

**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)
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Debtor.¹ :
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**DECLARATION OF ALAN KESSMAN IN SUPPORT
OF DEBTOR AND DEBTOR-IN-POSSESSION'S MOTION FOR
ORDER AUTHORIZING PAYMENT OF (I) RETENTION PAY TO CERTAIN
EMPLOYEES AND (II) CHAPTER 11 PLAN/SALE-RELATED PERFORMANCE
PAY TO SENIOR MANAGEMENT PURSUANT TO SECTIONS 105(A) AND 363 OF
THE BANKRUPTCY CODE AND SUPPLEMENTING FIRST DAY DECLARATION**

ALAN KESSMAN, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the Chief Executive Officer of Vion Pharmaceuticals, Inc., the above-captioned debtor and debtor-in-possession (the "Debtor").
2. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents or my opinion based upon my experience, knowledge and information concerning the Debtor's operations, financial condition and the industry as a whole. If I were called upon to testify, I would testify competently to the facts set forth herein.
3. In my capacity as Chief Executive Officer, I am responsible for the oversight of all of the Debtor's affairs, and, as a consequence, I have detailed knowledge of all aspects of the Debtor's operations. I thus file this Declaration in support of the Motion (the "Motion") for

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.

Order Authorizing Payment of (i) Retention Pay to Certain Employees (the “Key Employee Retention Plan”) and (ii) Chapter 11 Plan/Sale-Related Performance Pay to Senior Management² (the “Management Performance Plan”) Pursuant to Sections 105(a) and 363 of the Bankruptcy Code [Dkt. No. 30] filed on December 22, 2009 and to advise the court of certain subsequent events relating to the SPA process described in my Declaration in Support of Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”) [Dkt. No. 3]³ filed on December 17, 2009.

SUPPLEMENTAL FACTS RELATING TO THE SPA PROCESS

4. As described in the First Day Declaration, on November 16, 2009, the Debtor submitted a Special Protocol Assessment (“SPA”) to the FDA regarding a new Phase III randomized trial of Onrigin™ sponsored by the Dutch-Belgian Cooperative Trial Group for Hematology (known as “HOVON”), which had already been engaging in a feasibility study for the drug. The Debtor believed that an approved SPA for the HOVON trial would be among the faster, lower cost ways to meet the FDA’s requirements that a new, randomized trial or trials be conducted for Onrigin™ prior to approval.

5. The SPA process provides for an official FDA evaluation of Phase III clinical study protocols. The SPA provides trial sponsors with a written agreement with the FDA that the design and analysis of the studies are adequate to support a license application submission if the study is performed according to the SPA and the results are successful. The SPA agreement may only be changed by the sponsor company or the FDA by a written agreement, or if the FDA becomes aware of a substantial scientific issue essential to product efficacy or safety.

² The Debtor is submitting this Declaration is being submitted in support of the Key Employee Retention Plan only. The Debtor intends to submit subsequent declaration(s) in support of the Management Performance Plan at a later time.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

6. As I informed the Court in the First Day Declaration, on December 11, 2009, the Debtor received a complete response letter from the FDA related to its NDA for Onrigin™ (laromustine) injection submitted in February 2009. The letter confirmed that the Debtor must complete a randomized trial or trials to define the efficacy and safety of Onrigin™ in the patient population proposed for the indication and that any trial should be designed to demonstrate a survival benefit that was clearly attributable to Onrigin™ with an acceptable safety profile in a well-characterized patient population. In addition to clinical and statistical recommendations, the letter also addressed clinical pharmacology and manufacturing issues. The complete response letter further requested that the Debtor provide an update on Onrigin™ safety information when the other issues had been addressed.

7. On December 30, 2009, the FDA raised concerns with the SPA submitted for the HOVON trial regarding the primary endpoint and study regimen. The modifications requested by the FDA would require a new Phase III trial which would involve significant time and expense to implement.

8. The Debtor continues to believe that obtaining an approved SPA for Onrigin™ remains the best way to increase the value of its estate and to generate interest among potential purchasers of the Debtor or its assets. Therefore, on January 11, 2010, the Debtor filed a new SPA (the "New SPA") for an alternative randomized Phase II/III trial of Onrigin™ that the Debtor believes will not have the same issues as those raised by the FDA in its review of the SPA for the HOVON trial. Instead, the primary objective of the Phase II part of this study is to compare two doses of Onrigin™ plus low dose Ara-C ("LDAC") with regard to safety and efficacy, and the primary objective for the Phase III part of this study is to determine if the optimal regimen of Onrigin™ plus LDAC improves overall survival compared with LDAC

alone. While this trial, if the protocol is approved, will take at least three years to complete and cost approximately \$35 to \$45 million (and thus cannot be undertaken by the Debtor on its own given its current financial circumstances), the Debtor believes that securing an approved SPA will provide an increased level of confidence to potential purchasers of the Debtor or its assets. The Debtor has requested expedited review of the New SPA, and the Debtor expects that it would receive some form of response from the FDA by the end of February 2010.

9. While in the First Day Declaration, I stated that further staff reductions were planned if the HOVON SPA was not approved by the FDA, the Debtor intends to keep staffing at currently planned levels through the end of February 2010, as it continues to implement its plan to sell the Debtor or its assets and wind down operations. Accordingly, planned reductions will leave the Debtor with twelve (12) of the Key Employees in the employ of the Debtor on February 1, 2010 and eight (8) of the Key Employees on March 1, 2010 to assist the Debtor's four executive officers then remaining in the efforts to sell and wind down the Debtor's business.

THE KEY EMPLOYEE RETENTION PLAN

A. Generally

10. By its Motion, the Debtor seeks authority to make payments to its remaining non-insider key employees (the "Key Employees")⁴, as more fully described below, pursuant to the Debtor's proposed Key Employee Retention Plan. Since the Debtor's reduction in approximately one-half of its work force on December 7, 2009, the Debtor is now operating with essential personnel only. If approved, I believe the Key Employee Retention Plan will fairly compensate Key Employees for their expected additional responsibilities, expenditure of

⁴ To protect the privacy of the Key Employees, their names have been omitted from this Declaration. To the extent such information is required by the Court, I am advised that the Debtor will provide the same to the Court for *in camera* review. Additionally, the Debtor will share the names of Key Employees with the Office of United States Trustee upon its request.

significantly more working-hours than which was contemplated by the normal terms of their employment, and, at least in part, lost opportunity costs associated with procuring permanent employment with another employer, while helping to assure that the Debtor has access to the dedicated personnel necessary to maintain essential operations, including, among other things, winding down the clinical trials of the Debtor's lead drug asset, Onrigin™ and properly disposing of the Debtor's drug product and over 1,000 chemicals in the Debtor's laboratories.

B. The Key Employees and Their Essential Services

11. The Key Employee Retention Plan contemplates payment to thirteen (13) Key Employees, none of whom are "insiders" of the Debtor, as defined under the Bankruptcy Code, as they do not serve, nor have they ever served, as an officer, director, person in control, or relative of any such person.

12. All of the Key Employees are located at the Debtor's New Haven, Connecticut office and laboratories and perform essential services related to the Debtor's lead drug asset Onrigin™, its other drug assets Triapine®, TAPET® and VNP40541, and other corporate matters.

The Key Employees, and their essential job functions, are described below:

- (a) Four (4) of the Key Employees are in clinical and regulatory affairs and are responsible for: (i) completing the New SPA process with the FDA for the proposed Phase II/III 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 International Conference for Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use ("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 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) Two (2) of the Key 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) Three (3) of the Key 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 (1) of the Key Employees is in human resources responsible for payroll and maintaining the Debtor's benefit plans for current and recently terminated employees; and
- (e) Three (3) of the Key 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.

13. The Debtor expects to employ certain of these personnel up to or through February 2010, and the remainder through April 2010 as summarized in the chart below.

C. The Terms of the Key Employee Retention Plan

14. Successful sale of the Debtor's assets for maximum value depends upon the Debtor's ability to retain its Key Employees, who possess the knowledge and skill required to continue the Debtor's business operations and preserve the value of its assets. As described above, the Key Employees have developed extensive institutional, regulatory and scientific knowledge that I do not believe can be timely and efficiently replicated in the marketplace.

15. In addition to payment of the Key Employee's prepetition base salary in the ordinary course of business, the proposed Key Employee Retention Plan provides for payments of a percentage of each Key Employee's monthly salary, increasing for each month, up to three (3) months, that the Key Employee remains employed by the Debtor (the "Retention Payments").

16. The Retention Payments are anticipated to be as follows:

KEY EMPLOYEE RETENTION	AGGREGATE PREPETITION BASE SALARY (DURING RETENTION PERIOD)	ANTICIPATED RETENTION PAYMENTS	SALARY EQUIVALENT PER PERSON
One (1) Key Employee to be employed through January 31, 2010	\$8,450	\$4,225	75% of 1 month salary
Four (4) Key Employees to be employed through February 28, 2010	\$85,761	\$51,457	1.5 months salary
Eight (8) Key Employees to be employed beyond February 28, 2010 to April 30, 2010	\$255,474	\$170,316	3 months salary
		\$225,999	

17. The Debtor proposes payment of the Retention Payments to those Key Employees entitled to such payment upon termination of that Key Employee's employment (except that those Key Employees terminated by the Debtor with cause shall not be entitled to any Retention Payment). The Key Employee Retention Plan also is meant to replace any pre-petition incentive compensation plan, retention plan and/or employment agreement in respect of the Key Employees (collectively, the "Prepetition Plans"), and all remaining employees accepting a Retention Payment shall be deemed to have waived any claim they may have under any Prepetition Plans.

18. The Debtor has determined that the total anticipated cost of the Key Employee Retention Plan is approximately \$225,999.00, which does not include applicable employer-paid

taxes. Accordingly, the Debtor has requested in the Motion authority to set aside an amount of \$225,999.00 (the “Retention Pool”) for payment of Key Employee Retention Payments pursuant to the Key Employee Retention Plan.⁵

19. I believe that the Debtor’s anticipated costs associated with the Key Employee Retention Plan are reasonable, modest, fully warranted and absolutely necessary. The Debtor considered a number of factors in designing the Key Employee Retention Plan, including industry standards, the Debtor’s historic practices and the nature of the Debtor’s business. The potential costs associated with the loss of Key Employees would be far in excess of the combined costs of the Key Employee Retention Plan. For example to properly close down the Debtor’s clinical program would typically require eleven (11) full time equivalent employees, while the Debtor has structured this program to keep only four (4) employees who will work with the Debtor’s Vice President of Clinical Affairs and with me, as its Chief Executive Officer, to get the job done.

20. In addition, the benefits offered within the Key Employee Retention Plan are competitive with those offered by other companies under similar circumstances. Finally, without the Key Employee Retention Plan, the Debtor believes that Key Employees will in fact leave the employ of the Debtor causing an interruption in business operations, irreversible harm to the value of the estate assets, and a substantial impediment to winding down the operations and successfully concluding this bankruptcy case.

21. Defections in the work force would cause significant delays to the Debtor in reaching its Chapter 11 objectives and could cause it to incur significant increased costs to wind down its operations upon the conclusion of a court approved sale or should that otherwise

⁵ The Debtor has also reserved the right to file an additional motion seeking authorization to pay further compensation to its employees to wind down the estate after disposition of the Debtor’s business and/or assets.

become necessary. Loss of any of the Key Employees may also make it more difficult to procure a purchaser of the Debtor's assets, should any such purchaser be looking to hire the Key Employees or keep the Debtor operational as part of its acquisition strategy.

CONCLUSION

22. For the reasons stated herein and in the Motion, I respectfully request that the Motion be granted in its entirety, together with such other and further relief as this Court deems just and proper.

I certify under penalty of perjury that, based upon my knowledge, information and belief as set forth in this Declaration, the foregoing is true and correct.

Executed this 15 day of January 2010, at New Haven, Connecticut.



Alan Kessman
Chief Executive Officer