

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Response Deadline: June 22, 2022 at 4:00 p.m. ET
Hearing: June 29, 2022 at 1:00 p.m. ET

**APPLICATION OF THE DEBTOR FOR ENTRY OF AN ORDER APPROVING
THE RETENTION AND EMPLOYMENT OF ONYX ASSET ADVISORS, LLC
AND RABIN WORLDWIDE, INC. AS SALE AGENT**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) submits this application (the “**Application**”), pursuant to sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2014-1 and 2016 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), authorizing the employment and retention of Onyx Asset Advisors, LLC (“**Onyx**”) and Rabin Worldwide, Inc. (“**Rabin**,” and together with Onyx, the “**Sale Agent**”). In support of the Application, 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 the Application 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 as of February 29, 2012. Venue is proper in this 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).

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. Pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final judgment or order with respect to the Application 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 Case.

5. Additional information regarding the Debtor’s business and operations, as well as the events precipitating the commencement of the 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* [Docket No. 15] (the “**First Day Declaration**”) and incorporated herein.

Experience of the Sale Agent

6. The Sale Agent has extensive experience and background in conducting sales and auctions of the sort contemplated herein and is well-qualified to conduct the sale and auction for the Debtor. The Sale Agent will market, auction, and sell the estate property in the Case using the following non-exhaustive methods:

- a. Campaigning to the Sale Agent’s customer database, which allows the Sale Agent to directly solicit its closest contacts in the biopharmaceutical industry and other associated industries;
- b. Reaching out to its network of buyers from previous sales who are actively seeking items to purchase at auction;
- c. Advertising in local and national industry publications; and

- d. Directly contacting and fully campaigning to collectors, investors, dealers, and related buyers, including those saved in the Sale Agent's proprietary customer database.

Terms of Employment

7. The terms of the Sale Agent's retention are set forth in the *Agreement to Auction Assets of Zosano Pharma Corporation*, dated June 4, 2022, a copy of which is attached hereto as **Exhibit B** (the "**Agreement**").² The following includes a non-exhaustive list of material terms in the Agreement.³ As set forth in Exhibit A to the Agreement, the Sale Agent will sell the machinery, equipment, rolling stock, facility and lab equipment, and other personal property (collectively, the "**Assets**"), which are currently located at the Debtor's premises at 34790 Ardentech Court Fremont, California 94555, or at such other locations as may be designated by the Debtor (collectively, the "**Premises**"). Among other things, the Sale Agent will:

- a. Conduct the sales of the Assets in good faith and in a manner reasonably designed to realize the maximum value reasonably attainable through negotiated sales transactions and/or auction events ("**Auctions**"), and in connection therewith develop appropriate (i) strategies for the sales of the Assets, (ii) pricing and presentation of Assets, and (iii) sales initiatives to maximize the value of the Assets. In addition, the Sale Agent may negotiate all terms and conditions of each sale;
- b. Provide qualified personnel necessary to supervise each sale as determined by the Sale Agent;
- c. Supervise all accounting functions for the sale including sales reporting, invoicing, preparation of all necessary release documents, and all other sales functions deemed necessary by the Sale Agent;
- d. Maintain frequent communication with the Debtor and its advisors and personnel to keep them abreast of strategy and timing, and to timely respond to all of the Debtor's requests for information about the sales process; and

² Capitalized terms used but not defined in this section shall have the meaning ascribed to such terms in the Agreement.

³ The summary of certain terms of the Agreement herein is qualified in its entirety by reference to the provisions of the Agreement itself. To the extent there is any discrepancy between the summary contained in this Application and the terms of the Agreement itself, the terms of the Agreement shall control. Unless otherwise defined, capitalized terms used in this summary shall have the meanings ascribed to them in the Agreement.

- e. Perform such other related services deemed by the Sale Agent to be required or prudent to facilitate each sale.

8. Sale Period. The Debtor will grant the Sale Agent the exclusive right to sell the Assets on behalf of the Debtor during the period (the “**Sale Period**”) commencing upon the execution of the Agreement and continuing through the earlier of (a) the closing of the sale of the Assets to the successful bidder(s) at the Auction, and (b) the Debtor’s election (the “**Overbid Election**”) to terminate or modify the Agreement upon receipt of a bona fide offer from a duly-qualified, non-Auction or Liquidation overbidder for any of the Debtor’s assets (i.e. including the Assets and the Debtor’s other assets not included under the Agreement).

