

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

Zosano Pharma Corporation,

Debtor.

Chapter 11

Case No. 22-10506 (JKS)

**LIQUIDATING TRUSTEE’S REPLY IN SUPPORT OF
ITS OBJECTION TO THE ALLOWANCE OF CLAIMS
FILED BY PATHEON MANUFACTURING SERVICES LLC**

SierraConstellation Partners, LLC, as Liquidating Trustee (the “Trustee”) in the bankruptcy case of the above-captioned debtor (the “Debtor”), hereby submits this Reply in support of its objection [Docket No. 465] (this “Objection”) to the allowance of the proof of claims (the “Disputed Claims”) filed by Patheon Manufacturing Services LLC (the “Claimant”).¹ In reply to the *Response of Patheon Manufacturing Services LLC to Liquidating Trustee’s Objection to Allowance of Claims Filed by Patheon Manufacturing Services LLC* [Docket No. 472] (the “Response”), the Trustee states as follows:

INTRODUCTION

1. In the Response, while the Claimant acknowledges many of the deficiencies in the Disputed Claims,² the Claimant still argues that many aspects of the Disputed Claims are supported by documentary evidence and relevant legal authority. However, the Claimant has simply changed the amount and basis for its claims with no actual evidence and cites to case law that are distinguishable, non-binding authority.

¹ Capitalized terms used but not otherwise defined herein, shall have the meaning ascribed to them in the Objection.

² See Response ¶¶ 9, 14, 21 n.11, 23.



2. The Claimant has failed to meet its burden and overcome the following deficiencies in the Disputed Claims. First, Claim No. 208 should still be reduced and the new amounts mentioned should be ignored as the Claimant failed to provide a sufficient basis for the amounts alleged. Second, Claim No. 304 should still be disallowed despite Emergex's alleged failure to pay the remaining \$91,000 as the terms of the Sale Agreement are binding on the Claimant. Third, Claim No. 318 should still be reclassified, reduced and allowed as a general unsecured claim not entitled to administrative expense because the Claimant failed to provide an actual and necessary benefit to the Debtor post-petition.

ARGUMENT

I. Objection to Claim No. 208

3. Not only has the Claimant failed to provide supporting documentation for certain purchase orders allegedly owed by the Debtor under the TTA, but the Claimant has attempted to add amounts to Claim No. 208, again, with no support.³

4. In looking for documentary support for the missing invoices and other documentation from Claim No. 208, the Claimant somehow found an additional \$135,681.45 in outstanding invoices and \$58,036.30 for the amounts the Claimant allegedly paid to Gamewell Mechanical. *See* Response ¶ 9.

5. Seeking to amend a claim this late in the game is not permitted by this Court or the Bankruptcy Code. After confirmation, and especially after an objection has been filed, "amendments to proofs of claim cannot seek to recover damages that were outside

³ In the Response, the Claimant states that it is in possession of documents that support both the \$166,641.55 of invoices plus the additional \$135,681.45 will be provided to the Liquidating Trustee. *See* Response ¶ 9 n.4. While the Claimant did provide support for the amounts listed in Claim No. 208, it has provided no support for the additional \$135,681.45 that it now claims it is owed.

the original proof of claim.” *In re Maxus Energy Corp.*, 2023 Bankr. LEXIS 2117, *13 (Bankr. D. Del. Aug. 28, 2023).

6. In determining whether the amounts sought were fairly encompassed within an original proof of claim, “courts look to whether the original proof of claim fairly put the debtor and other parties in interest on notice of the claim as asserted in the amended claim.” *Id.* at * 20 (“[T]he standard for granting leave to amend a proof of claim turns on an objective reading of the original proof of claim.”). The additional amounts that the Claimant seeks to add are for amounts that the Claimant failed to invoice the Debtor. *See* Response ¶ 9. Therefore, in reading Claim No. 208, which included final invoices to the Debtor for these services, it was impossible for the Debtor to know that such invoices were incorrect.

7. Because of the Claimant’s mistake, made prepetition, the Debtor was never put on notice of these alleged amounts. *See In re Maxus Energy Corp.*, 2023 Bankr. LEXIS 2117, at *19 (“If ‘the alteration of the original pleading is so substantial that it cannot be said that defendant was given adequate notice of the conduct, transaction, or occurrence that forms the basis of the new claim or defense, the amendment will not relate back and will be time barred if the limitations period has expired.’”) (quoting 6A *Federal Practice and Procedure* § 1497 (3d ed. 2023)). The additional amounts asserted in the Response do not relate back to the Claim No. 208 and should be disregarded and disallowed.

8. Therefore, Claim No. 208 should be reduced by \$964,897.38, as agreed to by the Claimant,⁴ and no additional amounts should be added.

⁴ *See* Response ¶ 9. Regardless of whether the June and July fees are allowed in Claim No. 318 as an administrative expense, such payment for these fees should not be made twice and thus they should be reduced from either Claim No. 208 or Claim No. 318.

II. Objection to Claim No. 304

9. While the Claimant has now amended Claim No. 304 to \$91,000 in Make Good cost, the Claimant provides no support for its argument that such claim was not superseded and resolved by the Sale Agreement.

10. The Claimant argues that because it was not a party to the Sale Agreement, such agreement is not binding on the Claimant. However, courts have held that final sale orders are binding not only on the parties to the sale agreement, but on all parties in interest who received proper notice of the sale. *See In re Cone Mills Corp.*, 313 Fed. Appx. 538, 541 (3d Cir. 2009) (“The District Court also agreed with the Bankruptcy Court’s conclusion that Chemtura is bound by the Sale Order because it had actual notice of the sale.”); *In re Banyan Cay Resort & Golf, LLC*, 2023 Bankr. LEXIS 2895, *11 (Bankr. S.D. Fla. Dec. 7, 2023) (“No one, including the debtors, appealed the Substitute Sale Order, which became final long ago. ...Even if the credit bid allocation set out in paragraph 2.4 of the USREC Purchase Agreement was contrary to law, as the debtors argue, it is binding on the debtors.”).

11. The Claimant received notice of the proposed sale and the final Sale Order, which included a copy of the Sale Agreement, and failed to raise any objection or appeal the Sale Order, which now constitutes a final order, binding on the Claimant. *See* Docket No. 195 ¶ 5 (“This Sale Order shall be binding in all respects upon the Debtor, its estate, all creditors of, and holders of equity interests in, the Debtor...”).

12. The Claimant admits that it incurred no damages above \$250,000 and acknowledges that pursuant to the Sale Agreement Emergex is responsible for payment of this amount. *See* Response ¶ 12. Emergex’s failure to comply with the Sale Agreement

does not undo the fact that the Debtor's obligation to pay such amounts was satisfied by a final, binding Sale Order. The claim should be disallowed in its entirety.

III. Objection to Claim No. 318

13. The Claimant still fails to establish that Claim No. 318 is entitled to administrative priority, because the Claimant has not identified any actual benefit that it provided to the Debtor's estate post-petition. *In re Energy Future Holdings Corp.*, 990 F.3d 728, 742, 44 (3d Cir. 2021) (“[T]he benefit must be actual, not hypothetical.”); *In re Goody's Family Clothing, Inc.*, 610 F.3d 812, 818 (3d Cir. 2010) (same). When measuring such benefit, bankruptcy courts may use a “hindsight-based analysis where “as viewed through the rearview mirror, whether the expenses of [the creditor] provided an actual benefit to the estate.” *Energy Future*, 990 F.3d at 743. *See also* Norton Bankr. Law & Practice § 49:19 (3d ed. 2020) (“In general, judicial examination of any claimed expense will consider whether the value of the estate or the business was enhanced or protected by the expense; whether the expense was an unavoidable cost of operating, marshalling, or liquidating the estate; and whether the expense was cost-effective in light of the circumstances.”) (citation omitted).

