminate the Utility Services they provide to the Debtor on account of the bankruptcy filing or any unpaid charges for prepetition services;
- G. The Debtor, in its discretion, may resolve any Additional Adequate Assurance Request by mutual agreement with the requesting Utility Provider and without further order of the Court, and may, in connection with any such resolution, provide the requesting Utility Provider, including, but not limited to, cash deposits,

prepayments, and/or other forms of security, if the Debtor believes such additional assurance is reasonable. The Debtor may reduce the amount of the Adequate Assurance Deposit by any amount allocated to a Utility Provider to the extent consistent with any alternative adequate assurance arrangements mutually agreed to by the Debtor and the affected Utility Provider. Additionally, within ten (10) calendar days of the request of the Debtor, following the completion of any sale or other disposition of all or substantially all of the Debtor's assets or stock and payment in full of all postpetition services, each Utility Provider that received any additional or alternative form of adequate assurance shall return said additional or alternative form of adequate assurance to the Debtor;

- H. If the Debtor determines that an Additional Adequate Assurance Request is not reasonable or cannot be resolved promptly, upon reasonable notice, the Debtor will request a hearing before this Court at the next regularly scheduled omnibus hearing in this case to determine the adequacy of assurance of payment made to the requesting Utility Provider (the "**Determination Hearing**"), pursuant to section 366(c)(3)(A) of the Bankruptcy Code;
- I. Pending the resolution of the Additional Adequate Assurance Request at a Determination Hearing, the Utility Provider making such request shall be prohibited from discontinuing, altering, or refusing service to the Debtor on account of unpaid charges for prepetition services, the commencement of this chapter 11 case, or any objections to the Proposed Adequate Assurance;
- J. Any Utility Provider that does not comply with the Adequate Assurance Procedures is deemed to find the Proposed Adequate Assurance satisfactory to it and is forbidden from discontinuing, altering, or refusing service to the Debtor on account of unpaid charges for prepetition services, the commencement of this chapter 11 case, or requiring additional assurance of payment (other than the Proposed Adequate Assurance);
- K. A Utility Provider shall be deemed to have adequate assurance of payment unless the Utility Provider makes an Additional Assurance Request and (a) the Debtor agrees to an Additional Assurance Request or agree to an alternative assurance of payment with the Utility Provider during the Resolution Period or (b) this Court enters an order requiring that additional adequate assurance of payment be provided;
- L. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Provider that fails to make an Additional Assurance Request; and
- M. At any time, the Debtor may terminate service from any of the Utility Providers, such termination being effective immediately upon the Debtor's notice to the Utility Provider. At such time, the Debtor shall no longer be required to make any more payments to such Utility Provider for any services provided after such termination, and any excess shall be returned forthwith.

5. No liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

6. As set forth in the Adequate Assurance Procedures, the Motion and this Interim Order shall be served, via first-class mail, on each Utility Provider the Debtor believes could be affected by the Motion and all other parties required to receive service under the Local Rules within two (2) business days of entry of this Interim Order.

7. In the event the Debtor defaults postpetition in respect of any of its obligations under this Interim Order to any Utility Provider, such Utility Provider may seek additional adequate assurance in this Court upon motion and appropriate notice to the Debtor, its counsel and the other Notice Parties.

8. To the extent the Debtor subsequently identifies additional Utility Providers, determines that an entity was improperly included as a Utility Provider, determines that the amount of a deposit held by, or prepayments made to a Utility Provider was incorrect, or discontinues services from an existing Utility Provider, the Debtor is authorized, in its sole discretion and without further order of the Court, to amend the Utility Providers List to add or delete any Utility Provider or to correct the amount of a deposit held by, or prepayments made to a Utility Provider; *provided, however*, that the Debtor shall provide notice of any such addition, deletion, or correction to the Notice Parties. If the Debtor adds any Utility Providers to the Utility Providers List, the Debtor will serve a copy of the Motion, along with the applicable portion of the amended Utility Providers List and this Interim Order, on such Utility Provider, and provide such Utility Provider ten (10) business days from the date of service of such notice to object to its inclusion on the Utility Providers List. Subject to a timely served objection by any such subsequently added Utility Provider, such subsequently added Utility Provider will be subject to the Adequate Assurance Procedures. For any entity that is removed from the Utility Providers List, the Debtor shall serve

that entity with notice of removal and such entity shall have five (5) business days from the date of service of such notice to object to that removal.

9. Notwithstanding the relief granted herein or any actions taken pursuant thereto, nothing herein shall be deemed: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law.

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

11. A final hearing to consider the relief requested in the Motion shall be held on June 29, 2022 at 1:00 p.m. (prevailing Eastern Time) and any objections to entry of such order shall be in writing and filed with the Court no later than June 22, 2022 at 4:00 p.m. (prevailing Eastern Time) and served on:

- (i) the Debtor, Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, CA 94555 (Attn: Steven Lo);
- (ii) proposed counsel for the Debtor, Greenberg Traurig, LLP (Attn: Dennis A. Meloro (melorod@gtlaw.com), John D. Elrod (elrodj@gtlaw.com) and Ari Newman (newmanar@gtlaw.com));
- (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Room 2207, Wilmington, DE 19801 (Attn: Joseph F. Cudia (joseph.cudia@usdoj.gov)); and
- (iv) counsel to any statutory committee appointed in the Case.

If no objections to the entry of the Final Order are timely filed, the Court may enter the Final Order without further notice or a hearing.

12. The requirements of Bankruptcy Rule 6003(b) are satisfied.

13. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

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

Dated: June 8th, 2022
Wilmington, Delaware


J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

Annex 1

List of Utility Providers

Utility Provider	Utility Service	Account Number(s)	Utility Provider Address	Service Address	Adequate Assurance Deposit ¹
PG&E	Electric	12844046800	P.O Box 997340, Sacramento, CA 95899-7340	34790 Ardentech Court, Fremont, CA 94555	\$0.00
Alameda County Water District	Water	Acct #1 - 40473113 Acct #2 - 40473103 Acct #3 - 40473093	P.O Box 45676, San Francisco, CA 94145-0676	34790 Ardentech Court, Fremont, CA 94555	\$328.00
Republic Services	Waste	3-0916-0314443	42600 Boyce Road, Fremont, California 94538	34790 Ardentech Court, Fremont, CA 94555	\$777.00
AT&T	Phone/Internet	Acct #1 - 831-000-7735 689 Acct #2 - 510-742-1929-410-8 Acct #3 - 831-000-7857-724	P.O. Box 5019, Carol Stream, IL 60197-5025	34790 Ardentech Court, Fremont, CA 94555	\$624.00
Ring Central Inc.	Cloud-based communications	1671986020	20 Davis Drive, Belmont, CA 94002	34790 Ardentech Court, Fremont, CA 94555	\$1,138.00

¹ The amount of the Adequate Assurance Deposit in the Adequate Assurance Account attributable to each Utility Provider is equal to 50% of the average monthly expense with respect to such Utility Provider based on the Debtor's books and records.