9. As Is, Where Is Sales. All Assets sales by the Sale Agent will be “as is,” “where is,” without representation or warranty, either expressed or implied, of any kind. The Sale Agent will be acting solely in its capacity as the Sale Agent for the Debtor and has no knowledge with respect to the fitness and usability of any of the Assets.

10. Auction Schedule. The Auction will be conducted online and scheduled to close online and for the Assets to be removed from the Premises on or before July 31, 2022, or on another date to be agreed upon by the Debtor and the Sale Agent. The removal costs of the Assets will be at the sole expense of the Buyers.

11. Title and Risk of Loss. The risk of loss to the Assets will remain with the Debtor until the Assets are paid in full and removed (either in part or in whole) by the Buyers. The title to the Assets will remain with the Debtor until such time as the Assets are sold, paid in full and removed by the Buyers.

12. Accounting and Settlement. The Sale Agent will maintain accurate records of the bidding during the Auction and accurate records of all direct sales. A preliminary accounting for all items sold will be provided to the Debtor three business days following the Auction Sale. All proceeds from the sale of the Assets will be collected by the Sale Agent, and within three weeks

following the Auction, an itemized accounting will be delivered to the Debtor. At the time of the delivery of that accounting, the Sale Agent shall pay the Debtor the sale proceeds (exclusive of the Buyer's Premium). The Sale Agent shall provide a final accounting one month after the Auction and shall deliver all funds to the Debtor on that date as payments clear the Sale Agent's bank.

13. Commitment Fee. The Debtor will pay the Sale Agent a fee (the "**Commitment Fee**") in the amount of \$50,000.00 in return for the Sale Agent's commitment to conduct and conclude the Auction, and in consideration of the Debtor's potential exercise of the Overbid Election.

14. Compensation. The Sale Agent will levy a buyer's premium of 18% ("**Buyer's Premium**") minus \$50,000.00 on all assets sold. The Buyer's Premium will be added to the "hammer price" of every item sold, paid by the winning bidder. Three percent of the Buyer's Premium will be collected by the Sale Agent and delivered to the auction hosting platform provider. The remaining portion of the Buyer's Premium will be retained by the Sale Agent as compensation for its services (the "**Compensation**").

15. Expenses. The Sale Agent will be reimbursed for its own expenses incurred in connection with the preparation, set up, and sale of the Assets in an amount not to exceed \$37,500.00 (the "**Sale Expenses**"). The Debtor will make a cash deposit to the Sale Agent of \$37,500.00; the Sale Agent will be entitled to apply the deposited funds against expenses upon written notice to the Debtor. The Sale Expenses may include costs to set-up, arrange, catalog, and photograph the Assets; placement of advertising in industry trade publications, regional newspapers, and digital advertising campaigns; e-mail and telemarketing campaigns; necessary travel and accommodations; personnel to supervise equipment removal; and third-party provider costs to host the Auction.

Relief Requested

16. By the Application, the Debtor requests entry of an order approving the employment and retention of Onyx and Rabin to market, auction, and sell the Assets pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016.

17. The Debtor further seeks authority to pay the Commitment Fee and Compensation described herein and provide the deposit for the Sale Expenses, without further order of the Court, as an expense of administration pursuant to sections 507(a) and 503(b) of the Bankruptcy Code, upon the submission of an auctioneer's report by the Sale Agent in accordance with Bankruptcy Rule 6004(f)(1).

Onyx and Rabin are Disinterested and Their Employment Should be Approved

18. The Sale Agent provides liquidation, auction, and other services to various entities in a number of different industries. In light of such experience, the Debtor believes that employing the Sale Agent is in the best interests of the estate.

19. As detailed in the Agreement, the Sale Agent will, among other things, supervise the auction and sale of the Assets, determine pricing of the Assets, provide accounting and reconciliations of sales, and perform other related services as appropriate.

