

**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. 34
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**ORDER PURSUANT TO SECTIONS 105(a), 327, 328, AND 330 OF THE BANKRUPTCY
CODE AUTHORIZING THE DEBTORS TO RETAIN AND
EMPLOY ORDINARY COURSE PROFESSIONALS**

Upon the motion, dated December 22, 2009 (the "Motion"),² of Vion Pharmaceuticals, Inc., as debtor-in-possession in the above-captioned case (the "Debtor"), for the entry of an order (the "Order"), pursuant to §§ 105(a), 327, 328, and 330 of title 11 of the United States Code (the "Bankruptcy Code") for authorization to employ professionals utilized in the ordinary course of business [Docket No. 34], all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and no trustee or examiner having been appointed, and due and proper notice of the Motion having been given; and it appearing that no other or further notice is necessary; and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief

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 used but not defined herein shall have the meaning ascribed to them in the Motion.

requested in the Motion, and that such relief is in the best interests of the Debtor, its estate, its creditors, and the parties in interest; and upon the record in this proceeding; and after due deliberation and sufficient cause appearing therefor, the Court hereby ORDERS that:

1. The Motion is granted as provided herein.

2. The Debtor is authorized, pursuant to sections 105(a), 327, 328, and 330 of the Bankruptcy Code, to retain and compensate professionals that the Debtor employs in the ordinary course of its businesses (each, an “Ordinary Course Professional,” and collectively, the “Ordinary Course Professionals”), including, but not limited to, those professionals listed on Exhibit 1 annexed hereto (the “Ordinary Course Professionals List”), effective as of the commencement date of these cases or, with respect to professionals not listed on Exhibit 1, such later date identified in this Order.

3. Each Ordinary Course Professional shall, within thirty (30) days after (i) for Ordinary Course Professionals listed on Exhibit 1, the date of entry of this Order, and (ii) for Ordinary Course Professionals not listed on Exhibit 1, the date on which each retained Ordinary Course Professional commences services for the Debtor, provide to the Debtor’s attorneys an affidavit, substantially in the form annexed hereto as Exhibit 2, certifying that such professional does not represent or hold any interest adverse to the Debtor or its estates for the matter on which the professional is to be employed (the “Ordinary Course Professional Affidavit”).³

4. The Debtor’s attorneys shall file the Ordinary Course Professional Affidavit with the Court within five (5) business days of receiving same from the Ordinary Course Professional and serve them upon (i) the United States Trustee, 844 King Street, Suite

³ To the extent that an Ordinary Course Professional Affidavit is not filed for an Ordinary Course Professional within 30 days of the later of entry of this order or commencing services for the Debtors, the Ordinary Course Professional should expressly provide in such Ordinary Course Professional Affidavit that the filing is beyond such period and explain why *nunc pro tunc* (or retroactive) relief is warranted.

2207, Lockbox 35, Wilmington, DE 19801, Attention: Joseph J. McMahon, Jr., Esq., and (ii) counsel to the creditors committee appointed in this case Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, New York 10022, Attention: Adam H. Friedman, Esq., and Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, Wilmington, DE 19801, Attention: Jeremy Ryan, Esq. (collectively, the "Reviewing Parties"). The Reviewing Parties shall have twenty (20) days following the date of service to notify Debtor's counsel, in writing, of any objection to the retention based on the contents of the Ordinary Course Professional Affidavit ("Retention Objection Deadline") and file any such objection with the Court, with service of any objection to be made upon (i) Fulbright & Jaworski LLP, 666 Fifth Avenue, New York, New York 10128, Attention: David L. Barrack, Esq., and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attention: John H. Knight, Esq., Christopher M. Samis Esq., and Julie A. Finocchiaro, Esq. so that any such objection is actually received by the Retention Objection Deadline.

5. If a timely objection is filed to the proposed retention of an Ordinary Course Professional hereunder, and any such objection cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court.

6. If no timely objection is received to a filed Ordinary Course Professional Affidavit, the retention, employment, and compensation of such Ordinary Course Professional shall be deemed approved by the Court pursuant to sections 327 and 328 of the Bankruptcy Code, without further order from the Court, and, except as expressly provided herein, the Debtor may pay the Ordinary Course Professional 100% of fees and 100% of expenses sought by each Ordinary Course Professional retained pursuant to this Order, without application to the Court,

upon the submission to and approval by the Debtor of reasonably detailed invoices indicating the nature of the services rendered and disbursements actually incurred; provided, however, that the following Fee Limits apply:

The Debtor is authorized and empowered to make payments up to \$15,000 per month per Ordinary Course Professional (the "Monthly Cap"), \$15,000 per project per Ordinary Course Professional (the "Project Cap"), in the case of Ordinary Course Professionals who customarily bill by project, and payments of \$150,000 per calendar year per Ordinary Course Professional (the "Annual Cap") during the course of this Chapter 11 proceeding for postpetition compensation of postpetition fees, plus payment of costs and disbursements, in the manner customarily made by the Debtor in the full amount billed by any such Ordinary Course Professional, upon receipt therefrom of reasonably detailed invoices indicating the nature of the services rendered and calculated in accordance with such Ordinary Course Professional's standard billing practices, including project billing, (without prejudice to the Debtor's normal right to dispute any such invoices), provided, however, that compensation paid to an Ordinary Course Professional is authorized as a final matter pursuant to the provisions set forth below.

7. The Debtors shall not pay an Ordinary Course Professional any amounts for invoiced fees and expense reimbursement until its Ordinary Course Professional Affidavit has been filed with the Court and the Retention Objection Deadline has passed and, if an objection is filed within the Retention Objection Deadline, after the Court signs an order overruling such objection.

8. In the event an Ordinary Course Professional seeks more than the Monthly Cap in a single month, more than the Project Cap for a single project or more than the Annual Cap in any calendar year during the pendency of this Chapter 11 case, then such Ordinary Course Professional shall file a fee application in accordance with the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, the Fee Guidelines Promulgated by the Executive Office of the United Trustee and any order entered by the Court governing the

payment of compensation and reimbursement of expenses in this Chapter 11 case.

9. In the event an Ordinary Course Professional is required to file a fee application by virtue of such Ordinary Course Professional's fees exceeding the Monthly Cap, such Ordinary Course Professional is required to submit a fee application for the applicable month for which its fees exceeded the Monthly Cap. In the event an Ordinary Course Professional is required to file a fee application by virtue of such Ordinary Course Professional's fees exceeding the Project Cap, such Ordinary Course Professional is required to submit a fee application for the applicable project for which its fees exceeded the Project Cap. In the event an Ordinary Course Professional is required to file a fee application by virtue of such Ordinary Course Professional's fees exceeding the Annual Cap, such Ordinary Course Professional is required to submit a fee application for the applicable year calendar year that they are employed by the Debtor, provided that the Debtor is authorized to pay the Ordinary Course Professional its fees and expenses below such Annual Cap in the ordinary course pursuant to this Order. Notwithstanding the requirement in this Order that Ordinary Course Professionals may be required to file fee applications, no Ordinary Course Professional shall be required to file a retention application.

10. The Debtor is authorized to modify or supplement the list of Ordinary Course Professionals from time to time during these chapter 11 cases, as needed, and to file with the Court and serve upon the Reviewing Parties a notice listing Ordinary Course Professionals added to the Ordinary Course Professionals List (the "Supplemental Notice of Ordinary Course Professionals"), along with the attendant Ordinary Course Affidavit.

11. If no objection to the retention of an additional Ordinary Course Professional listed on the Supplemental Notice of Ordinary Course Professionals is filed with

this Court and served upon the Debtors' counsel within fifteen (15) days after the service thereof, the retention of such Ordinary Course Professionals shall be deemed approved by the Court pursuant to sections 327 and 328 of the Bankruptcy Code without the need for a hearing, effective as of a date that is no earlier than thirty-seven (37) days prior to the filing of the Supplemental Notice of Ordinary Course Professionals and accompanying Ordinary Course Affidavit unless the Ordinary Course Affidavit contains an express request for *nunc pro tunc* relief; provided, however, if an objection is served and filed, and cannot be resolved within fifteen (15) days, the matter shall be set for a hearing before the Court.

12. Any Ordinary Course Professional retained pursuant to a supplemental list of Ordinary Course Professionals will be paid in accordance with the terms and conditions of this Order.

13. The right of any party in interest to dispute any invoices shall not be affected or prejudiced in any manner by the relief granted in this Order.

14. All Ordinary Course Professionals who are not law firms and law firm Ordinary Course Professionals who did not represent the Debtors prior to the Filing Date who are employed pursuant to this Order shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtor.

15. Every ninety (90) days (commencing on the first day of the month following the ninetieth day after the entry of this Order), the Debtor shall file with the Court a report summarizing payments to Ordinary Course Professionals (an "Ordinary Course Professionals Report"), and serve the Ordinary Course Professionals Report on the Notice Parties.

16. The Ordinary Course Professionals Report shall include the following information for each Ordinary Course Professional receiving payments from the Debtor during the applicable Reporting Period (as defined below): (i) the name of such Ordinary Course Professional; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the preceding ninety (90) day period ending at the conclusion of the prior calendar month (the "Reporting Period"); and (iii) a general description of the services rendered by such Ordinary Course Professional.

17. This Order shall not apply to any professional retained by the Debtor pursuant to a separate order of the Court.

18. The Debtor shall serve this Order within three (3) business days of its entry on the parties in interest identified in Local Rule 2002-1(b).

19. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: January 20, 2010
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Ordinary Course Professional List

Professional	Address
Coleman, Sudol, Sapone P.C.	Attn: Henry Coleman 714 Colorado Avenue Bridgeport, CT 06605 Tel: 203-366-3560
Cooper Grace Ward	Attn: Andrew Corkhill Central Plaza Two, Level 23 66 Eagle Street Brisbane 4000 Australia Tel: 617-3231-1285
Law Office of Albert Wai-Kit Chan, LLC	Attn: Albert Wai-Kit Chan World Plaza, Suite 604 141-07 20th Avenue Whitestone, NY 11357 Tel: 718-357-8836
Simmons & Simmons	City Point One Ropemaker Street London, UK EC2Y955 Tel: 02076282020
UHY Advisors NE, LLC	Attn: Richard Gesseck Maritime Center 555 Long Wharf Drive, 12th floor New Haven, CT 06511 Tel: 203-401-2108
Wiggin and Dana, LLP	Attn: Patricia Melick P. O. Box 1832 New Haven, CT 06508-1832 Tel: 203-363-7615

Exhibit 2

Ordinary Course Professional Affidavit

The Firm may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to this Chapter 11 case, for persons that are parties in interest in the Debtor's Chapter 11 case. The Firm does not perform services for any such person in connection with this Chapter 11 case, or have any relationship with any such person, their attorneys or accountants that would be adverse to the Debtor or its estate. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtor prior to its bankruptcy filing, the Firm is a "disinterested person" under 11 U.S.C. § 101(14), such that the Firm:

- (a.) is not a creditor, an equity security holder, or an insider of the Debtor;
- (b.) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of any of the Debtor; and
- (c.) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason.

As part of its customary practice, the Firm is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtor, claimants and parties in interest in this Chapter 11 case.

In the ordinary course of its business, the Firm maintains a database for purposes of performing "conflicts checks." The Firm's database contains information regarding the Firm's present and past representations. Pursuant to Federal Rule of Bankruptcy Procedure 2014(a), I obtained a list of the entities identified in Rule 2014(a) from counsel to the Debtor for purposes of searching the aforementioned database and determining the connection(s) which the Firm has with such entities. The Firm's search of the database identified the following connections:

[Disclose Connections Here]

Neither I nor **[any principal, partner, director, officer, etc.]** of or professional

employed by, the Firm has agreed to share or will share any portion of the compensation to be received from the Debtor with any other person other than the principal and regular employees of the Firm.

Neither I nor **[any principal, partner, director, officer, etc.]** of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor or its estate with respect to the matter(s) upon which this Firm is to be employed. Furthermore, if the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtor prior to its bankruptcy filing, I state that neither I nor **[any principal, partner, director, officer, etc.]** of or professional employed by, the Firm, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtor.

The Debtor owes the Firm \$ [_____] for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532. If the Firm is either (i) not a law firm or (ii) a law firm that did not represent the Debtor prior to its bankruptcy filing, my signature below acknowledges that the Firm understands that any and all pre-petition claims that it has against the Debtor will be deemed waived if the Firm's employment is authorized.

As of October 25, 2009, which was the date on which the Debtor commenced this Chapter 11 case, the Firm **[was/was not]** party to an engagement or services agreement with the Debtor. **[A copy of such agreement is attached as Exhibit 1 to this Affidavit].**

If the Firm is not a law firm, the following is a list of all payments which the Firm received from the Debtor during the year prior to the Debtor's bankruptcy filing:

[The Debtor recommends (and the U.S. Trustee will likely request) that the OCP organize payments in the following columns: invoice date, invoice amount, date(s) of service covered by invoice, payment date and payment amount. Retainers and draws on retainers should be specifically noted as such]

The Firm is conducting further inquiries regarding its retention by any creditors of the Debtor, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Firm should discover any facts bearing on the matters described herein, the Firm will supplement the information contained in this Affidavit.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this affidavit was executed on _____ 200__, at _____, _____.

Affiant Name:

SWORN TO AND SUBSCRIBED before
me this ___ day of _____, 200__.

Notary Public