14. This is consistent with the law in other circuits. *See, e.g., In re IDL Dev., Inc.*, 2019 Bankr. LEXIS 3419 (Bankr. D. Mass. Nov. 1, 2019) (the debtor owed no money under a license agreement postpetition and prior to rejection; the court rejected as speculative the licensor's extracontractual administrative expense claim for alleged diminution in the value of the license postpetition and also rejected the argument that the estate benefitted by having the license in place during the debtor's sale process); *In re Enron Corp.*, 279 B.R. 79 (Bankr. S.D.N.Y. 2002) (debtor made no actual use of pipeline

capacity under transportation contracts and therefore claimant was not entitled to administrative expense claim).

15. The only alleged benefit that the Claimant can point to is that by leaving the agreements in place (instead of immediately rejecting them) the Debtor was able to market the business as a going concern. *See* Response ¶ 21. The only case law that the Claimant points to in support of its argument that this is sufficient (which it is not), is distinguishable, non-binding authority.

16. For example, the Claimant cites to an unpublished opinion by a District Court in Louisiana, for the argument that allowing the debtor to decide to retain the lease prior to the sale provided a benefit to the debtor. *See Kimzey v. Premium Casing Equip., LLC*, 2018 U.S. LEX 42744, *8 (W.D. La. 2018). In this order, the Louisiana District Court notes that “two divergent lines of cases have emerged” with respect to the type of benefit that must be provided in these circumstances.⁵ *See Id.* at *16. “The first line of cases hold that an administrative expense claim may be allowed ... without regard to whether the debtor actually used the equipment. ... [While] [t]he second line of cases have found that lease payments should only be allowed ... to the extent the debtor has made actual use of the leased property.” *Id.*

⁵ Even the cases that the Claimant cites in support of the rule followed by the Louisiana District Court are distinguishable from the case at hand, as they both involved certain post-petition actions by the debtor that led to the incurrence of administrative expense claims. For example, in *In re Sanchez Energy Corp.*, the debtor entered into a new contract and amended prior contracts with the Claimant post-petition. 2021 Bankr. LEXIS 578 (S.D. Tex. 2021). The Court in *Nabors Offshore Corp. v. Whistler Energy II, L.L.C.*, found that the Debtor did not just simply wait to reject the contracts, but specifically requested that the claimant continue under the contract and accepted services provided by the claimant post-petition. 931 F.3d 432 (5th Cir. 2019). The Claimant does not argue that any such request or acceptance of service was made by the Debtor in this case, but simply notes that the Debtor decided to sell the company before rejecting the lease. Such facts are not grounds for awarding an administrative expense claim. *See In re Grant Broadcasting of Philadelphia, Inc.*, 71 B.R. 891, 897 (Bankr. E.D. Penn. 1987) (“If the Programmers’ position were accepted, we would place the Debtors in the position of being liable for their full contract obligations on executory contracts prior to acceptance or rejection. This would create tremendous pressure upon the Debtors to reject as many contracts as quickly as possible.”).

17. Courts within the Third Circuit have followed the later rule and have held that cost for unused property is not necessary to the preservation of a debtor's estate. *See In re Grant Broadcasting of Philadelphia, Inc.*, 71 B.R. 891, 897 (Bankr. E.D. Penn. 1987); *In re Jughandle Brewing Co., LLC*, 2024 Bankr. LEXIS 1305, *23-24 (Bankr. D.N.J. June 3, 2024) ("In a case where the trustee fails to reject and an administrative expense allowance is the only remedy, that landlord benefits at the expense of all other creditors."). The Third Circuit actually rejected an argument, similar to the one made by the Claimant, "that the necessary cost of providing [debtor] natural gas and thereby preserving the estate under § 503(b)(1) is presumptively the rate established by the contract." *Sharon Steel Corp. v. National Fuel Gas Distribution Corp.*, 872 F.2d 36, 38 (3d Cir. 1989). Other courts have agreed. *See, e.g., In re Eagle-Picher Indus.*, 447 F.3d 461, 464 (6th Cir. 2006) ("[A] debt qualifies as an 'actual, necessary' administrative expense only if (1) it arose from a transaction with the bankruptcy estate and (2) directly and substantially benefitted the estate.").

18. The cases cited by the Claimant that allegedly follow this presumption often find that the presumption is rebutted by evidence of the lack of actual use. *See Response ¶ 21*. For example, the Court in *In re Highway Techs, Inc.*, found that the debtor overcame the presumption that the contract terms and rate represent the reasonable value of the services or goods provided under the contract, because, post-petition the Debtor only used the software at a few locations instead of the 100 locations that it had contracted for prior to the bankruptcy filing. 2015 Bankr. LEXIS 308 (Bankr. D. Del. 2015) ("Therefore, Wynne is entitled to an administrative expense claim for its actual use of the Software at 43 locations post-petition in the amount of \$69,129.38."). The presumption was also

rebutted in *In re ID Liquidation One, LLC*, because “the evidence show[ed] that the rate provided in the contract was not predicated upon an assessment of the value of the services provided.” 503 B.R. 392, 400 (Bankr. D. Del. 2013).

19. Here, there is no evidence that the Debtor used any of the services agreed to pre-petition under the MSA for any purpose whatsoever.

20. In fact, Ryan Perkins, who serves as the Claimant’s Director of Finance, testified, on behalf of the Claimant, as follows:⁶

Q. Are you aware, other than the base fee, of any expenses that were incurred post-bankruptcy?

A. Yeah. ... I'm not aware.

...

Q. Okay. Isn't it true that Zosano never accessed or used the suite during the bankruptcy case?

A. I -- I -- I don't know if they physically came on site or not.

Q. You don't know; correct?

A. Yeah, I don't -- I don't -- I never physically verified that anybody that - that -- nobody came onsite during that time period.

Q. Are you aware of any potential buyer coming on site to look at the suite or review the capabilities that were at the suite or -- or associated with the suite?

A. I knew that there was, you know discussions with -- between Zosano and EmergX around purchasing their -- Zosano's assets. But, again, I wouldn't be involved with being -- like courting buyers to the suite to access --

Q. Who would -- who -- who would have been involved with that, if that occurred?

A. I mean, I'm not sure. It would probably -- if it -- if it had occurred, it would be somebody from our business management group. Again, probably Gatin Patel would be a contact.

Q. Okay. But as you sit here today, you're not aware of that having occurred; correct?

A. Correct.

21. Given the lack of evidence showing that any actual service was provided to the Debtor post-petition or that keeping the facility accessible actually helped the Debtor

⁶ The Deposition Transcript of Ryan Perkins is attached hereto as **Exhibit 1**.

post-petition, the Claimant has not met its burden of proving that it provided any actual benefit to the Debtor. *See VFS Leasing Co. v. Wyo. Sand & Stone Co. (In re Wyo. Sand & Stone Co.)*, 393 B.R. 359, 361-362 (Bankr. M.D. Penn. Jan. 28, 2008) (“Even if I were satisfied that this ‘potential’ was valuable to the estate, I would hardly be likely to embrace the contract lease payment as being a reasonable measurement of value for a large truck laying dormant on the premises because it ‘might’ be helpful in advancing the sale.”); *see also In re Energy Future Holdings Corp.*, 990 F.3d 728, 741 (3d Cir. 2021) (“The party seeking to recover [administrative] expenses must ‘carry the heavy burden of demonstrating’ that such expenses qualify as an administrative expense.”); *In re Unidigital, Inc.*, 262 B.R. 283, 288 (Bankr. D. Del. 2001) (“[P]riority claims are narrowly construed.”).