20. To the best of the Debtor's knowledge, and based upon the declaration of Kevin K. Otus, attached hereto as **Exhibit C** (the "**Otus Declaration**"), Onyx and its professionals do not have any connection with the Debtor, its creditors, any other party in interest, its respective attorneys and accountants, the U.S. Trustee, any person employed in the office of the U.S. Trustee, or any insider of the Debtor. In addition, Onyx does not employ any person that is related to a judge of the Court or the U.S. Trustee for this region.

21. To the best of the Debtor's knowledge, and based upon the declaration of Shira Weissman, attached hereto as **Exhibit D**, (the "**Weissman Declaration**") and together with the Otus Declaration, the "**Sale Agent Declarations**"), Rabin and its professionals do not have any connection with the Debtor, its creditors, any other party in interest, its respective attorneys and accountants, the U.S. Trustee, any person employed in the office of the U.S. Trustee, or any insider of the Debtor. In addition, Rabin does not employ any person that is related to a judge of the Court or the U.S. Trustee for this region.

22. To the best of the Debtor's knowledge and based on the Sale Agent Declarations, neither Onyx, Rabin, nor any of their professionals represents any interest adverse to the Debtor or the estate.

23. To the best of the Debtor's knowledge and based on the Sale Agent Declarations, Onyx and Rabin are "disinterested persons" as defined under section 101(14) of the Bankruptcy Code.

24. Accordingly, the retention of the Sale Agent to assist the Debtor in maximizing value for the assets should be approved.

Notice

25. Notice of the Application 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; and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

Conclusion

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

Dated: June 8, 2022

ZOSANO PHARMA CORPORATION

By: /s/ Steven Lo

Name: Steven Lo

President and Chief Executive Officer

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 APPROVING THE RETENTION AND EMPLOYMENT OF
ONYX ASSET ADVISORS, LLC AND RABIN WORLDWIDE, INC. AS SALE AGENT**

Upon the *Application of the Debtor for Entry of an Order Approving the Retention and Employment of Onyx Asset Advisors, LLC and Rabin Worldwide, Inc. as Sale Agent* (the “**Application**”)² filed by the above-captioned debtor and debtor-in-possession (the “**Debtor**”), pursuant to sections 327(a), 328, and 330 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016, seeking entry of an order approving the retention of Onyx Asset Advisors, LLC (“**Onyx**”) and Rabin Worldwide, Inc. (“**Rabin**,” and together with Onyx, the “**Sale Agent**”); and upon declarations filed in support of the Application; and upon the statements of counsel in support of the relief requested in the Application at the hearing before the Court; and it appearing that the Court has jurisdiction to consider the Application 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 the Case and the Application 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)(2); and the Debtor having consented to the Court entering an order in the event this matter is deemed a non-core

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 used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

proceeding; and the Court having determined that the relief requested in the Application 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 Application has been given 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 Application is APPROVED, as set forth herein.
2. The Debtor is authorized to retain the Sale Agent to provide the marketing and auction services described in the Application on the terms and conditions set forth in the Agreement.
3. The Debtor is authorized to provide the deposit for the Sale Expenses, without further order of the Court.
4. The Compensation (including the Commitment Fee and the Buyer's Premium) described in the Application are approved as reasonable under section 328(a) of the Bankruptcy Code. Final allowance of the Compensation may be included in an order approving the sale of the Assets without the need for the Sale Agent to file a separate fee application conditioned upon the submission of an auctioneer's report in accordance with Bankruptcy Rule 6004(f)(1).
5. The Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment, or supplement is immaterial, and the Debtor is authorized to execute any additional documents reasonably necessary to consummate the transactions set forth in the Agreement.
6. The Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

EXHIBIT B

AGREEMENT TO AUCTION ASSETS OF ZOSANO PHARMA CORPORATION

This Agreement to Auction Assets (“Agreement”) entered into and effective as of June 4, 2022, by and between Onyx Asset Advisors, LLC a California company, located at 201 Mission Street, Suite 1200, San Francisco, CA 94105 and Rabin Worldwide, Inc., a California corporation, located at 21 Locust Avenue, Ste. 2A, Mill Valley, CA 94941 (collectively the “Sale Agent”), and Zosano Pharma Corporation, a Delaware corporation, located at 34790 Ardentech Court Fremont, California, 94555 (“Owner”), for Rabin and Onyx to sell certain equipment and other tangible personal property (the “Auction”). Sale Agent and Owner also may be referred to herein individually as a “Party” and together as the “Parties”.

