

**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.¹ : **Re: Docket No. 8**
: :
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**ORDER AUTHORIZING THE RETENTION
OF DELAWARE CLAIMS AGENCY, LLC AS NOTICING
AND CLAIMS AGENT, AND APPROVING RELATED AGREEMENT**

Upon consideration of the Application² of Vion Pharmaceuticals, Inc. (the “Debtor”), for entry of an Order authorizing the retention of Delaware Claims Agency, LLC (the “Claims Agent”) to serve as official noticing and claims agent for the Clerk of the Bankruptcy Court (“Clerk”), under 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f) and Local Rule 2002-1(f) pursuant to the terms of the Services Agreement³ annexed to the Application as **Exhibit C**; and upon the Declaration of Joseph L. King in support of the Application; and the Debtor having estimated that there are hundreds of creditors in this Chapter 11 case, many of which are expected to file proofs of claims; and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. § 156(c), Bankruptcy Rule 2002(f) and Local Rule 2002-1(f) to utilize, at the Debtor’s expense, outside agents and facilities to provide notices to parties in

¹ 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.

² Capitalized terms shall have the meanings ascribed to them in the Application unless otherwise defined herein.

title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied the Claims Agent has the capability and experience to provide such services and that the Claims Agent does not hold an interest adverse to the Debtor or its estate respecting the matters upon which it is to be engaged; and good and sufficient notice of the Application having been given; and no other or further notice being required; and it appearing that the employment of the Claims Agent is in the best interests of the Debtor, its estate and creditors; and sufficient cause appearing therefore; it is hereby

ORDERED, that the Motion is granted as set forth herein, and it is further

ORDERED, that the Debtor is authorized to retain the Claims Agent effective as of the Petition Date under the terms of the Services Agreement to perform the noticing and other services set forth in the Application and to receive, maintain, record and otherwise administer the proofs of claim filed in this Chapter 11 case; provided, however, that the Claims Agent is not authorized to serve as the Debtor's plan disbursing agent; and it is further

ORDERED, that the Claims Agent is appointed as the official noticing and claims agent for the Clerk and custodian of court records and, as such, is designated as the authorized repository for all proofs of claim filed in this Chapter 11 case and is authorized and directed to maintain official claims registers for the Debtor and to provide the Clerk with a certified duplicate thereof on a weekly basis unless otherwise directed by the Clerk; and it is further

ORDERED, that the Debtor and the Claims Agent are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application; and it is further

³ Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Debtor's Application.

ORDERED, that without further order of the Court, the Debtor is authorized to compensate the Claims Agent in accordance with the terms and conditions of the Services Agreement, upon the Claims Agent's submission to the Debtor of invoices summarizing in reasonable detail the services and expenses for which compensation is sought; provided, however, that at the time invoices are delivered to the Debtor, the Claims Agent shall also serve a copy of the invoices upon the Office of the U.S. Trustee and any official committee(s) appointed in the case; provided further, that this Court retains jurisdiction to resolve any disputes between the Claims Agent and the aforementioned parties with respect to such invoices; and it is further

ORDERED, that, pursuant to § 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of the Claims Agent incurred pursuant to the Services Agreement shall be an administrative expense of the Debtor's estate; and it is further

ORDERED, that the Claims Agent may hold its retainer under the Services Agreement during this Chapter 11 case as security for the payment of expenses only under the Services Agreement; and it is further

ORDERED, that, notwithstanding any provision in the Services Agreement, the Debtor shall indemnify the Claims Agent solely to the extent set forth below:

- a. Subject to the provisions of subparagraphs (c) and (d) below, the Debtor shall indemnify the Claims Agent for any claim arising from, related to or in connection with its performance of the services described in the Services Agreement;
- b. the Claims Agent shall not be entitled to indemnification, contribution or reimbursement for services other than the services to be provided under the Services

Agreement, unless such services and the indemnification, contribution or reimbursement therefore are approved by the Court;

c. Notwithstanding anything to the contrary in the Services Agreement, the Debtor shall have no obligation to indemnify any person, or provide contribution or reimbursement to any person, for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from that person's gross negligence or willful misconduct; (ii) for a contractual dispute in which the Debtor alleges breach of the Claims Agent's contractual obligations under the Services Agreement unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to that person's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which that person should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified by the Application and Order;

d. If, before the earlier of (i) the entry of an order confirming a Chapter 11 plan in this case (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing this Chapter 11 case, the Claims Agent believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under the Services Agreement (as modified by this Application Order), including without limitation the advancement of defense costs, the Claims Agent must file an application before this Court, and the Debtor may not pay any such amounts before the entry of an order by this Court approving the

payment. This subparagraph (d) is intended only to specify the period of time under which the court shall have jurisdiction over any request for fees and expenses for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify the Claims Agent; and it is further

ORDERED, that neither the Debtor (or its successor(s)) nor the Claims Agent shall terminate the Claims Agent's engagement prior to the effective date of a confirmed plan without further order of this Court. In the event that the Claims Agent's engagement is terminated, the Claims Agent shall cooperate with any successor claims agent and the Court Clerk's office to ensure the proper transfer of claims and other engagement-related data; and it is further

ORDERED that nothing herein or in the Services Agreement obligates a successor chapter 7 trustee or chapter 11 trustee to employ the Claims Agent; and it is further

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

ORDERED, that this Court shall retain jurisdiction over any and all matters arising from or related to the interpretation and implementation of this Order.

Dated: December 21, 2009
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE