

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

In re:

Zosano Pharma Corporation,

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**DECLARATION OF STEVEN LO IN SUPPORT OF
CONFIRMATION OF CHAPTER 11 PLAN OF
LIQUIDATION OF ZOSANO PHARMA CORPORATION**

I, **STEVEN LO**, hereby declare, under penalty of perjury, as follows:

1. I am a director of, and consultant to, the above-captioned debtor and debtor in possession (the “**Debtor**” or the “**Company**”). I was Chief Executive Office of the Debtor from October 2019 to September 2022 and ended my role as CEO after the closing of the sale of the Debtor’s assets to reduce the administrative expenses to the bankruptcy estate.

2. I have been actively involved in all aspects of the Debtor’s Chapter 11 Case since its commencement on June 1, 2022. I have assisted the Company during the restructuring process by providing oversight and assistance with respect to, among other things, the sale of the Company’s assets and the negotiation and development of the *Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* [Docket No. 232] (the “**Plan**”).

3. I am familiar with the Debtor’s overall day-to-day operations, business and financial affairs, and books and records. I am over the age of 18, competent to testify, and authorized to submit this declaration (the “**Declaration**”) on behalf of the Debtor in support of confirmation of the Plan.

4. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge of the Debtor’s operations and finances, information gathered from my review of relevant documents, and information supplied to me by other members of the Debtor’s



management and advisors. If called upon to testify, I could and would testify competently to the facts set forth herein on that basis.

5. Capitalized terms not otherwise defined in this Declaration have the meanings ascribed to them in the *Memorandum of Law in Support of Confirmation of the Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* (the “**Confirmation Brief**”), filed concurrently with this Declaration.

I. FORMAL AND PROCEDURAL REQUIREMENTS FOR CONFIRMATION

6. I am advised and believe that the Plan satisfies the formal and procedural requirements for confirmation under the applicable provisions of the Bankruptcy Code and Bankruptcy Rules for the reasons set forth in section II of the Confirmation Brief. Certain of these requirements are discussed below.

7. Sections 1122 and 1123(a)(1). I am advised and believe that the Plan appropriately classifies Interests separate from Claims. It is my understanding that unsecured Claims are grouped according to priority and based on other factors including the nature of the claimants’ relationships with each other and with the Debtor. I therefore believe that the classification of Claims and Interests in the Plan complies with sections 1122 and 1123(a)(1) of the Bankruptcy Code.

8. Section 1123(a)(4). I am advised and believe that under the Plan, the treatment of each Claim or Interest in each particular Class is the same as the treatment of any other Claim or Interest in such Class. Accordingly, the requirements of Bankruptcy Code section 1123(a)(4), which requires the same treatment for each claim or interest of a particular class unless a holder agrees to a less favorable treatment of its claim or interest, are satisfied.

9. Section 1123(a)(5). I believe that the Plan contains adequate means for its implementation as required by section 1123(a)(5) of the Bankruptcy Code because it provides,

among other things, for the vesting of all remaining property of the Estate in the Liquidating Trust, for the reconciliation of Claims against the Estate, for the distribution of net assets of the Estate to the holders of Allowed Claims, and for the dissolution of the Debtor and the wind-down and closure of the Chapter 11 Case.

10. Section 1129(a)(3). I believe the Plan was negotiated and proposed by the Plan Proponent in good faith, with the legitimate purpose of maximizing stakeholder value, and not by any means forbidden by law. It is my understanding that the Plan provides for the distribution of value to creditors, and for the payment in full of allowed Administrative Expense Claims and Priority Claims (if any). The Plan achieves this goal without the necessity of significant litigation over the various issues raised by parties in interest throughout the Chapter 11 Case. Therefore, I am advised and believe that the requirements of section 1129(a)(3) of the Bankruptcy Code are satisfied with respect to the Plan.

11. Section 1129(a)(6). The Plan does not implicate any rate changes that would require regulatory approval; therefore, I am advised and believe that the requirements of section 1129(a)(6) are inapplicable to the Plan.

12. Section 1129(a)(7). It is my understanding that the Plan satisfies the “best interests test” of section 1129(a)(7) of the Bankruptcy Code, because it provides a greater recovery to creditors than would a chapter 7 liquidation. It is my understanding that because the Plan is a liquidating plan, the “liquidation value” in the hypothetical chapter 7 liquidation analysis for purposes of the best interests test is substantially similar to the estimates of the results of the chapter 11 liquidation contemplated by the Plan, although recoveries for holders of Allowed General Unsecured Claims are greater by virtue of the lower costs of administration of the Plan. Indeed, I have reviewed the liquidation analysis, attached as Exhibit B to the First Amended Disclosure

Statement [Docket No. 231] and incorporated herein by reference, showing that the net cash available for distribution to creditors in a chapter 7 scenario would be \$3,066,000 versus the \$3,862,000 available under the Plan scenario. I understand there may also be delays in providing creditor distributions in a chapter 7 case, because the chapter 7 trustee and his or her professionals would need to get up to speed on the case, and because a new bar date would need to be established. A new bar date could also conceivably result in additional claims being asserted, thus increasing the total claims against the Debtor's Estate and diluting creditor recoveries. I believe that the support of the Plan by voting creditors demonstrates that the Debtor's creditors fully expect to recover as much or more value under the Plan on account of their Claims, as of the Effective Date, than the amount they would receive if the Debtor was liquidated on the Effective Date under chapter 7 of the Bankruptcy Code. I therefore believe that the Plan is in the best interests of all creditors and thus satisfies section 1129(a)(7) of the Bankruptcy Code.