1. Assets and Title:

1.1. The Auction will include, but will not be limited to, the machinery, equipment, rolling stock, facility and lab equipment and other personal property (the “Assets”), listed on Exhibit A, which is attached to and made a part of this Agreement and are currently said to be located at 34790 Ardentech Court Fremont, California, 94555 or at such other locations as may be designated by the Owner (the “Premises”).

1.2. Owner warrants and represents that it has good and marketable title to the Assets, and that it has complied with any and all sale notices required by law allowing it to convey free, clear and unencumbered title to auction buyers (“Buyers”). Owner warrants that it will transfer title to and possession of the Assets to Buyers, free and clear of any leases, security interests, mortgages, liens, pledges, charges, encumbrances, equities, claims, conditions, or restrictions. Owner further warrants that it will indemnify, defend and hold Sale Agent, each of its affiliates, and each of their respective directors, managers, officers, employees, members, managers and representatives (the “Indemnified Parties”) harmless with respect to all losses, costs, expenses (including without limitation, legal fees and disbursements through all levels of appeal), claims, causes of action, liabilities, suits, proceedings and damages made, threatened, asserted brought or commenced by any person, entity or governmental agency against any of the Indemnified Parties in connection with or related to or arising out of, in any manner, this Agreement, the Auction, title to the Assets or the right to sell the Assets, including, without limitation, to the extent arising from or based upon (i) any hazardous materials claims relating to the Assets, the Owner’s locations and/or the Sale; (ii) any product liabilities claims by purchasers, subsequent purchasers or users of any Assets sold in the Sale; (iii) any breach of any representation or express or implied warranties in any material respect, including but not limited to the implied warranties of merchantability, and fitness for a particular purpose; (iv) liabilities, obligations, and/or proceedings relating to the Assets, the Owner’s locations, and its affiliates including, without limitation, their operation and conduct; (v) any breach by the Owner in connection with any sale or transaction entered into with any third-party pursuant to this Agreement; (vi) claims by the Owner’s creditors relating to any amounts paid to Sale Agent pursuant to this Agreement; or (vii) any tax liability with respect to the Sale of the Assets; provided, however, that such indemnity shall not: (i) apply to any loss, cost, expense, claim, cause of action, liability, suit, proceeding or damages to the extent that it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily from such Indemnified Parties’ gross negligence or willful misconduct.

1.3. Seller grants Sale Agent the exclusive right to sell the Assets on behalf of Owner during the period (the “Sale Period”) commencing upon the execution of this Agreement and

continuing through the earlier of (a) the closing of the sale of the Assets to the successful bidder(s) at the Auction, and (b) Owner's election (the "Overbid Election") to terminate or modify this Agreement upon receipt of a bona fide offer from a duly-qualified, non-Auction or Liquidation overbidder for any of Seller's assets (i.e. including the Assets and the Owner's other assets not included under this Agreement). Owner agrees it will not sell, offer or engage any other service provider to sell any Asset during the Sale Period, except to the extent required by a court of competent jurisdiction or by the Owner in the exercise of its directors' and officers' fiduciary duties. Owner warrants that no brokerage fees are due and owing in connection with the sale of the Assets.

1.4. Owner authorizes the Sale Agent to use the name and insignia of Zosano Pharma Corporation in promotional materials relating to advertising and promoting the sale of the Assets at Auction.

1.5. All Assets sales by Sale Agent will be "as is", "where is", without representation or warranty, either expressed or implied, of any kind. Sale Agent is acting solely in its capacity as Sale Agent for the Owner and has no knowledge with respect to the fitness and usability of any of the Assets.

