

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

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: *In re:* : Chapter 11  
: :  
: **VION PHARMACEUTICALS, INC.,** : Case No. 09-14429 (CSS)  
: :  
: Debtor.<sup>1</sup> :  
: :  
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**DEBTOR AND DEBTOR-IN-POSSESSION’S MOTION FOR ENTRY OF AN ORDER  
PURSUANT TO 11 U.S.C. §§ 105(a), 507(a)(4) AND 507(a)(5) (A) AUTHORIZING THE  
DEBTOR TO PAY PRE-PETITION WAGES AND SALARIES, AND HONOR CERTAIN  
EMPLOYEE BENEFITS, (B) AUTHORIZING THE DEBTOR TO HONOR WORKERS’  
COMPENSATION OBLIGATIONS AND (C) DIRECTING ALL BANKS TO HONOR PRE-  
PETITION CHECKS FOR PAYMENT OF PRE-PETITION EMPLOYEE OBLIGATIONS**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed undersigned counsel, hereby moves this Court (the “Motion”) for entry of an order (A) authorizing the Debtor to pay pre-petition wages and salaries and honor certain Employee (as defined below) benefits; (B) directing all banks to honor pre-petition checks for payment of pre-petition Employee obligations; and (C) authorizing the Debtor to honor workers’ compensation obligations. In support of the Motion, the Debtor relies on the Declaration of Alan Kessman, the Debtor’s Chief Executive Officer, in Support of Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”), filed concurrently herewith.<sup>2</sup> In further support of the Motion, the Debtor respectfully states as follows:

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<sup>1</sup> The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Vion Pharmaceuticals, Inc. (1221). The Debtor’s corporate offices are located at 4 Science Park, New Haven, Connecticut 06511.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed in the First Day Declaration.

## **JURISDICTION**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2).

2. The statutory and legal predicates for the relief sought herein are 11 U.S.C. §§ 105(a), 363(b), 507(a)(4) and 507(a)(5), and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

## **BACKGROUND**

3. On December 17, 2009 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware.

4. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

5. No request for appointment of a Chapter 11 trustee or examiner has been made, and, as of the date hereof, no official committee has been appointed.

6. A description of the Debtor's corporate structure and business and the events leading to this Chapter 11 case are set forth in the First Day Declaration.

## **THE EMPLOYEES**

7. As of the Petition Date, the Debtor had 19 full-time employees and two part time employees (each an "Employee," and collectively, the "Employees") engaged in work related to the Debtor's lead drug asset Onrigin™, its other drug assets Triapine®, TAPET® and VNP40541 and corporate matters. Due to further reductions, the Debtor will have 17 full-time employees and two part time employees as of January 1, 2010. All of the Employees are located at the Debtor's New Haven Connecticut office and laboratories:

(a) seven of such Employees (one which has resigned effective December 18, 2009) are in clinical and regulatory affairs and are responsible for: (i) completing the SPA process with the FDA for the HOVON Phase III human clinical trial of Onrigin™; (ii) supporting the Debtor's ongoing human clinical trials of Onrigin™ by providing clinical and safety oversight and then, if appropriate after a sale of the Debtor's assets is completed or otherwise upon winding down the Debtor's operations, closing such trials in compliance with Federal regulations and ICH guidelines and ensuring for proper disposal of drug product at clinical sites in the U.S. and Europe; (iii) providing drug and clinical and safety oversight if requested by the National Cancer Institute ("NCI") on the ongoing trials of Triapine® sponsored by the NCI and, if appropriate after a sale of the Debtor's assets is completed or otherwise winding down the Debtor's operations, ensuring proper closure of trials and disposal of drug products by the NCI; and (iv) completing and filing all necessary regulatory documents relating to the human clinical trials of Onrigin™ and Triapine® and maintaining all regulatory documents and files related to the Debtor's Investigational New Drug applications therefor;

