

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

In re:

ZOSANO PHARMA CORPORATION,

Debtor.¹

Chapter 11

Case No. 22-10506 (JKS)

Objection Deadline: January 27, 2023 at 4:00 p.m.

Hearing Date: TBD

**BMR-34790 ARDENTECH COURT LP'S MOTION FOR ALLOWANCE
AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS
PURSUANT TO 11 U.S.C. §§ 503 AND 365(D)(3)**

BMR-34790 Ardentech Court LP ("BMR" or "Landlord"), by and through its undersigned counsel, hereby files this Motion for Allowance and Payment of Administrative Expense Claims pursuant to 11 U.S.C. §§ 503 and 365(d)(3) (the "Motion"). In support of this Motion, Landlord respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in the district pursuant to 28 U.S.C. § 1409. This Request is made pursuant to 11 U.S.C. §§ 503 and 365(d)(3).

FACTUAL BACKGROUND

2. The Debtor² and BMR³ are parties to a certain Lease dated as of May 1, 2007, as amended (collectively, the "Lease"), for the Debtor's former facility located at 34790 Ardentech Court, Fremont, California 04555 (the "Leased Premises").

¹ The business address and the last four (4) digits of the Debtor's federal tax identification number are Zosano Pharma Corporation, 34790 Ardentech Court, Fremont, California 04555 (8360).

² The Debtor is successor-in-interest to ZP OPCO Inc., formerly known as Zosano Pharma, Inc., and, previously, The Macroflux Corporation. ZP OPCO, Inc., is the original signatory to the Lease.

³ BMR is successor-in-interest to BMR-34790 Ardentech Court LLC, the original party to the Lease. Accordingly, the correct Lease counterparty is BMR-34790 Ardentech Court LP, not "Bio-Med Realty" as listed in the Cure Notice.

3. Pursuant to the Seventh Amendment to the Lease dated as of May 30, 2017, the Debtor agreed to make monthly base rent payments in the amount of \$153,422.88 during the current Lease period, along with operating expenses and management fees, for a monthly total of \$186,945.00.

THE BANKRUPTCY PROCEEDING

4. On June 1, 2022 (the "Petition Date"), the Debtor commenced this case under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

5. On September 13, 2022, this Court entered the *Omnibus Order Authorizing Debtor to Reject Certain Executory Contracts and Unexpired Lease of Nonresidential Real Property Effective as of the Rejection Date* [D.I. 195] (the "Rejection Order"). Pursuant to the Rejection Order, the Debtor rejected the Lease as of August 25, 2022 (the "Lease Rejection Date").

6. On November 22, 2022, this Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Second Amended Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* [D.I. 294] (the "Confirmation Order") confirming the *Amended Chapter 11 Plan of Liquidation of Zosano Pharma Corporation* attached as Exhibit A to the Confirmation Order (together with all exhibits thereto, and as the same may be amended, supplemented or otherwise modified, the "Plan") in the Debtor's bankruptcy case.

7. The Plan became effective on December 8, 2022. *See* D.I. 308.

8. Despite the Plan having become effective, the Debtor has not paid all post-petition rent obligations due under the Lease.

9. The Debtor did not make its payment for June rent, and \$100,817.00 in June rent payments and interest remains outstanding.

10. Additionally, the Debtor did not make its payment for August rent, and \$150,762.50 through August 25, 2022, also remains outstanding.

RELIEF REQUESTED

11. Section 503(b)(1)(A) of the Bankruptcy Code provides for the allowance of administrative expenses, including, in particular, actual, necessary costs and expenses of preserving the bankruptcy estate. “When third parties are induced to supply goods or services to the debtor-in-possession... the purposes of [Section 503] plainly require that their claims be afforded priority.” *In re Jartran, Inc.*, 732 F.2d 584, 586 (7th Cir. 1984); *In re Goody’s Family Clothing, Inc.*, 392 B.R. 604, 609 (Bankr. D. Del. 2008).

12. In addition, Section 365(d)(3) of the Bankruptcy Code provides, in pertinent part, that a “trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property... until such lease is assumed or rejected notwithstanding 503(b)(1) of this title.” 11 U.S.C. § 365(b)(2). *See also In re Montgomery Ward Holding Corp.*, 268 F.3d 204 (3d Cir. 2001); *In re Pac-West TeleComm, Inc.*, 377 B.R. 119, 123 (Bankr. D. Del. 2007).

13. Landlord submits that the Debtor’s use of the Leased Premises has been actual and necessary in preserving the Debtor’s bankruptcy. The Debtor used the Leased Premises from the Petition Date through the Lease Rejection Date. Upon information and belief, the Debtor utilized the Leased Premises as part of their business operations, and for storage of medical research equipment that would have otherwise had to have been decommissioned over a period of time and at great expense.

14. As a result, Landlord is entitled to an allowed administrative rent claim in the amount of \$251,579.50 for amounts due under the Lease from the Petition Date through the Lease Rejection Date, plus attorneys' fees and costs incurred.

15. This Motion is made without prejudice to each and all of Landlord's remaining claims against the Debtor and its estate, including, but not limited to Landlord's unsecured claim for rejection damages and prepetition rent owed.

WHEREFORE, Landlord, through undersigned counsel, respectfully requests that the Court enter an Order granting Landlord an allowed Chapter 11 administrative expense claim for amounts incurred under the Lease from the Petition Date through the Lease Rejection Date in the amount of \$251,579.50 plus attorneys' fees and costs incurred, and for such other relief as is just and proper under the circumstances.

Dated: January 6, 2023

ARMSTRONG TEASDALE LLP

/s/ Jonathan M. Stemerman
Jonathan M. Stemerman (No. 4510)
1007 North Orange Street, Third Floor
Wilmington, DE 19801
Telephone: (302) 416-9667
Email: jstemerman@atllp.com

Counsel to BMR – 34790 Ardentech Court LP

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

In re:

ZOSANO PHARMA CORPORATION,

Debtor.¹

Chapter 11

Case No. 22-10506 (JKS)

Re: D.I. ____

**ORDER GRANTING BMR-34790 ARDENTECH COURT LP'S
MOTION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE
EXPENSE CLAIMS PURSUANT TO 11 U.S.C. §§ 503 AND 365**

Upon BMR-34790 Ardentech Court LP's Motion for Allowance and Payment of Administrative Expense Claims Pursuant to 11 U.S.C. §§ 503 and 365 (the "Motion"); and the Court having jurisdiction to consider the Request and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered objections thereto, if any; and upon the findings and for the reasons made on the record of the Court at any hearing on the Motion (the "Hearing"); and notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is GRANTED as follows:

1. BMR-34790 Ardentech Court LP is allowed an administrative expense claim in the amount of \$251,579.50 plus attorneys' fees and costs incurred (collectively, the "Administrative Claim Amount");

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 04555 (8360).

2. Debtor is directed to remit payment of the Administrative Claim Amount to BMR-34790 Ardentech Court LP within ten (10) business days after the date of this Order; and

3. This Court shall retain jurisdiction over all matters arising from or related to the implementation of this Order.

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In re:

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CERTIFICATE OF SERVICE

I, Jonathan M. Stemerman, hereby certify that on January 6, 2023, a true and correct copy of the foregoing *BMR-34790 Ardentech Court LP's Motion for Allowance and Payment of Administrative Expense Claims pursuant to 11 U.S.C. §§ 503 and 365(d)(3)* was served upon the parties listed below via electronic mail:

Dennis A. Meloro, Esq.
Greenberg Traurig, LLP
The Nemours Building
1007 North Orange Street, Suite 1200
Wilmington, DE 19801
Email: melorod@gtlaw.com

John D. Elrod, Esq.
Greenberg Traurig, LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305
Email: elrodj@gtlaw.com

Ari Newman, Esq.
Greenberg Traurig, LLP
333 S.E. Second Ave., Suite 4400
Miami, FL 33131
Email: newmanar@gtlaw.com

Joseph F. Cudia, Esq.
United States Department of Justice
Office of the United States Trustee
844 King Street, Suite 2207
Lockbox #35
Wilmington, DE 19801
Email: joseph.cudia@usdoj.gov

Dated: January 6, 2023

ARMSTRONG TEASDALE LLP

/s/ Jonathan M. Stemerman
Jonathan M. Stemerman (No. 4510)
1007 North Orange Street, Third Floor
Wilmington, DE 19801
Telephone: (302) 416-9667
Email: jstemerman@atllp.com

Counsel to BMR – 34790 Ardentech Court LP