2. Expenses: Sale Agent will be reimbursed for its own expenses incurred in connection with the preparation, set up and sale of the Assets. Expenses will include, but are not limited to: costs to set-up, arrange, catalog, and photograph the Assets; placement of advertising in industry trade publications and regional newspapers, digital advertising campaigns; e-mail and telemarketing campaigns; necessary travel and accommodations, personnel to supervise equipment removal, and third-party provider costs to host the Auction. Owner acknowledges and agrees that Sale Agent will be entitled to reimbursement for expenses in an amount (the "Expense Cap") not to exceed Thirty Seven Thousand Five Hundred Dollars (\$37,500). Owner shall make a cash deposit to Sale Agent in the amount of the Expense Cap upon execution of this Agreement; Sale Agent shall be entitled to apply the deposited funds against expenses upon written notice to Owner.

3. Commitment Fee/Buyer's Premium:

3.1. In return for Sale Agent's commitment to conduct and conclude the Auction on the schedule set forth in Section 4 below and in consideration of the Owner's potential exercise of the Overbid Election, Owner shall pay Sale Agent upon execution of this Agreement a fee (the "Commitment Fee") in the amount of Fifty Thousand Dollars (\$50,000.00), which Commitment Fee shall be fully-earned and non-refundable upon receipt.

3.2. Sale Agent shall further be entitled to levy and collect on all items sold an industry standard buyer's premium ("Buyer's Premium") of (x) Eighteen Percent (18%), minus (y) Fifty Thousand Dollars (\$50,000.00); the purpose and effect of which is to increase the net proceeds to the Seller and/or its bankruptcy estate by \$50,000 above what it would receive if the Buyer's Premium were set at a flat 18%.. Three percentage (3%) points of the Buyer's Premium shall be collected by Sale Agent and delivered to the auction hosting platform provider. The remaining portion of the Buyer's Premium shall be retained by Sale Agent as compensation, including to cover its overhead and other costs over the Expense Cap. The Buyer's Premium is added to the 'hammer price' of every item sold, paid by the winning bidder.

4. Auction Schedule: The Auction will be conducted online and scheduled to close online and for the Assets to be removed from the Premises on or before July 31, 2022 or at another date to be agreed to by the Parties (“Sale Period”). All Assets shall be available for Sale Agent to preview as agreed among the Parties. This time period is intended to take into consideration advertising deadlines imposed by applicable trade journals or trade shows, and Sale Agent’s opinion of the minimum time frame necessary to maximize return on the Assets. All Assets will be sold “AS IS” and “WHERE IS”, with removal costs at the sole expense of Buyers.

5. Title and Risk of Loss: Risk of loss to the Assets will remain with Owner until the Assets are paid in full and removed (either in part or in whole) by Auction Buyers. Title to the Assets will remain with Owner until such time as the Assets are sold, paid in full and removed by Auction Buyers.

6. Occupancy Rights: Owner shall allow Sale Agent unrestricted use of the Premises commencing on the date of this Agreement and continuing through July 31, 2022 (“Occupancy Period”). Use of the Premises will be without cost or expense to Sale Agent. Owner shall maintain adequate utilities and security at the Premises during the Occupancy Period, and will indemnify, defend and hold Sale Agent harmless with respect to costs, expenses, liabilities, and damages, including without limitation, legal fees, in regards to the payment of rent and access to the Premises during the Occupancy Period.

7. Abandonment Rights. If Sale Agent determines, in its reasonable discretion, to abandon any of the Assets during the Sale Term or after the Sale Termination Date, disposition, disposal, or collection of any abandoned Assets is the obligation of, and shall be at the expense of, Owner.

8. Removal of Assets: All Assets will be sold “AS IS” and “WHERE IS”. The sold Assets will be disconnected from at least the first utility service point nearest the Assets, with electrical and plumbing services properly capped or removed. Owner, or its contractors, will supervise the removal of sold Assets. Sale Agent has no obligation to remove any item(s) that were not sold during the Auction.

9. Pre-Auction Removal of / Retained Assets: In the event that, prior to the Auction sale of the Assets, the Owner removes any portion of the Assets from the Premises and/or from the attached Exhibit A, or if the Owner is otherwise responsible for Sale Agent not being able to sell these Assets at Auction (other than in connection with an exercise of the Overbid Election, Owner will be responsible to Sale Agent for any loss of its Buyer’s Premium and any expenses incurred as a result of removal and/or inability to sell these Assets.