(b) three of such Employees are in research and manufacturing and are responsible for ensuring that: (i) relationships with the Debtor's single source contract manufacturing companies for Onrigin™ and Triapine® are preserved; (ii) supplies of Onrigin™ and Triapine® are properly maintained and shipped to clinical sites under Federal regulations and ICH guidelines; (iii) the Debtor's drug products are properly disposed from warehouses in the U.S. and Europe upon completion or termination of human clinical trials under Federal regulations and ICH guidelines, and (iv) the Debtor's laboratories are properly closed and all potentially hazardous chemical, biological and radioactive materials are disposed of properly, if

appropriate after a sale of the Debtor's assets is completed or otherwise upon winding down the Debtor's operations;

(c) two full-time and one part-time of such Employees are in information technology and facilities management responsible for maintaining the Debtor's computer network and databases, assisting with the maintenance of the Debtor's facility, the sale of the Debtor's laboratory equipment and other fixed assets and returning the Debtor's leased premises to move-in condition, as required under the terms of the Debtor's lease;

(d) one such Employee is in human resources responsible for payroll and maintaining the Company's benefit plans for current and recently terminated employees; and

(e) six full-time and one part-time of such Employees are in finance and administration and are responsible for monitoring and managing the Debtor's Chapter 11 efforts and managing the Debtor's general corporate functions. One of the full-time finance and administration employees has been told that her last day of employment will be December 31, 2009.

8. Each of the Employees possesses the institutional knowledge, experience and skills necessary to support the Debtor's business operations during the Chapter 11 process. Because of the Debtor's need for the continued commitment of every Employee, in particular after the recent lay off and resignation of over one-half of its work force, the Debtor is requesting the relief herein to minimize any hardships to the Employees resulting from the commencement of the Debtor's Chapter 11 case. The Debtor must take all necessary steps to retain its Employees and bolster employee morale in order to succeed in its efforts to preserve and maximize the value of its estate.

9. Accordingly, by this Motion, the Debtor seeks authority to pay and honor its pre-petition obligations, pay unpaid compensation, pay employee withholding taxes and employer taxes (including but not limited to federal, state, employment, and other payroll and withholding taxes), honor vacation and sick time off obligations, continue its workers' compensation programs, maintain employee benefits, continue garnishment and payroll deductions, reimburse Employees' business expenses, and honor miscellaneous Employee benefits that the Debtor has traditionally provided in the ordinary course of business (all such obligations to the Employees collectively, the "Employee Obligations").

### **SUMMARY OF EMPLOYEE OBLIGATIONS**

#### **A. Wages, Salaries and Other Compensation**

10. In the ordinary course of business, the Debtor coordinates its payroll and payroll taxes through its payroll processor, CheckPoint HR, LLC.

11. Employees are paid twice per month on the fifteenth and last day of the month. Exempt employees are paid for hours worked through the pay date while non-exempt employees are generally five (5) days in arrears. The average payroll per pay period for the Employees as of the Petition Date is approximately \$130,500 (including employer payroll-related taxes), which amount will decline as the Debtor continues to reduce its work force.

12. By this Motion, the Debtor seeks an order authorizing, but not directing it, to pay all outstanding wages, salaries, expenses and other compensation owed to the Employees, estimated as of the Petition Date and payable on December 31, 2009, to be approximately \$17,650 in aggregate.

#### **B. Vacation, Sick, Holiday, and other Leave**

13. The Debtor's full-time Employees are covered by the Debtor's vacation and sick leave policies (the "Vacation Policy" and the "Sick Leave Policy," respectively).

14. Under the Vacation Policy, full-time Employees are eligible for up to twenty-five (25) days (officers up to thirty (30) days) of paid vacation time per year depending on date of hire and years of service. All vacation days are fully earned and available as of January 1 each year. Employees who voluntarily terminate with 2 weeks' notice or are involuntarily terminated due to their position being eliminated are eligible for a maximum payout of up to ten (10) unused vacation days (twenty (20) days for officers), depending on their years of service.

15. To reduce the vacation time taken by its remaining Employees in December and during the remainder of the Chapter 11 process the Debtor made a cash payout on December 15, 2009 to seventeen of its full-time employees for unused 2009 vacation days, thereby encouraging such Employees to devote all their attention to complete critical activities such as filing the petition, year-end financial statement preparation, attending to the sales or financing process, and clinical and regulatory activities associated with the Debtor's NDA, SPA and on-going human clinical trials.

16. Under the Debtor's Sick Leave Policy, all full-time Employees are eligible for ten (10) sick days per year. All sick days are available as of January 1 each year. Sick days cannot be carried forward to the next year and unused sick time is not paid out under any circumstances.

17. Full-time Employees have twelve (12) company-paid holidays each year. Remaining in 2009 are Christmas Eve Day, Christmas Day, New Year's Eve Day and, the three business days between Christmas Day and New Year's Eve Day. The 2010 Holiday Schedule comprises New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day (as observed), Labor Day, Columbus Day, Thanksgiving Day, Day after

Thanksgiving, Christmas Eve Day, Christmas Day and New Year's Eve Day. Holidays are not counted as hours worked for the purpose of computing overtime.

18. Each Employee's eligibility for medical leave of absence is determined on an individual case-by-case basis. Medical leaves may be eligible for disability or workers' compensation benefits. Accrued but unused sick and vacation time must be used before the unpaid portion of the leave begins or for the first fourteen (14) days of the disability period. During approved medical leave, the Debtor will continue to maintain health insurance coverage and the Employee is required to make normal monthly payments for the coverage.

19. If a member of an Employee's immediate family passes away, the Debtor allows up to three (3) days off with pay in order to assist with arrangements or to attend the funeral. If there is a death of a close relative, the Employee is granted one (1) day off with pay.

20. In the event that an Employee is summoned to jury duty or subpoenaed to appear in court as a witness, the Debtor will continue the Employee's normal rate of pay for the first five (5) days of jury duty. If the Employee is on a case and jury duty is longer than five (5) days, the Debtor will continue the Employee's normal rate of pay, less any jury duty pay, for up to thirty (30) days.

21. By this Motion, the Debtor seeks an order authorizing, but not directing it, to honor all liabilities to its Employees with respect to vacation, sick pay, paid holidays, and other benefits that arose prior to the Petition Date and to continue its pre-petition policies with respect to the same going forward. The Debtor anticipates that its Employees will utilize any 2010 accrued vacation, sick days and other such leave in the ordinary course, without resulting in any material cash flow requirements beyond the Debtor's normal payroll obligations.

**C. Insurance Benefits**

22. In the ordinary course of business, the Debtor provides medical (including prescription drug) and dental insurance to its eligible Employees (collectively, the “Health Benefits”). Eligible Employees are also entitled to participate in the Debtor’s short-term disability, long-term disability, long-term care, life and travel accident insurance programs (collectively with the Health Benefits, the “Insurance Benefits”). The Debtor utilizes group plans with a number of insurance providers, including Anthem BCBS, Guardian, UNUM Life Insurance Co. of America, Provident Life and Accident Insurance Co., Security Mutual Life Insurance Co. of New York, Metropolitan Life Insurance Co. and A.C. Newman & Co.

(i) Medical (including Prescription Drug) and Dental Programs

23. Full-time Employees are eligible to receive Health Benefits on the first day of employment. The Debtor funds approximately 91% of the monthly premium, plan deductible and health savings account fees associated with medical coverage and 90% of the monthly premium for dental coverage. The remainder of the monthly premium and deductible is funded by each participating full-time Employee via deductions from his or her paycheck. Participating Employees may make elective contributions to their health savings accounts through payroll deduction, which the Debtor remits to Mellon Bank, the custodian for the employees’ health savings accounts. The Debtor’s average monthly cost over a twelve (12) month period for providing the medical and dental benefits to Employees is approximately \$20,600. As of the Petition Date, the Debtor does not believe there are any outstanding unpaid amounts for the Health Benefits.

(ii) Disability, Long-Term Care and Life Insurance Programs

24. The Debtor participates in and fully funds the cost of a plan by which eligible full-time Employees are provided short-term and long-term disability insurance coverage

through Unum Life Insurance Co. of America (the “Disability Insurance”). Full-time Employees are automatically enrolled in Disability Insurance on the first of the month following thirty (30) calendar days of continuous employment. Eligible Employees may at their own cost via payroll deduction apply for an individual long-term disability policy, which provides greater income protection beyond the company-paid plan. As of the Petition Date, the Debtor does not believe there are any outstanding unpaid amounts for Disability Insurance.