22. Accordingly, Claim No. 318 should be treated as a pre-petition unsecured claim pursuant to 11 U.S.C. § 502(g)(1).

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee respectfully requests that this Court sustain the Debtor’s Objection and enter an Order disallowing, reclassifying, reducing and allowing the Disputed Claims, and grant the Trustee such other and further relief as is just and proper.

Respectfully submitted this 10th day of July, 2025.

GREENBERG TRAURIG, LLP

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*Counsel for SierraConstellation Partners,
LLC, as Liquidating Trustee*

Exhibit 1

RYAN PERKINS
In re: Zosano Pharma Corporation, Debtor

June 24, 2025

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:) Chapter 11
)
Zosano Pharma Corporation,) Case No. 22-10506 (JKS)
)
Debtor.)

Greenville, North Carolina
June 24, 2025

Deposition of RYAN PERKINS,

a witness herein, called for
examination by counsel for
SierraConstellation Partners, LLC, in
the above-entitled action, pursuant to
agreement, the witness being duly sworn
by Kylie Fleming, Court Reporter and
Notary Public in and for the State of
North Carolina, taken at Thermo Fisher
Scientific, 5900 Martin Luther King Jr.
Highway, Greenville, North Carolina,
beginning at 9:07 a.m.

RYAN PERKINS
In re: Zosano Pharma Corporation, Debtor

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APPEARANCES OF COUNSEL

On behalf of SierraConstellation
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[appearing via videoconference]

Also Present:

Jon Landau, Videographer
Justin Sorensen, Thermo Fischer

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1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Okay. The
3 following will be the videotaped
4 deposition of Ryan Perkins, in re:
5 Zosano Pharma Corporation, File Number
6 22-10506(JKS).

7 Today's date is June 24th,
8 2025, and the time is 9:07 a.m. We're
9 here today at Thermo Fisher Scientific,
10 located at 5900 Martin Luther King Jr.
11 Highway, Greenville, North Carolina.
12 The court reporter is Kylie Fleming, and
13 the videographer is Jon Landau.

14 At this time, I will ask all
15 attorneys present to please state their
16 names and whom they represent for the
17 record.

18 MR. SORENSER: Justin Sorensen,
19 in-house counsel, corporate counsel for
20 Patheon, a division of Thermo Fisher
21 Scientific.

22 MR. ELROD: John Elrod on
23 behalf of SierraConstellation Partners,
24 LLC, as liquidating trustee for Zosana.

25 THE VIDEOGRAPHER: You may --

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1 oh, on -- on the computer.

2 MR. SOLIMINE: Louis Solimine

3 on behalf of the claimant, Patheon

4 Manufacturing Services, LLC.

5 THE COURT REPORTER: Okay.

6 Will you please raise your right hand,

7 sir. Do you swear or affirm today to

8 tell the truth, the whole truth, and

9 nothing but the truth?

10 THE WITNESS: I do.

11 THE COURT REPORTER: Thank you

12 so much. And, Counsel, whenever you're

13 ready.

14 MR. ELROD: All right.

15 RYAN PERKINS,

16 having been duly sworn,

17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ELROD:

20 Q. Good morning, Mr. Perkins. Can you

21 state your full name for the record.

22 A. Ryan James Perkins.

23 Q. Okay. And what is your address?

24 A. It is -- my home --

25 Q. Yes, sir.

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1 A. -- home address? 4309 Dublin Road,
2 D-U-B-L-I-N. It's Winterville, North
3 Carolina 28590.

4 Q. Okay. And do you have a work e-mail
5 address that you used -- or use?

6 A. Yes. It is
7 ryan.perkins@thermofisher.com.

8 Q. And have you ever used a personal e-mail
9 address to communicate about matters
10 relating to Zosano?

11 A. No.

12 Q. The thermofisher.com address that you
13 just gave me, did you ever use that to
14 communicate about matters relating to
15 Zosano?

16 A. Yes.

17 Q. Okay. What is your cell phone number?

18 A. 252-723-0792.

19 Q. And do you ever send text messages?

20 A. I do.

21 Q. Have you ever sent any relating to
22 Zosano?

23 A. I have not.

24 Q. Okay. Your counsel may have gone over
25 this with you, but I wanted to give you

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1 a few ground rules for the deposition.

2 First, let's try not to talk over each
3 other because it makes it difficult for
4 the court reporter to take down your
5 testimony.

6 Try to give an audible response
7 to questions that I ask so the court --
8 court reporter can take that down as
9 opposed to shaking your head or nodding.

10 And then you're entitled to a
11 break, if you need one. Just let me
12 know. The only exception to that is if
13 I ask you a question that's pending and
14 you haven't answered it, I'd like you to
15 answer that question. And, of course,
16 if you ever don't understand one of my
17 questions, just ask me to repeat it or
18 rephrase it; I'm happy to do that.

19 Okay?

20 A. Okay.

21 Q. What is your job title?

22 A. Finance Director.

23 Q. And is that with Thermo Fisher?

24 A. Yes.

25 Q. And is Thermo Fisher the parent company

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1 of the Claimant, Patheon Manufacturing
2 Services, LLC?

3 A. Yes.

4 Q. Okay. Do you hold any titles with
5 Patheon?

6 A. Any other titles other than what I've
7 given you?

8 Q. Well, I think your testimony was -- and
9 correct me if I'm wrong -- you were
10 Director of Finance for Thermo Fisher.
11 Are you also a Director of Finance for
12 Patheon?

13 A. Yes.

14 Q. Okay. And were you employed by Patheon
15 at the time of the events that are at
16 issue with respect to this claim
17 objection?

18 A. For a period of the relationship with
19 Zosano.

20 Q. Tell me -- tell me that period when you
21 were employed by Patheon.

22 A. So I was here from 2018 to 2020.

23 Q. Okay.

24 A. And then I left for two years. I came
25 back in April of '22, and I've been here

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1 since.

2 Q. And has your job title stayed the same

3 during that time period?

4 A. It has not.

5 Q. Okay. What -- what have those titles

6 been during those times periods?

7 A. For the first two years, I was the

8 controller for the site, still working

9 in finance.

10 Q. Okay.

11 A. And then when I returned for about 18

12 months, I was the Senior Manager of

13 Finance, Operations Finance.

14 Q. Okay.

15 A. And then for the last about 18 months,

16 I've been the Finance Director.

17 Q. Okay. And during the time after you

18 returned to Thermo Fisher, did you

19 directly work on matters relating to

20 Zosano?

21 A. In some capacity.

22 Q. And what capacities were those, or what

23 capacity is that?

24 A. Just reviewing responses and invoices

25 that were collected for the claim.

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1 Q. Okay. Did you ever have any direct
2 dealings with Zosano?

3 A. I did not.

4 Q. Okay. Who at Patheon would have dealt
5 directly with Zosano?

6 A. Our business management group.

7 Q. Any particular individuals in that
8 group?

9 A. They're still here. Gatin Patel.

10 Q. Gatin?

11 A. G-A-T-I-N P-A-T-E-L.

12 Q. Okay. Anybody else?

13 A. Mary Ruth Sikes.

14 Q. Anybody else?

15 A. No.

16 Q. Okay.

17 A. Not that I can remember.

18 Q. All right. In broad strokes, what is
19 your understanding of the services that
20 Patheon provided to Zosano?

21 A. So we entered into a technical transfer
22 agreement with Zosano, as well as a -- a
23 master supply agreement with the intent
24 of transferring their technology here to
25 the site so that we could provide --

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1 ultimately so that we could provide them
2 with tech transfer services that would
3 lead to a commercial manufacturer of
4 their product.