10. Accounting and Settlement: Sale Agent will maintain accurate records of the bidding during the Auction and accurate records of all direct sales. A preliminary accounting for all items sold will be provided to Owner three (3) business days following the Auction Sale. All proceeds from the sale of the Assets will be collected by Sale Agent and within three (3) weeks following the Auction, an itemized accounting will be delivered to Owner. At the time of the delivery of that accounting, Sale Agent shall pay Owner the sale proceeds (exclusive of the Buyer’s Premium). Sale Agent shall provide a final accounting one month after the Auction and shall deliver all funds to the Owner on that date as payments clear Sale Agent’s bank.

11. Conditions: In addition to any other conditions set forth herein, Sale Agent obligations under this Agreement are also conditioned on: (i) Owner's compliance with relevant local laws, rules and regulations of provisions applicable to this transaction, (ii) title to and possession of all of the Assets being available for sale as contemplated by this Agreement, (iii) Owner will be responsible for removing any and all powders, liquids, oils and/or raw materials from the Assets (containers, tanks, vessels, pipes, etc.) and making sure the Assets are in a clean and assembled manner, and (iv) Sale Agent being allowed to utilize the Premises for the entire Occupancy Period and to conduct the Auction and remove the purchased Assets as stated in this Agreement.

12. Representations of Owner: Owner warrants and represents that (i) the person signing this Agreement is the Owner, or on behalf of the Owner is authorized to do so; (ii) that it has confirmed its legal right to employ Sale Agent under the terms of this Agreement; (iii) Owner agrees to hold Sale Agent harmless for any actions arising from Owner's material breach or failure to comply with any of its agreements, covenants, presentations or warranties contained in this Agreement, and (iv) Owner further warrants that none of the Assets infringes or violates any third party's trademark, patents, copyrights, trade secrets or other proprietary rights, title or interest.

13. Representation of Sale Agent: Sale Agent hereby warrants and represents that it does not have an interest materially adverse to the interests of the Owner by way of any direct or indirect relationship in the business being liquidated by the Owner or any anticipated Buyers, except to the extent that Buyers may have previously purchased items from one of Sale Agent's prior Auctions. Sale Agent agrees to hold Owner harmless for any actions arising from Sale Agent's gross negligence or willful misconduct.

14. Hazardous Wastes: Sale Agent shall in no event be obligated to sell any Asset which contains any hazardous materials, or to incur any costs or expenses relating in any manner, either directly or indirectly, to any hazardous materials or toxic materials, or any materials which may be regulated as such under applicable laws, rules, or regulations and Sale Agent shall in no event be responsible for removing or disposed of any raw materials, including oils or byproducts, whether hazardous or not, from the Premises.

15. Payment of Taxes: Sale Agent agrees to collect applicable taxes from Buyers and remit such taxes to the appropriate tax authority having jurisdiction of the Assets.

16. Insurance: Sale Agent shall, and shall cause its agents and contractors to obtain, prior to the commencement of activities for Auction and maintain during the Auction, evidence of General Liability Insurance, in the sum of One Million Dollars (\$1,000,000.00). The General Liability Insurance shall name Owner as an additional insured.

17. Arbitration: Any dispute or controversy arising out of or relating to this Agreement or any interpretation, construction, performance, or breach of this Agreement, including fraud in the inducement, shall be resolved by final and binding arbitration conducted by a retired judge with the Judicial Arbitration and Mediation Service ("JAMS"), in accordance with the rules of JAMS then in effect. Such proceedings shall be conducted at the offices of JAMS, before a single arbitrator, who has been chosen and agreed upon by all parties. The decision and award of damages, if any, of the arbitrator shall be final, conclusive, and binding on the parties. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. All fees and costs incurred by each party in connection with the arbitration proceedings, including but not limited to

attorney's fees, costs of suit, witness, expert and arbitrator fees, shall be paid by the party who is found to be in default of the Agreement; unless the Arbitrator awards the fees and costs incurred as proportionate shares or in a different manner as determined by the arbitrator.

18. Damages: Neither Owner nor Sale Agent shall be liable for any indirect, incidental, special, punitive or consequential damages.

19. Governing Law: This Agreement shall be governed by, construed upon, and enforced in accordance with the Laws of California. This Agreement is subject to the approval of the bankruptcy court where the Owner's bankruptcy case is pending.