25. The Debtor pays the cost of a basic long-term care insurance plan through Unum Life Insurance Co. of America to eligible full-time Employees (the “Long-Term Care Insurance”). Employees may elect at their own cost via payroll deduction to increase their benefits beyond what is provided by the basic plan. As of the petition date, the Debtor does not believe there are any outstanding unpaid amounts for Long-Term Care Insurance.

26. The Debtor offers its eligible full-time Employees group term life insurance and accidental death and dismemberment coverage (collectively, the “Group Life Insurance”). Eligible Employees are provided Group Life Insurance at no cost to the Employees through Unum Life Insurance Co. of America (“Unum”). In lieu of the Group Life Insurance, Officers and certain employees at the director level and above may elect individual term life insurance through Security Mutual Life Insurance Co. of New York (“Security Mutual”), also at no cost to the Employee (collectively with the Group Life Insurance, the “Life Insurance”). Executives may opt at their own incremental cost via payroll deduction for a universal life (“Universal Life Insurance”) insurance policy through Security Mutual. Eligible Employees are also given the opportunity to purchase supplemental life insurance and accidental death and dismemberment (“Supplemental Life Insurance”) coverage through Unum, with 100% of the cost funded by each participating Employee via payroll deduction. In addition, as per the terms

of his employment agreement, the Debtor provides additional company-paid life and disability coverage to its Chief Executive Officer through Security Mutual and Metropolitan Life Insurance Co. As of the Petition Date, the Debtor does not believe there are any outstanding unpaid amounts for the Life Insurance, Universal Life Insurance and Supplemental Life Insurance.

27. The Debtor's average monthly cost over a twelve month period for providing the Disability Insurance, Long-Term Care Insurance and Life Insurance to its Employees is approximately \$130.

(iii) Travel Accident Insurance

28. The Debtor pays the cost of travel accident insurance for certain full-time Employees through A.C. Newman & Co. (the "Travel Accident Insurance"). The Debtor's average monthly cost over a twelve month period for providing the Travel Accident Insurance is approximately \$217.

29. As of the Petition Date, the Debtor does not believe there are any outstanding unpaid amounts for the Travel Accident Insurance.

30. By this Motion, the Debtor seeks an order authorizing, but not directing it, to pay all amounts due and owing as of the Petition Date with respect to the Insurance Benefits and to continue such benefits post-petition.

**D. Other Benefits**

31. The Debtor offers eligible full-time Employees the opportunity to participate in its Health Flexible Spending Account and Dependent Care Flexible Spending Account (the "Flexible Spending Accounts"). There is no cost to the Debtor for this program. Eligibility begins on the first day of the month following thirty calendar days of continuous employment. Pursuant to the Flexible Spending Accounts arrangement, elected amounts are deducted from each participating Employee's payroll check and held by the Debtor co-mingled

in its corporate bank accounts until such time that the Employee submits a request to Debtor for the reimbursement of funds. As of the Petition Date, the Debtor estimates that it holds approximately \$1,194 of Employees' and former Employees' withholdings co-mingled in its corporate bank accounts related to the Employees' Flexible Spending Accounts.

32. The Debtor reimburses its President and Chief Financial Officer for the cost of his daily commute (the "Commuting Assistance") from his New York City home to its New Haven office in lieu of relocation assistance. The Debtor's average monthly cost over the last three month period for providing the Commuting Assistance is approximately \$1,300 per month. As of the Petition Date, the Debtor does not believe there are any outstanding unpaid amounts for the Commuting Assistance.

33. The Debtor reimburses its officers for annual tax planning assistance of up to \$600 per year (\$2,000 in the case of its Chief Executive Officer) (the "Tax Planning Assistance"). The Debtor's average monthly cost over a twelve month period for providing the Tax Planning Assistance is approximately \$417. As of the Petition Date, the Debtor does not believe that there are any outstanding unpaid amounts for the Tax Planning Assistance.