5 Q. Okay. I think you mentioned a -- a
6 supply agreement. What was the term you
7 used? Starting with an m?

8 A. It's -- I said master, but it should be
9 manufacturing supply agreement.

10 Q. Okay. All right. Under that first
11 agreement which you referenced, which I
12 think was the Technology Transfer
13 Agreement, was the performance under
14 that agreement of the -- you know, the
15 -- what the -- the things that Patheon
16 was supposed to provide to Zosano, was
17 that completed?

18 A. I don't know.

19 Q. Okay. Okay. And do you know -- your --
20 I guess Patheon's response, which is
21 filed with the Bankruptcy Court,
22 indicated that Patheon -- that Patheon
23 provided budgeted fees in excess of 1.76
24 million. Do you recall that figure?

25 A. Can I see it?

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1 Q. Sure.

2 MR. ELROD: We can mark this as

3 Exhibit 1.

4 (EXHIBIT NUMBER 1 WAS MARKED.)

5 THE WITNESS: Thank you.

6 BY MR. ELROD:

7 Q. This is docket number 472 in the

8 bankruptcy case.

9 A. And what was the number that you're

10 referring to?

11 Q. It's -- it's in paragraph two on the

12 second page, last sentence.

13 A. Yes, I'm familiar.

14 Q. Okay. Was that 1.76 million paid by

15 Zosano to Patheon?

16 A. I believe portions of that 1.76 million

17 were -- were paid.

18 Q. Do you know how much were paid?

19 A. I don't know the amount that was paid?

20 THE VIDEOGRAPHER: Excuse me.

21 Can I go off the record for just one

22 second? Going off record. The time is

23 9:18 a.m.

24 (RECESS.)

25 THE VIDEOGRAPHER: Okay. We're

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1 going back on record. The time is 9:18

2 a.m.

3 BY MR. ELROD:

4 Q. I think my last question was regarding

5 how much the 1.76 million was paid, and

6 I think you said you don't know?

7 A. I don't know.

8 Q. Okay. But some portion of it was paid.

9 Do you have any sense of how much was

10 paid? Like a million or more or --

11 A. I -- I don't know. When I reviewed the

12 company records, I reviewed outstanding

13 debts, and I -- I did not review the --

14 the amounts that were paid against the

15 agreement.

16 Q. Okay. And when you reviewed the company

17 records, did they reflect any

18 outstanding debts relating to this 1.76

19 million?

20 A. Yes.

21 Q. And how much was shown as outstanding?

22 A. I don't know the exact number off the

23 top of my head, but it was the -- we

24 have these outlined in the documents

25 that we provided. It's going to be

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1 the -- basically the bill back items,
2 CAPEX validation invoices, qualification
3 invoices that were included in the
4 claim.

5 Q. You said CAPEX validation, bill -- I'm
6 sorry, what were the -- what were the
7 categories?

8 A. Bill backs, validation services,
9 qualification services.

10 Q. Okay. And those are all -- your
11 testimony is that all of those are
12 reflected in the claims that were filed
13 with the Bankruptcy Court?

14 A. Yes.

15 Q. Okay. I'm going to show you those.

16 MR. ELROD: And we'll mark
17 those as Exhibits 2 through 4. Is that
18 fair?

19 (EXHIBIT NUMBER 2 WAS MARKED.)

20 (EXHIBIT NUMBER 3 WAS MARKED.)

21 (EXHIBIT NUMBER 4 WAS MARKED.)

22 BY MR. ELROD:

23 Q. All right. So let's start -- we'll just
24 go -- they're -- they're marked with
25 claim numbers in the top right-hand.

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1 We'll go in sequential order. Claim
2 number 208, that'll be Exhibit 2.

3 There's claim number 304, that'll be
4 Exhibit 3. And there's a claim number
5 318, that'll be Exhibit 4. Okay?

6 MR. SORENSER: There's a copy
7 of those for you. Just three or four.
8 Okay. Just making sure.

9 THE WITNESS: Thank you.

10 BY MR. ELROD:

11 Q. All right. And looking through these --
12 and I'll give you all the time you need
13 to look through them -- can you tell me
14 where portions of the 1.76 million are
15 reflected?

16 MR. SOLIMINE: John, I don't
17 understand the question.

18 MR. ELROD: I've asked the
19 witness where -- he's indicated some of
20 the 1.76 million is outstanding. I've
21 asked the witness where that's reflected
22 in the proofs of claim that were filed
23 with the court.

24 MR. SOLIMINE: Do you
25 understand the question, Ryan?

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1 THE WITNESS: I do. So one
2 example would be invoice number
3 992233717.

4 BY MR. ELROD:

5 Q. Okay. And this is in Exhibit 2?

6 THE WITNESS: Have you list --
7 have you marked these?

8 THE COURT REPORTER: Is there a
9 number on there?

10 MR. ELROD: So --

11 THE COURT REPORTER: That's 1.

12 MR. ELROD: Yeah. That's 1.
13 Claim number 208 should be Number 2.

14 THE COURT REPORTER: If you
15 don't mind, I'll just --

16 MR. ELROD: Yeah. So there's
17 claim numbers in the top right-hand
18 corner, and so it's sequential. Okay.

19 THE COURT REPORTER: 208 is
20 Number 2, 304 is Number 3, and then 4 is
21 318?

22 MR. ELROD: Yes, ma'am.

23 THE COURT REPORTER: Okay.

24 THE WITNESS: So, yes, this
25 would be in Exhibit 2.

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- 1 BY MR. ELROD:
- 2 Q. So this is Exhibit 2 within -- or
- 3 what -- which page of Exhibit 2, I
- 4 should ask?
- 5 A. Page -- they're not numbered. 10. Page
- 6 10.
- 7 Q. And is that -- is it a Patheon invoice?
- 8 A. It's a Patheon invoice.
- 9 Q. Approval project invoice?
- 10 A. Yes.
- 11 Q. Okay. And it's -- the last three digits
- 12 of the invoice are 717?
- 13 A. That's correct.
- 14 Q. Okay. And this is dated from December
- 15 of 2021; correct?
- 16 A. Yes.
- 17 Q. Okay. And so there's an amount shown
- 18 for \$17,833?
- 19 A. Yes.
- 20 Q. And that -- a -- that -- that is a
- 21 portion of the 1.76 million; correct?
- 22 A. Yes.
- 23 Q. Okay. Any other amounts that fall
- 24 within the 1.76 million?
- 25 A. Under the TT agreement -- the TTA, the

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1 following invoice, last four digits
2 4006, in the amount of \$99,120.54.
3 Q. Okay. So to short circuit it, there's a
4 batch of invoices after the cover page,
5 Technology Transfer Agreement. This is
6 following the attachment.

7 Is it fair to say -- and
8 there's another cover page that's
9 labeled Manufacturing and Supply
10 Agreement.

11 A. Right.

12 Q. So it's your -- is it -- is it true that
13 all the invoices within the technology
14 transfer portion of the claim, your
15 testimony is that all of those are
16 outstanding and all of those are a
17 portion of the 1.76 million; is that
18 fair to say?

19 A. Just one moment.

20 MR. SOLIMINE: Ryan, while
21 you're looking at that, I want to
22 clarify the record just for a second,
23 and that is the response that Mr. Elrod
24 referred to says that Patheon -- the
25 debtor agreed to pay -- pay Patheon

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1 certain budgeted fees in excess of \$1.76

2 million. It doesn't say \$1.76 million.

3 It says in excess of that amount.

4 MR. ELROD: Let's refrain from
5 speaking objections.

6 BY MR. ELROD:

7 Q. All right. So the invoices that are --
8 that are shown behind the Technology
9 Transfer Agreement page before the
10 Manufacturing Supply Agreement Page,
11 those all fall within the asserted
12 amount of \$1.76 million?

13 MR. SOLIMINE: Same objection.

14 THE WITNESS: Yes. So
15 everything within that section following
16 the cover page technical transfer --
17 Technology Transfer Agreement and before
18 the manufacturing -- the MSA page, to my
19 knowledge, would be billed under the
20 tech transfer agreement.

21 BY MR. ELROD:

22 Q. Okay. And those amounts that are
23 outstanding as of today, it appears
24 that's the \$721,923 number that's
25 reflected in the attachment to Exhibit

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1 2?

2 A. What page are you referring to? The
3 attachment?

4 Q. It's -- so there's the kind of legal
5 form. This is in Exhibit 2. Not
6 Exhibit 1, Exhibit 2.

7 A. Oh, in Exhibit 2?

8 Q. Yes, sir.

9 A. Yes.

10 Q. And it's -- if you go -- so there's kind
11 of the proof of claim form that are the
12 first several pages. Keep -- keep going
13 through. And there's an attachment
14 behind those. It's not -- not those.
15 Couple pages back. There it is.

16 Okay. So there's a \$721,923
17 figure that's shown within that
18 attachment. Is it your testimony that
19 the invoices within the Technology
20 Transfer Agreement section comprise that
21 \$721,000 number?

22 A. Yes.

23 Q. Okay. All right. And then there's the
24 Manufacturing and Supply Agreement, or
25 MSA amounts that are asserted in this

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1 claim for, let's call it, 2.133 million.
2 Do you see this?
3 A. Yes.
4 Q. Okay. And those are behind the
5 Manufacturing and Supply Agreement cover
6 page that's shown in that claim? Yes?
7 A. What was the question? I'm sorry?
8 Q. I asked you if those are shown behind
9 the Manufacturing and Supply Agreement
10 cover page --
11 A. Okay.
12 Q. -- within the claim?
13 A. Yes.
14 Q. Okay. All right. A couple of kind of
15 broad questions about the way that TTA
16 and the MSA worked.
17 When Patheon incurred an
18 expense under either the TSA or the MSA,
19 was that passed along to Zosano as a
20 portion of the fee, or was that a
21 separate pass along? In other words,
22 there was a fee that was owing under the
23 MSA or the TTA that was a flat, let's
24 call it monthly fee. Were there
25 additional amounts that were passed

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1 along as expenses were incurred?

2 A. Yes.

3 Q. Okay.

4 A. The base fees that you're referring to
5 were being billed under the MSA.

6 Q. Okay. And for the purposes of -- I
7 think it's Exhibit 4, which is the
8 administrative expense claim, those are
9 the \$380,000 monthly fees? Those are
10 the base fees?

11 A. Yes.

12 Q. Okay. And so let's just say
13 hypothetically that in a particular
14 month additional expenses were incurred
15 by Patheon beyond the base fees, those
16 would be passed along to Zosano under
17 the terms of the MSA; correct?

18 A. If the fees incurred by Patheon were not
19 covered by the base fees, then we would
20 pass them along to the customer, either
21 under the Technology Transfer Agreement
22 or under the MSA.

23 Q. Okay. All right. And can you describe
24 in broad strokes what types of fees
25 would be above and beyond the base fee?

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1 A. So the Technology Transfer Agreement
2 outlines the types of expenses that we
3 would incur that would be passed along
4 to the customer. So those are primarily
5 related to the procurement,
6 qualification, validation of equipment,
7 and any necessary laboratory supplies,
8 laboratory outsourcing, subcontractor
9 services as agreed to in the Technology
10 Transfer Agreement.

11 Q. Okay. During the -- the period after
12 June 1st of 2022, were any fees or
13 expenses beyond the base fees incurred
14 by Patheon in relation to Zosano?

15 A. I can't remember the exact dates of when
16 the final invoices -- well, no. Hold
17 on. Let me think about this. Can you
18 repeat the question?

19 Q. Sure. So I'll represent to you that
20 June 1st, 2022, was the date the
21 bankruptcy was filed. Are you aware of
22 any expenses incurred by Patheon after
23 the date the bankruptcy was filed that
24 are beyond the base fees of \$380,000 per
25 month?

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1 A. Yes.

2 Q. Okay. Can you -- are -- have those been
3 asserted in one of these claims that are
4 in front of you?

5 A. The -- let's see. An estimate -- the
6 initial estimate of those fees are in
7 Exhibit 3.

8 Q. Exhibit 3. Okay. Where in Exhibit 3?

9 A. On the second to last page. Attachment
10 to Proof of Claim of Patheon
11 Manufacturing Services, LLC.

12 Q. Okay. And where within that?

13 A. So the \$3,784,500 was the initial
14 good-faith best estimate at the time --

15 Q. Okay.

16 A. -- to -- basically for make good costs
17 to return the suite to its, you know,
18 original existing condition. And then
19 an estimate of those expenses at the
20 time are represented on the last page in
21 the schedule titled PSG Global
22 Engineering Project Estimate.

23 Q. Okay. All right.

24 A. But since then, this estimate has -- was
25 revised. And I can't remember the exact

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1 number. I think it was \$91,060 that we
2 had revised this claim too.

3 Q. Okay. All right. I want to make sure
4 that I have your testimony clear. If we
5 look at Exhibit 4, which is the
6 post-petition or what we call
7 administrative claim. And you look at
8 the attachment thereto, there are
9 monthly -- and this is on -- let's see,
10 it's -- I don't know if you have the
11 page. It's a couple of -- I think it
12 might be the page in front of that.

13 It's the -- the one that -- it looks
14 like your lawyer may have prepared.
15 There are references to monthly base
16 fees of \$380,000 per month for June,
17 July, and August of 2022, and then
18 \$94,293.15 for required post-petition,
19 pre-rejection purchase of equipment; do
20 you see that?

21 A. Where is that -- I'm sorry. Where is it
22 the reference?

23 Q. It's in the --

24 A. 380,000 per month for the months June,
25 July, and August?

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1 Q. Yes, sir. It's the --

2 A. And the 94,293 in payments by Patheon.

3 Okay.

4 Q. Okay.

5 A. Yes, I see it.

6 Q. Okay. So I think in -- in talking with

7 your counsel, I'll represent to you that

8 -- and --- and in writings, he's --

9 indicated that he acknowledges that the

10 94,000 -- or Patheon acknowledges that

11 the 94,000 figure is not properly an

12 administrative expense claim. It's a

13 pre-petition claim. And if you look at

14 the invoices, they date from prior to

15 June 1st of 2022.

16 What I want to know is, other

17 than the monthly base fees for June,

18 July, and August, and other than what

19 you testified about just a moment ago

20 with respect to -- I think it's claim

21 three, which is the estimate that's been

22 revised down to 91,000, were there

23 additional expenses that were incurred

24 by Patheon post bankruptcy?

25 A. And June was the bankruptcy?

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1 Q. Yes, sir. June 1st. So it -- basically
2 it would be June, July, and August, were
3 there any additional expenses that were
4 incurred by Patheon?

5 A. Outside of the base fees and the --
6 outside of the base fees specifically?

7 Q. Yes, sir. Outside of the base fees.

8 A. Okay. Based on the support outside of
9 the -- the base fees, the only invoice
10 that I see that we issued in Exhibit 2
11 beyond July -- or June of 2022 was
12 the -- the invoice in the amount of
13 \$38,256.85.

14 Q. Okay. Can you point me to where that
15 is? You said it was in Exhibit 2.

16 A. It's in Exhibit 2.

17 MR. SORENSER: Back two pages.
18 You had it. That the base fee.

19 THE WITNESS: It's two pages
20 before the Manufacturing and Supply
21 Agreement.

22 MR. ELROD: Okay.

23 THE WITNESS: Divider page.

24 BY MR. ELROD:

25 Q. Okay. So there's a project invoice

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1 that's dated 7/21 of 2022?
2 A. Yes.
3 Q. Okay.
4 A. But based on -- with the information
5 that's in this package, I can't confirm
6 the date of incurrence --
7 Q. Okay.
8 A. -- from the vendor.
9 Q. Okay.
10 A. Which may or may not have been before
11 this date.
12 Q. Got it.
13 A. It -- it was likely -- it was before
14 this date because the support is there.
15 I just don't know how far before this
16 date it was.
17 Q. Okay. So it was -- the -- the
18 underlying expenses were prebankruptcy
19 expenses? Okay.
20 A. Yes.
21 Q. Are you aware, other than the base fee,
22 of any expenses that were incurred post
23 bankruptcy? Other than the -- I think
24 it was the \$91,000 number you testified
25 earlier?

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1 A. Yeah. Outside of the base fee and the
2 \$91,000, I'm not aware.

3 Q. Okay. All right. And isn't it true
4 that in the post bankruptcy period,
5 Zosano never used the Patheon facility?

6 A. However, I do want to make a correction
7 to my statement because the -- although
8 I didn't incur additional expenses
9 outside of, like, from vendors, I did
10 have to continue to carry the overhead
11 to support the suite. So we had
12 employees that were employed by the
13 site, by Patheon, that supported the
14 suite. I had support functions that
15 continued to support and remained
16 available to support the suite.
17 Utilities that we had to continue to pay
18 for. So my basic labor and overhead
19 expenses continued.

20 MR. ELROD: Okay. I'm going to
21 object to the extent that's
22 unresponsive, but I understand what
23 you're saying.

24 BY MR. ELROD:

25 Q. Now, you use the term the suite by --

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1 the suite, that's the -- if I understand
2 it -- correct me if I'm misspeaking, is
3 the suite -- does that refer to the
4 portion of the facility in Greenville
5 that was dedicated to -- to Zosano?

6 A. Yes.

7 Q. Okay. Now, you mentioned utilities,
8 employees, and I think overhead --
9 general overhead, perhaps. Those fees
10 or -- or those expenses would have been
11 incurred regardless of whether
12 Patheon -- regardless of whether Zosano
13 used the facility or not; correct?

14 A. Yes.

15 Q. Okay.

16 A. It would have -- it would have been --
17 it would have been incurred whether
18 Zosano chose under the agreement to use
19 the dedicated facility or if they did
20 not. But as long as I was in -- as long
21 as we had this contract with them and we
22 had to fulfill the obligations in the
23 contract, those were additional expenses
24 to the site.

25 Q. Okay. But they would have been incurred

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1 regardless of whether or not Zosano had
2 the contract in place or not? In other
3 words, there weren't incremental costs
4 that were incurred as a result of the
5 Zosano contract?

6 A. Yes, they were incremental costs as a
7 result of the Zosano contract.

8 Q. Okay. And where are those reflected in
9 any of the invoices?

10 A. The addition --

11 MR. SOLIMINE: I object -- I'm
12 going to object. Ryan, hang on a
13 second. I'm going to object to this
14 line of questioning because Patheon is
15 not making a claim for any such amounts.
16 I don't know what the purpose of this
17 questioning is.

18 MR. ELROD: Okay. Counsel, I
19 would encourage you not to make a
20 speaking objection. We're entitled to
21 inquire on any line of questioning that
22 we like that's relevant to this
23 proceeding, and this is certainly
24 relevant to this proceeding.

25 MR. SOLIMINE: I disagree,

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1 John. But go ahead, Ryan, if you can
2 answer the question, you're welcome to.

3 BY MR. ELROD:

4 Q. You can answer.

5 A. Can you repeat the question?

6 Q. Sure. I'll -- I'll rephrase it, how
7 about that.

8 Patheon would have incurred
9 those expenses regardless of whether or
10 not Zosano was using the facility?

11 MR. SOLIMINE: Same objection.

12 BY MR. ELROD:

13 Q. Wouldn't it?

14 A. We would have had incremental -- we had
15 incremental expenses because of the
16 contract with Zosano that we incurred
17 while the suite remained available to
18 the -- to Zosano under the contract.
19 Incremental expenses that would not have
20 otherwise been incurred. We built the
21 amount of space here on the site and we
22 hired employees to support that area.
23 So if I was not in a contract with
24 Zosano, I would not have those -- those
25 expenses.

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1 Q. How many different suites does Patheon
2 have here similar to what it had for
3 Zosano?

4 MR. SOLIMINE: At what time?

5 BY MR. ELROD:

6 Q. During the relevant time period.

7 A. At least three I can remember.

8 Q. Okay. And so were those with three
9 additional customers, or did that
10 include Zosano?

11 A. Three additional customers.

12 Q. Okay. So a total of four, perhaps?

13 A. (Witness nods head up and down.)

14 Q. Okay. Isn't it true that Zosano never
15 accessed or used the suite during the
16 bankruptcy case?

17 A. I -- I -- I don't know if they
18 physically came on site or not.

19 Q. You don't know; correct?

20 A. Yeah, I don't -- I don't -- I never
21 physically verified that anybody that --
22 that -- nobody came onsite during that
23 time period.

24 Q. Are you aware of any potential buyer
25 coming on site to look at the suite or

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1 review the capabilities that were at the
2 suite or -- or associated with the
3 suite?

4 A. I knew that there was, you know,
5 discussions with -- between Zosano and
6 EmergX around purchasing their --
7 Zosano's assets. But, again, I wouldn't
8 be involved with being -- like courting
9 buyers to the suite to access --

10 Q. Who would -- who -- who would have been
11 involved with that, if that occurred?

12 A. I mean, I'm not sure. It would probably
13 -- if it -- if it had occurred, it would
14 be somebody from our business management
15 group. Again, probably Gatin Patel
16 would be a contact.

17 Q. Okay. But as you sit here today, you're
18 not aware of that having occurred;
19 correct?

20 A. Correct.

21 Q. Okay. And you're not --- also not aware
22 of Zosano ever using the suite for any
23 other Patheon services during the post
24 bankruptcy period; correct?

25 A. Yeah. I can't -- I can't like directly

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- 1 verify that.
- 2 Q. Can you indirectly verify it?
- 3 A. Not with the knowledge that I have at
- 4 this time.
- 5 Q. Okay. Who is Derek -- is it Neice,
- 6 Neice, Neice?
- 7 A. Neice.
- 8 Q. Neice. Who -- who is Derek Neice?
- 9 A. He was the former finance director of
- 10 the site.
- 11 Q. Okay. And is he still employed?
- 12 A. He is.
- 13 Q. What is his role now?
- 14 A. His role is Senior Director of Finance
- 15 Transformation.
- 16 Q. And is he in Greenville or is he
- 17 somewhere else?
- 18 A. He is -- does not sit here. He works
- 19 remotely.
- 20 Q. Okay. Where does he live?
- 21 A. In -- around Wilson, North Carolina, 45
- 22 minutes from here or so.
- 23 Q. Okay. If Zosano had used the facility
- 24 during the post bankruptcy period, isn't
- 25 it true that there would have been

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1 additional expenses that were incurred?

2 For example, if they used it for some

3 type of manufacturing, wouldn't there

4 have been additional expenses?

5 A. If they had used, there would have been

6 additional expenses on top of the

7 expenses that we had -- had incurred.

8 Q. On top of the monthly base fee; correct?

9 A. Yes.

10 Q. Okay. And the overhead that you were

11 talking about a few moments ago with

12 respect to utilities and employees, that

13 was all built into the monthly base fee;

14 correct?

15 A. Correct.

16 Q. Okay. And was it your testimony with

17 respect to those employees that they

18 were specifically hired for Zosano?

19 A. Yes. We had a specific cost center

20 outlined in our financials where we

21 reported the expenses for these

22 employees.

23 Q. Who were the specific employees that

24 were hired for Zosano?

25 A. I do not know their names.

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1 Q. Did those employees have any additional
2 duties other than Zosano-related work?

3 A. Not that I know of.

4 Q. Are those employees still employed by
5 Patheon/Thermo Fisher?

6 A. I -- I can't confirm. I -- I don't know
7 what their names were.

8 Q. Okay. Are you aware of anybody being
9 terminated by Patheon as a result of the
10 Zosano bankruptcy or the lack of Zosano
11 work?

12 A. I'm not. But the nature of our business
13 is growing, so it's likely that we would
14 have absorbed them into another project
15 elsewhere and -- and charged that out to
16 another customer.

17 Q. Okay.

18 A. After the termination of the contract.

19 Q. And I've also seen the term condo used
20 on some of the documents. Is that the
21 same thing as the suite?

22 A. Yeah. Dedicated facility, suite, condo,
23 they're all interchangeable terms to
24 describe the same thing.

25 Q. Okay. And I think you testified there

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1 were three additional suites for -- for
2 other customers --

3 A. Yes.

4 Q. -- in the -- in this facility in
5 Greenville?

6 A. Yes.

7 Q. What is the square footage approximately
8 of the Zosano suite, or what was it, I
9 should say?

10 A. I don't know off the top of my head. I
11 -- I think it -- it may be estimated in
12 the Tech Transfer Agreement, if there's
13 a design listed in there, but I don't
14 know what the square footage is.

15 Q. Other than the Zosano suite and the
16 three additional suites for other
17 customers, does this facility in
18 Greenville overall have any additional
19 functions?

20 A. Outside of those suites?

21 Q. Yes, sir.

22 A. Yes. We have several -- I would call
23 them like customer agnostic lines where
24 we produce multiple products and brands
25 on particular lines.

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1 Q. In fact, that's the -- the main purpose
2 of this facility, isn't it?

3 A. Yes.

4 Q. Okay. And so those suites, what portion
5 of this facility percentage-wise do
6 those suites compromise?

7 A. From a square footage standpoint,
8 probably less than 10 percent.

9 Q. Okay. So by extension, just dividing
10 equally, the Zosano-dedicated suite
11 would have been approximately 2.5
12 percent of the entire Greenville
13 facility?

14 A. Yes.

15 MR. SOLIMINE: Objection.

16 BY MR. ELROD:

17 Q. And so I -- is it fair to say that the
18 utilities that you referenced earlier
19 would have been approximately 2.5
20 percent or less of the utilities
21 associated with the site?

22 MR. SOLIMINE: Objection.

23 BY MR. ELROD:

24 Q. You can answer, unless he instructs you
25 not to. You can answer.

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1 MR. SOLIMINE: Yes, you can
2 answer, Ryan, if you know.

3 THE WITNESS: Right. Okay.

4 MR. SOLIMINE: If you know.

5 THE WITNESS: Yeah. I -- I
6 don't know the exact math on this stuff,
7 but if -- yes, it's -- I -- I -- I
8 don't -- I don't know the exact math on
9 it.

10 BY MR. ELROD:

11 Q. Okay. But it was not the majority of
12 the utilities for this location?

13 A. It's not -- it's not going to be the
14 majority.

15 Q. Okay. It would be a small percentage;
16 correct.

17 A. Yes.

18 Q. Okay.

19 A. Single digits.

20 Q. And if there was no manufacturing during
21 that post bankruptcy time period, the
22 utilities associated with Zosano would
23 have been minimal or nonexistent;
24 correct?

25 A. I wouldn't say minimal or nonexistent,

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1 but like in comparison to what they
2 would be when we were running, just to
3 keep the suite in a GMP state requires,
4 you know a -- it requires more utilities
5 than one would think.
6 Q. And by "GMP state," are you referring to
7 the --
8 A. Good manufacturing practices.
9 Q. -- like the cleaning manufacturing --
10 A. To keep it as a clean, sterile
11 environment.
12 Q. Okay. Okay.
13 A. Airflow, clean water, steam, all of this
14 stuff is available to the suite.
15 Q. Okay. And the facility we're sitting in
16 -- here in Greenville, it wasn't built
17 for Zosano, was it, the entire facility?
18 A. It was not.
19 Q. Okay. When was it built?
20 A. I believe it was originally built in
21 1970.
22 Q. Okay. And did Thermo Fisher or its
23 predecessor own it at that time?
24 A. No.
25 Q. Who -- who was the original owner?

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- 1 A. Burroughs Wellcome.
- 2 Q. Okay. And when did Thermo Fisher or its
- 3 predecessor acquire the facility?
- 4 A. I believe the acquisition was in 2017.
- 5 Q. Okay. And that was prior to the time
- 6 when Zosana started doing business with
- 7 Patheon; correct?
- 8 A. To my knowledge.
- 9 Q. Okay. And Zosano did not -- well,
- 10 Patheon did not acquire the facility in
- 11 anticipation of Zosano business in
- 12 particular, did it?
- 13 A. Not to my knowledge.
- 14 Q. It was part of a broader business
- 15 strategy, wasn't it?
- 16 A. Yes.
- 17 Q. Okay. Do you know whether there --
- 18 well, let me back up.
- 19 When I checked in this morning,
- 20 there were extensive -- there was an
- 21 extensive security procedure. Do you
- 22 know whether any records still exist
- 23 from the time after Zosano filed
- 24 bankruptcy as to who visited?
- 25 A. I'm not aware of the retention -- what

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1 the retention policy is for those
2 records.

3 Q. Okay. Okay. But it's -- how long --

4 MR. SOLIMINE: John, you mean
5 who visited the suite, I assume?

6 MR. ELROD: Who visited the
7 site and anybody from Zosano or any
8 Zosano potential buyer that may have
9 visited.

10 MR. SOLIMINE: All right.

11 BY MR. ELROD:

12 Q. You're not aware of anybody?

13 A. I'm not. I --

14 Q. Okay. And was that security system more
15 or less in place during that time frame?

16 A. The front desk?

17 Q. Yes, sir.

18 A. It was.

19 Q. Okay. So there would have been a
20 check-in process?

21 A. Yes.

22 Q. Okay. All right. Now, the space that
23 Zosano had dedicated to it at this
24 facility, has it been repurposed or
25 reused at this time?

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1 A. It is not.

2 Q. And is it vacant at present?

3 A. It is vacant.

4 Q. Okay. But if Zosano had never done
5 business with Patheon, it may well be
6 vacant as well; correct?

7 A. It could be vacant --

8 MR. SOLIMINE: Objection.

9 THE WITNESS: -- or it could
10 have been consumed --

11 MR. SOLIMINE: Objection.
12 Wait, Ryan, let me -- excuse me for a
13 second. I'm -- I'm objecting to the
14 form of the question and the (connection
15 faltered) --

16 MR. ELROD: You can answer.

17 MR. SOLIMINE: Go ahead.

18 THE WITNESS: Okay. It -- it
19 could have -- it could remain vacant or
20 it could have been consumed as a -- as
21 another strategic project here at the
22 site.

23 BY MR. ELROD:

24 Q. Okay. Are you aware of Patheon turning
25 away any customers who may have wanted

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1 suites during that three-month post
2 bankruptcy time?

3 A. I'm sorry, can you repeat the question?

4 Q. Sure. Are you aware of Patheon turning
5 away any potential customers that may
6 have wanted to use that space? In other
7 words, was Patheon approached by
8 potential customers that -- that may
9 have wanted space and, you know, you
10 turned them away because there was a
11 contract in place with Zosano?

12 A. I don't know.

13 Q. You're not aware of any as you sit here?

14 A. I'm not aware.

15 Q. Okay. And in terms of where the suite
16 is, is that a kind of segregated portion
17 of the building from the -- I forgot the
18 exact term you used, but the kind of
19 general manufacturing that Thermo Fisher
20 or Patheon has here?

21 A. It's in the general vicinity of our
22 production areas.

23 Q. Okay. Okay. And correct me if I'm
24 wrong, when -- when -- the branding
25 on -- on this facility on the front, it

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- 1 says Thermo Fisher, doesn't it?
- 2 A. (Witness nods head up and down.)
- 3 Q. Now, Patheon, is that the specific
- 4 Thermo Fisher business that sets up
- 5 these suites similar to what was set up
- 6 for Zosano?
- 7 A. Patheon is the -- is -- is the brand --
- 8 I mean, it's the original company that
- 9 Thermo Fisher bought.
- 10 Q. Okay.
- 11 A. And it's the brand name that we continue
- 12 to use. It's the legal entity that we
- 13 continue to -- continue to use, and
- 14 Thermo Fisher is the parent company.
- 15 Q. And so is it fair to say it's kind of
- 16 like contract manufacturing?
- 17 A. Our business?
- 18 Q. The -- the Patheon business?
- 19 A. Yes. Contract manufacturing.
- 20 Q. Okay. Okay. But that contract
- 21 manufacturing portion of this facility
- 22 in Greenville, I think you said it was
- 23 somewhat distinct from the general
- 24 Thermo Fisher manufacturing here?
- 25 A. The -- the site as a whole is --

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1 materially it's contract manufacturing.

2 That's the business that we do here.

3 Q. Okay.

4 A. Just for several different customers and

5 several different suites and several

6 different models and modes that we

7 provide to our customers.

8 Q. Okay. I -- I thought -- I -- I -- I

9 guess I misunderstood your testimony

10 earlier, and I apologize. But it sounds

11 like there are other customers that have

12 manufacturing here that are not in

13 suites?

14 A. That are not dedicated, yeah. Or --

15 yeah, are not in suites.

16 Q. Okay.

17 A. So we may have a line that has seven

18 customers on it, and they all represent

19 a portion of capacity for that

20 particular line.

21 Q. Okay. All right. All right. There is

22 an invoice that Patheon issued to a

23 company called EmergX. Are you familiar

24 with EmergX?

25 A. Yes.

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1 Q. Who is EmergX, to your understanding?

2 A. My understanding is that EmergX is the
3 company that purchased the assets from
4 Zosano.

5 Q. And that -- that amount is approximately
6 91,000; is that correct?

7 A. That is the amount that is calculated.

8 Q. Okay. And has -- have there been any
9 communications with EmergX about the
10 payment of that amount?

11 A. Multiple communications.

12 Q. Do you know whether your counsel and I
13 -- to be clear, I don't want to know
14 communications that you and your counsel
15 had or your counsel had with
16 representatives of Patheon relating to
17 legal advice, but what I want to know is
18 whether you know whether your counsel
19 has been interfacing with EmergX
20 regarding the payment of that invoice?

21 A. I do not.

22 Q. Okay. But it's fair to say, isn't it,
23 that Patheon has itself, without using
24 outside counsel, been asking for that
25 invoice to be paid?

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1 A. That is correct.

2 Q. Okay. And has Patheon considered
3 commencing litigation to get that paid?

4 A. Not specifically for that one particular
5 invoice. We have not pursued that yet.

6 Q. Okay. Is that something that Patheon
7 may well do?

8 MR. SOLIMINE: Objection. You
9 can answer, if you know.

10 THE WITNESS: Yes.
11 Potentially. It's -- it would be part
12 of the escalation pathway for
13 outstanding invoices.

14 MR. ELROD:

15 Q. Okay. And the -- the \$380,000 base fee
16 amount, the monthly base fee amount, my
17 understanding is it -- I believe it
18 started out at 300 and escalated over
19 time?

20 A. Do you have a copy of the MSA? Is -- is
21 it one of the exhibits I could
22 reference?

23 Q. So -- of -- of -- I'm sorry, the MSA?

24 A. Yeah.

25 Q. I do not. Not have it with me. No.

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1 A. Okay. I -- I don't remember the
2 beginning year amounts, but I do know
3 that it did escalate over time.

4 Q. Okay. There's a footnote that may
5 refresh your recollection in Exhibit 1.

6 MR. SOLIMINE: I believe you're
7 referring to footnote two on page 2.

8 BY MR. ELROD:

9 Q. It's on the second page, footnote two.

10 A. And the question was?

11 Q. So that amount started out at --

12 A. \$300,000 per month.

13 Q. 300,000 -- well, I guess it started at
14 less than that. For 2019, the footnote
15 says it was a million dollars, which
16 divided by 12 would, of course, be less
17 than that, and then escalated over time.
18 How were those figures arrived at?

19 A. I was not directly related in -- in
20 putting together the quote for the --
21 the MSA.

22 Q. Who would have been involved in that?

23 A. The -- I don't know, it's probably,
24 again, business management, maybe Gatin
25 -- no, Gatin Patel wasn't even here in

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1 business management at that time. I

2 honestly don't know who was in the

3 quoting department at that time.

4 Or perhaps Mary Ruth Sykes used to be

5 the director of business management.

6 Q. Okay.

7 A. She -- she may be knowledgeable of how

8 that was derived.

9 Q. Is she still employed at Patheon?

10 A. She is not here at this site.

11 Q. Where -- where does she reside or what

12 site?

13 A. She is also remote.

14 MR. ELROD: Okay. All right.

15 I think that's all I've got for you

16 today.

17 THE WITNESS: Okay.

18 THE COURT REPORTER: Do you

19 have any cross?

20 MR. SOLIMINE: No, no cross.

21 THE COURT REPORTER: Okay.

22 THE VIDEOGRAPHER: Okay. All

23 right. Then we're going off record.

24 The time is 10:15 a.m. This concludes

25 this deposition.

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1 (THE DEPOSITION CONCLUDED AT 10:15 A.M.)

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1 ERRATA SHEET

2 In Re: Zosano Pharma

3 Case Number: 22-10506(JKS)

4 Deponent: Ryan Perkins

5 Date: June 24, 2025

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SIGNATURE

I, Ryan Perkins, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true, and correct transcript of my testimony.

Signature is subject to corrections on attached errata sheet, if any.

Ryan Perkins

State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 2025.

Notary Public

My commission expires: _____

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CERTIFICATE

State of North Carolina
County of Wake

I, Kylie Fleming, a notary public in and
for the State of North Carolina, do
hereby certify that there came before me
on the 24th day of June, 2025, the
person hereinbefore named, who was by me
duly sworn to testify to the truth and
nothing but the truth of his knowledge
concerning the matters in controversy in
this cause; that the witness was
thereupon examined under oath, the
examination reduced to typewriting.

I further certify that I am not counsel
for, nor in the employment of any of the
parties to this action; that I am not
related by blood or marriage to any of
the parties, nor am I interested, either
directly or indirectly, in the results
of this action.

In witness whereon, I have hereto set my
hand, this the 1st day of July, 2025.

Kylie Fleming
Professional Court Reporter