20. Force Majeure: Acts of God, earthquakes, hurricanes, tornadoes, fires, flood, epidemics and quarantine restrictions, freight embargoes, strikes and work stoppages from any cause and acts of any government in its sovereign capacity shall excuse performance by both parties until the event is resolved and work may begin again, and the Occupancy Period shall be extended; assailing thieves or bandits, misconduct of any government or governmental employee, or intimidation or threats of violence against Sale Agent shall permit the Sale Agent to withdraw absolutely and seek reimbursement of all its expenses; any other act that was beyond the reasonable control of the Owner or the Sale Agent and which is without the fault or negligence of Owner or Sale Agent shall permit Owner or Sale Agent or both to declare the agreement terminated, subject to reimbursement from proceeds then or imminently available.

21. Entire Agreement: This Agreement, and any exhibits attached hereto and made part thereof, constitutes the entire agreement among the parties with respect to the subject matter hereof. No changes, modification, or additions to this Agreement shall be valid unless the same is in writing and signed by Owner and the Sale Agent.

22. Counterparts: This Agreement may be executed in duplicate originals, each of which is equally admissible in evidence and shall fully bind the parties who have executed this Agreement. For purposes of this Agreement, facsimile and electronically transmitted signatures shall be sufficient to bind the parties.

23. No Partnership, Etc.: The Sale Agent is not in any way or for any purpose a partner of, joint venture with, nor an investor of Owner's business or otherwise. This Agreement establishes a relationship solely between an Owner and Sale Agent as to certain services that are rendered.

This Agreement is executed as of the same date first written above.

The Owner: **Zosano Pharma Corporation**

By:  _____

Printed Name: Steven Lo

Title: President and CEO

The Sale Agent: **Onyx Asset Advisors, LLC**

By: 
Kevin Otus (Jun 5, 2022 08:49 PDT)

Kevin Otus, Managing Partner

Rabin Worldwide, Inc.

By: *Shira Weissman*
Shira Weissman (Jun 5, 2022 10:55 PDT)

Shira Weissman, Chief Operating Officer

EXHIBIT A

Exhibit C

Otus Declaration

(to be filed)

Exhibit D

Weissman Declaration

(to be filed)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,¹

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

Response Deadline: June 22, 2022 at 4:00 p.m. ET
Hearing: June 29, 2022 at 1:00 p.m. ET

**NOTICE OF APPLICATION OF THE DEBTOR FOR ENTRY OF AN
ORDER APPROVING THE RETENTION AND EMPLOYMENT OF
ONYX ASSET ADVISORS, LLC AND RABIN WORLDWIDE, INC. AS SALE AGENT**

PLEASE TAKE NOTICE that, on June 8, 2022, the above-captioned debtor and debtor-in-possession (the “**Debtor**”) filed the *Application of the Debtor for Entry of an Order Approving the Retention and Employment of Onyx Asset Advisors, LLC and Rabin Worldwide, Inc. as Sale Agent* (the “**Application**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”). A copy of the Application is attached hereto.

PLEASE TAKE FURTHER NOTICE that any response or objection to the relief sought in the Application must be filed with the Court **on or before June 22, 2022 at 4:00 p.m. prevailing Eastern Time.**

PLEASE TAKE FURTHER NOTICE that at the same time, you must also serve a copy of the response or objection upon: (i) 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)); (ii) counsel to any statutory committee appointed in the chapter 11 case; and (iii) the United States Trustee for the District of Delaware, 844 N. King Street, Room 2207, Wilmington, Delaware, Attn: Joseph F. Cudia (joseph.cudia@usdoj.gov).

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).

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE RELIEF SOUGHT IN THE APPLICATION WILL BE HELD ON JUNE 29, 2022 AT 1:00 P.M., PREVAILING EASTERN TIME, VIA ZOOM VIDEO CONFERENCE BEFORE THE HONORABLE J. KATE STICKLES, UNITED STATES BANKRUPTCY COURT JUDGE, AT THE BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 3RD FLOOR, COURTROOM NO. 7, WILMINGTON, DELAWARE 19801.

Dated: June 8, 2022

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

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-and-

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