34. By this Motion, the Debtor seeks an order authorizing, but not directing it, to pay all amounts due and owing as of the Petition Date with respect to the Flexible Spending Accounts, Commuting Assistance and Tax Planning Assistance, and to continue such benefits post-petition.

**E. Reimbursable Business Expenses**

35. As is customary with most business, the Debtor reimburses its Employees who incur and pay a variety of approved business-related expenses in the ordinary course of performing their duties (collectively, the "Employee Expense Obligations"). Generally, the

Employees initially incur and pay such expenses and are subsequently reimbursed by the Debtor after submission and approval of expense reimbursement requests.

36. Because a significant lag time may occur between the time such expenses are incurred and the time an expense reimbursement request is submitted, it is difficult to determine with precision the aggregate outstanding amount of such Employee Expense Obligations. As of the Petition Date, the Debtor believes that the Employee Expense Obligations are approximately \$1,000, including amounts in the approval process.

37. It would be patently inequitable to require Employees to personally bear any expenses that they incurred in furtherance of their responsibilities to the Debtor. Accordingly, the Debtor requests authority, in its discretion and in the exercise of its business judgment, to continue to honor all of its Employee Expense Obligations in the ordinary course of business, regardless of when such obligations arose.

**F. Workers' Compensation Obligations**

38. Under the laws of the State of Connecticut, the Debtor is required to maintain workers' compensation liability insurance and to provide the Employees with workers' compensation coverage for claims arising from or related to their employment (the "Workers' Compensation Obligations"). The Debtor provides workers' compensation benefits to the Employees through an insured program with Chubb Indemnity Insurance Company (the "Workers' Compensation Policy"). Premiums are payable quarterly in advance and are subject to annual audit. The Debtor's premium for the policy is approximately \$268 per month. The outstanding unpaid amount due for such policy is approximately \$2,500, which reflects estimated additional premium payments due upon audit for the prior terms.

39. Failure to maintain workers' compensation insurance could result in the institution of administrative or legal proceedings and material fines against the Debtor and its

officers and directors. The Debtor therefore seeks authority to continue paying and/or contesting in good faith, as appropriate in the Debtor's business judgment, all outstanding amounts related to Workers' Compensation Obligations that arose prior to the Petition Date, including, without limitation, any payments for workers' compensation claims, premiums and fees owed for administrative costs, and other amounts required in connection with the Debtor's workers' compensation program, as such amounts become due in the ordinary course of the Debtor's business.

**G. Employee Payroll Garnishments/Other Payroll Deductions**

40. The Debtor deducts from its Employees' paychecks certain payroll taxes, such as social security, medicare and unemployment taxes, required to be withheld by certain federal and state taxing authorities (the "Payroll Tax Obligations"). The Debtor forwards certain of these withheld amounts, as well as the necessary employer contributions, to CheckPoint HR, LLC, which forwards the amounts to the appropriate governmental authorities, or alternatively makes direct payments to certain governmental authorities. By this Motion, the Debtor seeks authority to forward any Payroll Tax Obligations not forwarded as of the Petition Date and to continue to withhold and forward any future Payroll Tax Obligations.

41. The Debtor may also be presented with garnishment or child support orders requiring the withholding of Employee wages to satisfy such obligations. Payments of these obligations are made from amounts otherwise payable to the Employees and are not an incremental cost obligation of the Debtor's estate. The Debtor seeks authority to make such deductions and to pay over such amounts to third parties as requested or required in the ordinary course.

## RELIEF REQUESTED AND BASIS THEREFOR

42. To minimize the personal hardship the Employees will suffer in connection with the filing of this case, the Debtor requests entry of an order (i) authorizing (but not directing) the Debtor to pay, in its sole discretion, the Employee Obligations as described in this Motion and all costs incident thereto; (ii) authorizing (but not directing) the Debtor to continue to honor its practices, programs, and policies with respect to the Employees, as such practices, programs and policies were in effect as of the Petition Date, with authorization (but not direction) to pay the Employee Obligations that become due and owing during the pendency of this case; and (iii) authorizing and directing Disbursement Banks (as defined below) to receive, process, honor, and pay all checks on account of Employee Obligations whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

43. Pursuant to § 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$10,950 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for –

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

11 U.S.C. § 507(a)(4).

44. The Debtor believes that the pre-petition Employee Obligations that it seeks to pay are entitled to priority status under §§ 507(a)(4) of the Bankruptcy Code and do not exceed \$10,950 for any individual Employee. The Debtor would therefore be required to pay these claims in full in order to confirm a Chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief requested herein would only affect the timing, but not the amount, of the payment of the Employee Obligations to the extent that they constitute priority claims.

45. Additionally, the failure to pay Payroll Tax Obligations could result in tax liabilities and penalties for both the Employees and the Debtor, and potentially for the Debtor's directors and officers. Likewise, the failure to transmit garnishments and other similar deductions can cause hardship to certain Employees and an administrative burden for the Debtor. Indeed, if the Debtor was to be prohibited from transmitting such deductions, the Debtor would expect inquiries from garnishors regarding the Debtor's failure to submit, among other things, child support and alimony payments that are not the Debtor's property, but, rather, have been withheld from Employees' paychecks on such parties' behalf. Further, if the Debtor cannot remit these amounts, the Employees may face legal action due to the Debtor's failure to submit such payments.

46. Moreover, maintaining the Debtor's Workers' Compensation Policy is justified because applicable state law mandates this coverage. Furthermore, with respect to the Workers' Compensation Obligations, the risk that eligible claimants will not receive timely payments with respect to employment-related injuries could have a devastating effect on the

financial well-being and morale of the Employees and their willingness to remain in the Debtor's employ.

47. The Debtor does not by this Motion seek to alter its compensation, incentive, vacation, and other benefit policies at this time. This Motion is intended only to permit the Debtor, in its discretion, to make payments consistent with its pre-petition policies to the extent that, without the benefit of an order approving this Motion, such payments would be inconsistent with the Bankruptcy Code.

48. The Debtor submits that, consistent with Bankruptcy Rule 6003(b), immediate entry of an order approving payment of the Employee Obligations is necessary to avoid immediate and irreparable harm to the Debtor and its estate, in addition to the Employees. The vast majority of the Employees rely exclusively on their full compensation, benefits and reimbursement of their expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtor is not permitted to pay the unpaid Employee Obligations. The Debtor believes that if it is unable to honor such obligations, Employee morale and loyalty will be jeopardized at a time when such support is critical.

49. Preservation and maximization of the Debtor's estate depends upon a maintaining the stability of its already significantly reduced workforce. Thus, the departure of even one or two Employees or deterioration in morale at this time will substantially and adversely impact the Debtor's business operations and its Chapter 11 efforts and result in immediate and irreparable harm to the Debtor's estate and its creditors. There is a real, immediate risk that if the Debtor is not authorized to continue to satisfy Employee Obligations in the ordinary course, Employees would no longer support and maintain the Debtor's operations,

thereby jeopardizing the value of the Debtor's assets. Consequently, it is critical that the Debtor continues its ordinary course personnel policies, programs and procedures that were in effect prior to the Petition Date, except as otherwise set forth herein, for all of its Employees. Cause therefore exists for the Court to grant the relief requested herein immediately, as permitted by Bankruptcy Rule 6003.

50. Courts in this District have approved the payment of pre-petition claims of employees for wages, salaries, expenses, and benefits on the grounds that the payment of such claims was necessary to effectuate the Chapter 11 process. See, e.g., *In re ProxyMed Transaction Services, Inc.*, Case No. 08-11551 (Bankr. D. Del. July 24, 2008) (BLS) (authorizing the payment of pre-petition wages, salaries and other compensation); *In re National Dry Cleaners Inc.*, Case No. 08-11382 (Bankr. D. Del, July 7, 2008) (CSS) (same); *In re Powermate Holding Corp.*, Case No. 08-10498 (Bankr. D. Del March 18, 2008) (KG) (same); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (Bankr. D. Del. January 23, 2008) (PJW); *In re Sea Containers Ltd.*, Case No. 06-11156 (Bankr. D. Del. October 17, 2006) (KJC) (same); *In re Pliant Corporation*, Case No. 06-10001 (Bankr. D. Del. January 31, 2006) (PJW) (same).