13. Section 1129(a)(11). It is my understanding that section 1129(a)(11) of the Bankruptcy Code requires that the Court determine that confirmation of the Plan is not likely to be followed by the liquidation or further financial reorganization of the Debtor unless contemplated by the Plan. Here, I believe that the Plan provides a straightforward and sound mechanism for its implementation. The available funds are anticipated to be sufficient to satisfy administrative or priority claims, to provide for compensation of the Liquidating Trustee and its professionals, and to provide for a distribution to holders of Allowed General Unsecured Claims. I therefore believe the Liquidating Trustee will have sufficient funds to satisfy all requirements and obligations under the Plan. Moreover, confirmation cannot be followed by any liquidation beyond that prescribed by the Plan. Furthermore, as the Plan calls for the dissolution of the Debtor following closure of the Chapter 11 Case, there would not be a need for further financial reorganization following

confirmation. Accordingly, I believe that the Plan satisfies the feasibility requirements of section 1129(a)(11) of the Bankruptcy Code.

14. Section 1129(a)(13). The Debtor does not have any “retiree benefits” as that term is defined in section 1114 of the Bankruptcy Code. Therefore, I am advised and believe that the requirements of section 1129(a)(13) are inapplicable to the Plan.

15. Sections 1129(a)(14)-(16). The Debtor does not owe domestic support obligations, is not an individual, and is not a not-for-profit entity; therefore, I am advised and believe that the requirements of section 1129(a)(14)-(16) of the Bankruptcy Code are inapplicable to the Plan.

16. Section 1129(d). No purpose (much less, a principal purpose) of the Plan was the avoidance of either taxes or the application of section 5 of the Securities Act of 1933. Therefore, I am advised and believe that section 1129(d) of the Bankruptcy Code is inapplicable to the Plan.

II. DISCRETIONARY PROVISIONS OF THE PLAN

17. I am aware that the Plan includes a number of discretionary provisions subject to section 1123(b) of the Bankruptcy Code. For example, I am advised that Classes 1 and 2 are unimpaired because the Plan leaves unaltered the legal, equitable, and contractual rights of the holders of Claims in those Classes. On the other hand, it is my understanding that Classes 3, 4, and 5 are impaired since the Plan modifies the rights of the holders of Claims or Interests within such Classes. In addition, I am advised that the Plan provides for the rejection of all executory contracts and unexpired leases not previously assumed or rejected under section 365 of the Bankruptcy Code.

18. I am advised that the Plan also includes certain releases, an exculpation provision, and an injunction provision. I believe that these discretionary provisions are proper because, among other things, they are the product of extensive good faith, arm’s-length negotiations, they are supported by the Debtor and its key constituents, they form an essential part of the Plan, and they

were generally accepted by holders of Claims entitled to vote on the Plan. Accordingly, I believe that the releases, exculpation, and injunction represent critical components of an appropriate Plan and, for the Debtor's part, represent valid exercises of the Debtor's business judgment.

19. Specifically, with respect to the releases by the Debtor and the Estate in Article IX.A. of the Plan, I believe that litigation undertaken against the parties otherwise benefitting from the releases, even if proper, would unquestionably reduce assets available for distribution under the Plan where the outcome of such litigation would be, at best, highly uncertain. I also believe such releases are integral to the overall structure of the Plan, which itself reflects a group of interrelated compromises.

20. Specifically, with respect to the third-party releases in Article IX.C. of the Plan, I understand such releases to be consensual in nature for the reasons set forth in the Confirmation Brief. The beneficiaries of such releases made significant contributions and/or concessions to or for the benefit of the Debtor after the Petition Date.

21. Specifically, with respect to the exculpation provision in Article IX.D. of the Plan, I understand that such a provision, aimed at providing limited protection to certain parties for their solicitation efforts throughout the course of a bankruptcy proceeding, is generally found to be consistent with the protections afforded under section 1125(e) of the Bankruptcy Code.

22. The Plan contains an injunction provision in Article IX.E., which, among other things, permanently enjoins all persons or entities who have held or may hold Claims against or Interests in the Debtor from, *inter alia*, taking any of the following actions on account of any such Claim or Interest: (i) commencing or continuing any action or proceeding against the Debtor, the Estate, the Liquidating Trustee, or their property; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtor, the Estate, the Liquidating

Trustee, or their property; (iii) creating, perfecting or enforcing any lien or encumbrance against property of the Debtor, the Estate, or the Liquidating Trustee; or (iv) asserting a right of setoff of any kind against any obligation due from the Debtor or against the property of interests in property of the Debtor or the Estate. Without the injunction provision, parties may take actions that are contrary to the releases and exculpation provisions set forth in the Plan and hinder the successful implementation of the Plan.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true to the best of my information, knowledge, and belief.

Dated: November 15, 2022

/s/ Steven Lo

Steven Lo