51. Authorization to pay any amounts under this Motion shall not be deemed to constitute post-petition assumption or adoption of any contract, program, or policy pursuant to § 365 of the Bankruptcy Code. The Debtor is in the process of reviewing these matters and reserves all of its rights under the Bankruptcy Code with respect thereto. Moreover, authorization to pay all amounts under this Motion shall not affect the Debtor's right to contest the amount or validity of any Employee Obligations, including without limitation the Payroll Tax Obligations that may be due to any taxing authority.

52. Accordingly, as authorized by §§ 363(b) and 105(a) of the Bankruptcy Code, the Debtor seeks authority to pay the Employee Obligations that become due and owing during the pendency of this case and to continue at this time its practices, programs, and policies with respect to the Employees, as such practices, programs, and policies were in effect as of the Petition Date. The Debtor submits that the relief requested herein is essential and critical to its ability to maximize value for its creditors.

**APPLICABLE BANKS SHOULD BE AUTHORIZED TO HONOR  
AND PAY CHECKS ISSUED AND MAKE OTHER TRANSFERS  
TO PAY THE PRE-PETITION EMPLOYEE OBLIGATIONS**

53. The Debtor further requests that the Court authorize and direct applicable banks and other financial institutions (collectively, the “Disbursement Banks”) to honor and pay all pre-petition and post-petition checks issued or to be issued, and fund transfers requested or to be requested, by the Debtor on account of the Employee Obligations that were not honored or paid as of the Petition Date. The Debtor also seeks authority to issue new post-petition checks, or effect new fund transfers, on account of the Employee Obligations to replace any pre-petition checks or fund transfer requests that may be dishonored or rejected.

54. As a result of the commencement of the Debtor’s Chapter 11 case, and in the absence of an order of the Court providing otherwise, the Debtor’s checks or other transfers on account of the Employee Obligations may be dishonored or rejected by the Disbursement Banks. The Debtor represents that each of these checks or transfers can be identified as relating directly to payment of an Employee Obligation. Accordingly, the Debtor believes that pre-petition checks and transfers other than those for Employee Obligations will not be honored inadvertently as a result of the Court granting the relief sought herein.

55. The Debtor hereby requests that all Disbursement Banks be authorized and directed to receive, process, honor, and pay all checks presented for payment and to honor all

fund transfer requests made by the Debtor related to the Employee Obligations, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

56. Finally, the Debtor requests that, to the extent applicable, the stay provisions set forth in Bankruptcy Rule 6004(h) be waived and the relief requested herein be effective immediately.

**NOTICE**

57. Notice of this Motion has been given to (i) the United States Trustee for this District and (ii) the Debtor's thirty (30) largest unsecured creditors, including U.S. Bank, N.A., the trustee under the trust indenture corresponding to the Debtor's 7.75% Convertible Senior Notes due 2012. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required-

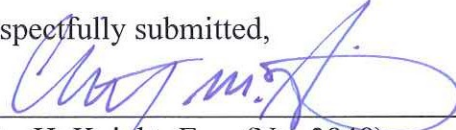
**NO PRIOR REQUEST**

58. The Debtor has not previously sought the relief requested herein from this or any other Court.

WHEREFORE, the Debtor requests entry of an Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as is just and proper.

Dated: December 17, 2009  
Wilmington, Delaware

Respectfully submitted,



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*Proposed Counsel to the Debtor and Debtor-In-Possession*

# EXHIBIT A

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

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: **VION PHARMACEUTICALS, INC.,** : Case No. 09-14429 (CSS)  
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**ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 507(a)(4) AND  
507(a)(5)(A) AUTHORIZING THE DEBTOR TO PAY PRE-PETITION  
WAGES AND SALARIES, AND HONOR CERTAIN EMPLOYEE BENEFITS,  
(B) AUTHORIZING THE DEBTOR TO HONOR WORKERS' COMPENSATION  
OBLIGATIONS AND (C) DIRECTING ALL BANKS TO HONOR PRE-PETITION  
CHECKS FOR PAYMENT OF PRE-PETITION EMPLOYEE OBLIGATIONS**

Upon the Debtor's Motion<sup>2</sup> for an Order Pursuant to 11 U.S.C. §§ 105(a), 507(a)(4) and 507(a)(5)(A) Authorizing the Debtor to Pay Pre-Petition Wages and Salaries, and Honor Certain Employee Benefits, (B) Directing All Banks to Honor Pre-Petition Checks for Payment of Pre-Petition Employee Obligations and (C) Authorizing the Debtor to Honor Workers' Compensation Obligations; and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) adequate notice of the Motion and the hearing thereon has been given and no other or further notice is necessary; and (v) upon the record

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<sup>1</sup> The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Vion Pharmaceuticals, Inc. (1221). The Debtor's corporate offices are located at 4 Science Park, New Haven, Connecticut 06511.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Motion.

herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein, it is hereby:

ORDERED, that the Motion is granted; and it is further

ORDERED, that the Debtor is authorized, but not directed, to pay all outstanding wages, salaries and other compensation owed to Employees that arose prior to the Petition Date; and it is further

ORDERED, that the Debtor is authorized, but not directed, to honor all liabilities to its Employees that arose under its vacation, sick leave, personal leave holiday policies and other benefits prior to the Petition Date and to continue such policies post-petition; and it is further

ORDERED, that the Debtor is authorized, but not directed, to pay any outstanding monies owing with respect to the Health Benefits and Insurance Benefits and to continue such benefits post-petition; and it is further

ORDERED, that the Debtor is authorized, but not directed, to pay outstanding monies owing with respect to the Employee Expense Obligations; and it is further

ORDERED, that the Debtor is hereby authorized, but not directed, to pay outstanding monies owing with respect to Workers' Compensation Obligations and to continue its workers' compensation policies post-petition; and it is further

ORDERED, that the Debtor is authorized, but not directed, to pay any accrued and unpaid payroll taxes and continue to forward all post-petition payroll deductions to the appropriate parties; and it is further

ORDERED, that the payment of any prepetition amounts under this Order shall not exceed \$30,000; and it is further

ORDERED, that, absent any further order of this Court, and provided that sufficient funds are on deposit in the applicable accounts, the Debtor's banks and financial institutions are (i) authorized to honor pre-petition payroll and transfers on or after the Petition Date, and to the extent that any bank or financial institution may have honored any pre-petition payroll checks prior to the Petition Date, such honoring is ratified, (ii) authorized to process and honor all other checks and transfers issued for payments approved by this Order and/or reissue checks for any payments approved by this Order where such checks may be dishonored post-petition, and (iii) prohibited from placing holds on, or attempting to reverse, automatic transfers to Employee accounts for Employee Obligations; and it is further

ORDERED, that the relief granted in this Order is subject to the statutory monetary caps set forth in 11 U.S.C. §§ 507(a)(4) and (a)(5); and it is further

ORDERED, that nothing herein shall be deemed an assumption or adoption by the Debtor of any agreements or policies providing for pre-petition compensation or benefits to the Debtor's Employees; and it is further

ORDERED, that nothing in this Order shall impair the Debtor's ability to contest the validity or amount of any Employee Obligations pursuant to any applicable law; and it is further

ORDERED, that the relief requested in the Motion and granted hereby is necessary to avoid immediate and irreparable harm to the Debtor and its estate and thus the requirements of Federal Bankruptcy Rule 6003(b) have been satisfied; and it is further

ORDERED, that no payments authorized herein will be made in violation of 11 U.S.C. § 503(c); and it is further

ORDERED, that this Order is effective immediately upon entry; and it is further

ORDERED, that this Court shall retain exclusive jurisdiction to hear and decide any and all disputes related to or arising from this Order.

Dated: December \_\_, 2009  
Wilmington, Delaware

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE