

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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:
In re: : Chapter 11
:
VION PHARMACEUTICALS, INC.,¹ : Case No. 09-14429 (CSS)
:
Debtor. : Hearing date: January 20, 2010 at 3:00 p.m. (ET)
: Objections Deadline: January 12, 2010 at 4:00 p.m. (ET)
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NOTICE OF MOTION

PLEASE TAKE NOTICE that, on December 22, 2009, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed the *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* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, and served upon and received by the undersigned proposed counsel at a date on or before **4:00 p.m. on January 12, 2010 (EST)**.

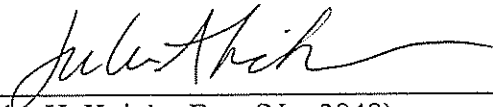
PLEASE TAKE FURTHER NOTICE that if any objections or responses are received, a hearing with respect to the Motion will be held on **January 20, 2010 at 3:00 p.m. (EST)** before The Honorable Christopher S. Sontchi at the United States Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom #6, Wilmington, Delaware 19801.

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.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: December 22, 2009
Wilmington, Delaware

Respectfully submitted,



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*Proposed Attorneys for the Debtor and
Debtor in Possession*

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**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**

Vion Pharmaceuticals, Inc., as debtor and debtor-in-possession (the “Debtor”), by and through undersigned counsel, hereby files this Motion (the “Motion”) for 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 Management (the “Management Performance Plan”) Pursuant to Sections 105(a) and 363 of the Bankruptcy Code, and in support thereof respectfully represents as follows:

I. JURISDICTION

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

2. The statutory bases for the relief requested herein are sections 105(a) and 363(b)(I) of title 11 of the United States Code (the “Bankruptcy Code”).

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.

II. BACKGROUND

A. Generally

3. On December 17, 2009 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 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.

B. Debtor's Business

6. A more complete description of the Debtor's corporate structure and business and the events leading to this Chapter 11 case are set forth in the Declaration of Alan Kessman in Support of Chapter 11 Petition and First Day Pleadings (the "First Day Declaration"), filed on December 17, 2009, which is incorporated herein by reference and shall constitute, in part, the evidentiary support for this Motion.² However, a brief description of the Debtor's business, as relevant to this Motion, is provided below.

7. The Debtor is a development-stage pharmaceutical company that develops therapeutics for the treatment of cancer. The Debtor's research and product development activities to date have consisted primarily of conducting preclinical trials of product candidates, obtaining regulatory approval for human clinical trials, conducting human clinical trials, preparing to file and filing for regulatory approval of the Debtor's lead product candidate, Onrigin™ (laromustine) Injection ("Onrigin™"), conducting pre-commercialization activities,

² Capitalized terms not otherwise defined herein shall have the meaning ascribed in the First Day Declaration.

negotiating and obtaining collaborative agreements and obtaining financing in support of these activities.

C. Events Leading To Filing For Bankruptcy

8. As stated more fully in the First Day Declaration, the U.S. Food and Drug Administration (“FDA”) has required that a new Phase III randomized study be conducted prior to any decision on approval of Onrigin™, the Debtor’s most significant asset, and the Debtor does not have sufficient funds to conduct such a trial.

9. The current global economy and capital markets have made it exceedingly difficult to raise capital through public offerings or private placements of securities, particularly in the small capitalization biotech sector within which the Debtor operates. This situation makes the timing and potential for equity or debt financing highly uncertain. It is also more difficult to raise capital now that the Debtor is no longer listed on the Nasdaq. Moreover, the Debtor believes that its capital structure has hampered its ability to seek equity financing due to the senior position of the debt and the great disparity between the amount outstanding under the Notes and the market value of the Debtor.

10. On or about October 12, 2009, the Debtor hired the investment banking firm Merriman Curhan Ford & Co. (“Merriman”) to assist in evaluating its strategic alternatives, including any combination of a restructuring of the Debtor and its outstanding indebtedness or a sale of the Debtor or its assets. On December 9, 2009, the Debtor terminated its agreement with Merriman and on December 11, 2009 engaged Roth Capital Partners, LLC (“Roth”) to assist in evaluating strategic alternatives after John W. Chambers and Michael A. Margolis, the leaders of the Debtor’s efforts at Merriman, left Merriman to join Roth Capital. By separate motion, the Debtor seeks authority to retain Roth to continue assisting the Debtor in these regards post-petition.

D. Debtor's Employees

11. On December 7, 2009, in an effort to reduce operating costs, the Debtor terminated approximately half of its workforce. In addition, four (4) employees also resigned in November and December, 2009.

12. Accordingly, as of the Petition Date, the Debtor had nineteen (19) full-time employees and two (2) part time employees (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 seventeen (17) full-time employees and two (2) part time employees as of January 1, 2010. All of the 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, as follows (and explained more fully in the First Day Declaration):

- (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 Special Protocol Assessment ("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 Debtor'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.

13. Of those Employees, six (6) are officers of the Debtor, and four (4) of such officers, Alan Kessman, Howard B. Johnson, Karen Schmedlin and Ann Cahill, are referred to herein as the "Officers."³ Those Employees – other than the officers – who the Debtor intends to retain after December 31, 2009,⁴ are referred to herein as the "Key Employees."

14. Because of the Debtor's need for the continued commitment of its Key Employees and Officers, in particular after the recent lay off and resignation of nearly one-half

³ Two of the current officers, Ivan King and James Tanguay, are not the subject of this Motion.

⁴ One current Employee has been notified by the Debtor that her last date of employment will be December 31, 2009. She is thus excluded from the defined term "Key Employee." Moreover, if the SPA is not approved by the FDA (as fully described in the First Day Declaration), further reductions in staff are planned, which will decrease the Debtor's necessary expenditures to retain Key Employees.

of its work force, the Debtor is requesting the relief herein to help to retain all Key Employees and to reward performance by its Officers that enhances the value of the estate in order to succeed in its efforts to maximize the returns to creditors and other interested parties.

15. As additional support of the relief requested herein, the Debtor intends to file an affidavit from its Chief Executive Officer and/or an expert more fully describing the need for the Key Employee Retention and the Management Performance Plans.

E. The Debtor's Objective

16. The Debtor's main objectives in this Chapter 11 case are to: (i) preserve and maximize the value of its assets, including its drug assets (Onrigin™, Triapine®, TAPET® and VNP40541), for the benefit of all stakeholders through a sale of its assets utilizing the section 363 process, restructuring, obtaining additional financing or engaging in another related transaction and/or (ii) ensure an orderly wind-up or liquidation of its business consistent with Federal regulations and International Conference for Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use ("ICH") guidelines relating to termination of human clinical trials and drug disposal.

17. The Debtor anticipates that its efforts to preserve and maximize the value of its assets will be substantially concluded by February 28, 2010. From the Petition Date until February 28, 2010, the Debtor will continue: (i) to support its ongoing investigator-initiated human clinical trials of its lead pharmaceutical agent Onrigin™ and its trials of its second agent Triapine® sponsored by the NCI; (ii) to seek to complete the SPA process for the HOVON trial of Onrigin™ with the FDA; (iii) its efforts, with the assistance of Roth, to sell assets, restructure, obtain additional financing or engage in another transaction, such as a reverse merger; and (iv) to file and maintain all necessary regulatory documents to preserve the value of its assets.

18. If these efforts have not resulted in an asset sale or other transaction by February 28, 2010, the Debtor anticipates that it will further reduce the number of clinical, regulatory, research and manufacturing employees and retain only such employees required for an orderly wind-up or liquidation of its business consistent with Federal regulations and ICH guidelines. In such event, the Debtor anticipates that its efforts to ensure an orderly wind-up or liquidation will be substantially concluded by April 30, 2010, which would include (w) closing all ongoing Onrigin™ clinical trials, (x) closing the Debtor's laboratories, (y) ensuring for the proper disposal of drug product and other potentially hazardous chemical, biological and radioactive materials, and (z) filing all appropriate regulatory documentation.

19. As described more fully in the First Day Declaration, during this time period, the Debtor will seek to complete the SPA process for the HOVON Phase III human clinical trial. If the FDA approves the SPA, the Debtor believes the value of the Debtor's lead drug asset Onrigin™ should be enhanced because a potential buyer will then have certain assurances from U.S. regulatory authorities as to the scientific and regulatory goals of the HOVON trial and therefore a clearer pathway, timeline and cost for potential regulatory approval for the drug. These assurances, in combination with the expected cost of the HOVON trial, which is approximately half of any other Phase III trial that could be sponsored by the Debtor or any acquirer of the Onrigin™ assets, may significantly increase the perceived value of the Debtor's Onrigin™ assets to a prospective purchaser.

20. As indicated above, the Debtor has retained six (6) clinical and regulatory employees to complete the SPA process and other clinical and regulatory tasks. Further staff reductions are anticipated if the FDA does not approve the SPA.

21. The Debtor also seeks to ensure, if necessary, an orderly wind-up or liquidation of its business under Federal regulations and ICH guidelines for pharmaceutical companies relating to drug disposal and termination of human clinical trials. In addition to their work on the SPA, the clinical and regulatory employees will also be responsible for (i) supporting the Debtor's ongoing human clinical trials of Onrigin™ by providing clinical and safety oversight and providing drug and clinical and safety oversight if requested by the National Cancer Institute ("NCI") on ongoing trials of Triapine® sponsored by the NCI, and filing all necessary regulatory documents related to ongoing human clinical trials of Onrigin™ and Triapine®, and maintaining all regulatory documents and files related to the Company's Investigational New Drug ("IND") applications for Onrigin™ and Triapine®; and (ii) if appropriate upon completion of the sale process of the Debtor's assets or upon the winding down of its business, (A) closing the trials in compliance with Federal regulations and ICH guidelines; (B) closing certain of the Debtor's previous Onrigin™ human clinical trials in conjunction with the Debtor's contract research organizations, including following up with remaining patients, closing down remaining clinical sites, and completing proper documentation of the data from these trials for regulatory authorities; and (C) ensuring proper disposal of drug product from clinical sites in the United States and Europe and ensuring proper closure of trials and disposal of drug product by the NCI.

22. In addition, the Debtor has retained three (3) research and manufacturing employees responsible during this period for ensuring that during the Chapter 11 process (i) relationships with the Debtor's single source contract manufacturing companies for Onrigin™ and Triapine® are preserved, and (ii) supplies of Onrigin™ and Triapine® are properly maintained and shipped to clinical sites under Federal regulations and ICH guidelines and properly disposed upon completion or termination of human clinical trials. If applicable, at the

conclusion of the Chapter 11 process, such employees will also assist with the ensuring of proper disposal of drug product from warehouses in the United States and Europe and closing of the Debtor's laboratories including disposal of potentially hazardous chemical, biological and radioactive materials.

23. Approval of this Motion, among others, will enable the Debtor to continue operating its business, take steps necessary to preserve and enhance the value of its assets, and assure that key personnel will expend the extraordinary time and effort necessary to maximize the value of the Debtor and its estate for the benefit of the Debtor's creditors.

III. RELIEF REQUESTED

24. By this Motion, the Debtor seeks entry of an order under Bankruptcy Code sections 105(a) and 363(b)(1) (i) approving the Key Employee Retention Plan and the Management Performance Plan (collectively, the "Plans") described below, (ii) authorizing the Debtor to implement the Plans, and (iii) allowing all payments thereunder as administrative expenses of the estate.

IV. BASIS FOR RELIEF

A. Generally

25. As part of the Debtor's recent cost-cutting efforts, developments relating to approval of Onrigin™ by the FDA, and the Debtor's efforts to market and sell its assets or refinance its debts, the Key Employees and Officers have been called upon to undertake additional responsibilities and expend significantly more working-hours than contemplated by the normal terms of their employment. Additional responsibilities include (or are expected to include) reviewing sale solicitation materials, preparing business plans, gathering and coordinating the dissemination of due diligence information, reviewing, commenting on and negotiating the term of any asset purchase agreement and related documents and preparation of

materials required in this bankruptcy case. The efforts of these Employees have been, and continue to be, critical to the Debtor's efforts to consummate a sale of the Debtor's assets for the highest value possible.

26. To properly and fairly compensate the performance of the Key Employees and Officers, the Debtor has approved the formation of the Key Employee Retention Plan and the Management Performance Plan, respectively. These Plans are believed by the Debtor to appropriately reward the substantial contribution and performance of these essential Employees. Moreover, approval of the Plans will result in replacement of the Debtor's prepetition bonus program and employee compensation package commensurate with the estate's post-petition needs, thereby reassuring the Employees that the Debtor will have the access to resources necessary to make (i) retention payments to key non-insider employees and (ii) performance payments to those insiders essential to the reorganization process upon achievement of benchmarks relating to substantial contributions to the value of the estate, to the extent that all such payments are approved by the Court.

B. Summary of the Key Employee Retention Plan

27. Successful sale of the Debtor's assets for maximum value depends upon the Debtor's ability to retain certain non-executive employees with the knowledge and skill to continue the Debtor's business operations and preserve the value of its assets. The Key Employees have developed extensive institutional, regulatory and scientific knowledge that cannot be timely and efficiently replicated in the marketplace.

28. The Key Employees are not 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.

29. The Debtor's financial difficulties have caused significant concern among the Key Employees with respect to prospects for future and continued employment and compensation. The Debtor believes its Key Employees are being contacted by competitors regarding other positions that offer increased job security and financial opportunity. The Key Employees continue to work for the Debtor based on the Debtor's statements that a new plan would be proposed to the Court.

30. 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").

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

ANTICIPATED 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	

32. 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. Moreover, the Key Employee Retention Plan shall replace any prepetition 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 under any Prepetition Plans.

33. 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 requests 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

34. The Debtor believes that the 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. 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 employ of the Debtor, causing an interruption in business operations and irreversible harm to the value of the estate assets.

35. Defections in the work force would cause the Debtor to incur significant costs in recruiting and attracting similarly qualified replacements, to the extent such replacements exist, and hiring qualified employees would be extremely difficult given that the Debtor is in

⁵ The Debtor reserves the right to file an additional motion seeking authorization to pay further compensation to Employees to wind down the estate after disposition of the Debtor's business and/or assets.

bankruptcy. Loss of any of the Key Employees may make it impossible to procure a purchaser of assets and would likely negatively impact the value of the assets due to the Debtor being unable to continue processes and procedures relating to FDA approval of its pharmaceutical assets, as explained in the First Day Declaration.

C. Summary of the Management Performance Plan

36. The Officers of the Debtor must be prepared to respond to inquiries from, and provide information and make management presentations to, potential bidders and financing sources relevant to the Debtor's efforts to reorganize. Moreover, the Officers are vital in assuring operation of the Debtor's business and maintaining – and growing – the value of the Debtor's assets as it continues its Chapter 11 efforts. The Officers will also play a critical role in supervising any wind-up or liquidation, which would include (w) the humane closing of all ongoing Onrigin™ clinical trials, (x) closing the Debtor's laboratories and drug manufacturing storage facilities, (y) ensuring for the proper disposal of drug product and other potentially hazardous chemical, biological and radioactive materials, and (z) ensuring that the same are done in a manner that meets the high ethical and regulatory standards applicable to research on human subjects.

37. Moreover, the Officers have the requisite and very specific expertise to manage (a) the proper shut-down of the Debtor's operations to assure the safety of the patients enrolled in clinical trials of the Debtor's products and (b) the safe disposal of its hazardous materials.

38. By the Management Performance Plan, the Debtor seeks to reward certain of its Officers for maximizing the value of the estate via continuing their substantial efforts relating to the sales process and operating the business at minimal staffing levels. The Management Performance Plan is thus designed to compensate them for the additional time and effort

expended in connection with selling the Debtor's assets or refinancing the Debtor's notes and consummating a Chapter 11 plan.

39. The proposed Management Performance Plan is straightforward and designed to provide the Debtor's four (4) Officers with greater compensation in return for substantial contributions to the Debtor's estate and return to its creditors. Under the plan, the Officers will earn a performance payment (the "Performance Payment") payable only in the event that (a) on or before May 31, 2010, the Court confirms a Chapter 11 plan for the Debtor; or (b) on or before April 30, 2010, the Debtor consummates one or more transactions for the sale of all or substantially all of the Debtor's assets.⁶

40. The Performance Payment will be equal to a percentage of the Officer's prepetition base salary, as follows:

OFFICER	TITLE	PREPETITION ANNUAL BASE SALARY	PERCENTAGE OF ANNUAL BASE SALARY	TOTAL PERFORMANCE PAYMENT
Kessman, Alan	CEO, Director	\$468,168	50%	\$234,084
Cahill, Ann	VP of Clinical Development	\$280,426	40%	\$112,170
Johnson, Howard	President, CFO	\$309,338	50%	\$154,669
Schmedlin, Karen	VP of Finance, CAO	\$220,563	50%	\$110,281
				\$611,204

41. Accordingly, the Debtor requests authority to set aside an amount of \$611,204 (the "Management Performance Pool"), representing the full performance payment for each of the Officers.

⁶ The Management Performance Plan is not intended to replace prepetition employment and/or compensation agreements with the Officers.

D. Implementation Of The Employee Programs Is A Valid Exercise Of The Debtor's Business Judgment Pursuant To Section 363(b) Of The Bankruptcy Code

42. Bankruptcy Code section 363(b)(1) permits a debtor-in-possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Uses of estate property outside the ordinary course of business may be authorized if the debtor demonstrates a "sound business purpose" for it. See In re Lionel Corp., 722 F. 2d 1063, 1071 (2d Cir. 1983) ("The rule we adopt requires that a judge determining a 363(b) application expressly find from the evidence presented before him a good business reason to grant the application."); In re Delaware Hudson Ry. Co., 124 B.R. 169, 179 (Bankr. D. Del. 1991).

43. Once a debtor articulates a valid business justification for a particular form of relief, the Court reviews the debtor's request under the "business judgment rule." The business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informal basis, in good faith and in the honest belief that the action was in the best interests of the company." In re Integrated Resources, Inc., 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (D. Del. 1985)).

44. The business judgment rule has vitality in Chapter 11 cases and shields a debtor's management from judicial second-guessing. See id.; Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (noting that under normal circumstances, courts defer to a trustee's judgment concerning use of property under Bankruptcy Code section 363(b) when there is a legitimate business justification); In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999) (affirming bankruptcy court approval of key employee retention program, stating that "in determining whether to authorize the use, sale or lease of property of the estate under [section 363(b)], courts require the debtors to show that a sound business purpose justifies such actions").

- **The Debtor Has Articulated a Valid Business Reason for Implementing the Management Performance Plan.**

45. As set forth above, the Debtor has articulated a valid business reason for implementing the Management Performance Plan. Among other things, the Management Performance Plan will reward Officers for their significant efforts to date and their increased responsibilities and burdens over the next few months as a result of the Debtor's attempts to market and sell its assets or otherwise reorganize. Moreover, as outlined above, the Management Performance Plan is structured to maximize value for the Debtor's estate and creditors. Accordingly, the Debtor believes that valid business reasons exist for the implementation of the Management Performance Plan and, therefore, that it should be approved.

46. In that regard, courts have found that a debtor's use of reasonable performance bonuses for employees is a valid exercise of a debtor's business judgment. See, e.g., In re America West Airlines, Inc., 171 B.R. 674, 678 (Bankr. D. Ariz. 1994) (noting that it is the proper use of a debtor's business judgment to propose bonuses for employees who helped propel the debtor successfully through the bankruptcy process); In re Interco Inc., 128 B.R. 229, 234 (Bankr. E.D. 1991) (stating that a debtor's business judgment was controlling in the approval of a "performance/retention program").

47. Even after the amendments to the Bankruptcy Code in 2005, courts in this district have approved employee bonus programs tied to performance targets as valid exercises of business judgment. In short, courts continue to distinguish "incentive" plans from "retention" plans, because new section 503(c)(1) applies only to payments that are meant to induce insiders to "remain with the [debtor's] business." 11 U.S.C. § 503(c)(1); see, e.g., In re Nellson Nutraceutical, Inc., 369 B.R. 787, 803-04 (Bankr. D. Del. 2007) (holding held that a modification made by debtors-in-possession to their employee incentive plan for a prior year,

which provided for payment of bonuses despite the debtors' failure to achieve the lowest threshold for bonuses under the original plan, had the primary purpose of motivating employees' performance, even though it had some retentive effect, and thus the plan payments were not restricted or precluded by section 503(c)); In re Global Home Products, LLC, 369 B.R. 778 (Bankr. D. Del. 2007) (finding management and sales bonus plans proposed by the debtors-in-possession were performance incentive, not retention, plans and thus were not subject to review under section 503(c)); In re Nobex Corp., Case No. 05-2005, 2006 Bankr. LEXIS 417 (Bankr. D. Del. Jan. 19, 2006) (approving "sale-related incentive pay" to two officers, contingent on a successful sale of the company for a price in excess of that offered by an existing, stalking horse bidder, in connection with the debtor's pursuit of a sale of the company).

48. Accordingly, approval of the Management Performance Plan is consistent with prevailing interpretations of the Bankruptcy Code and cases similar to the one at bar. The Management Performance Plan does not conflict with Bankruptcy Code section 503(c)(1). It is not intended to "induce" the Officers to "remain with the [Debtor's] business"; it does not contain a date certain through which participants must be employed by the Debtor – as compared to the Key Employee Retention Plan. Rather, the benchmark for payments were developed to ensure that the Officers continue their substantial efforts to solicit and/or facilitate the timely sale of the Debtor's assets at the maximize price possible for creditors of the estate. Consequently, the Management Performance Plan is properly characterized as a performance-based, Chapter 11 plan/sale-related Management Performance Plan, not a retention plan for insiders subject to the requirements of Bankruptcy Code section 503(c)(1).

49. Nor is the Management Performance Plan a severance program for insiders subject to the provisions of Bankruptcy Code section 503(c)(2). See 11 U.S.C. § 503(c)(2). The

Management Performance Plan does not provide benefits to the Officers upon termination of their employment with the Debtor. Therefore, the Management Performance Plan relates to proposal and confirmation of a Chapter 11 plan and/or the sale of substantially all of the Debtor's assets, and thus is not a severance plan subject to the requirements of Bankruptcy Code section 503(c)(2).⁷

50. Finally, the Management Performance Plan is not flawed even if interpreted as having some retentive effect – e.g., by paying the Officers their pre-petition monthly salary in addition to the proposed performance bonus(es). “[M]erely because a plan has some retentive effect does not mean that the plan, overall, is retentive rather than incentivizing in nature.” In re Dana Corp., 358 B.R. 567, 571 (Bankr. S.D.N.Y 2006).

- **The Key Employee Retention Plan is Supported by a Valid Business Reason.**

51. The Key Employee Retention Plan is supported by a valid business reason; namely, the Debtor's ability to preserve the value of its assets would be substantially hindered if it is unable to retain the services of those employees with valuable institutional experience, regulatory expertise, and scientific knowledge.⁸ The fact that the Debtor is in bankruptcy and winding down operations would make it extremely difficult to attract employees to replace the loss of any of the Key Employees. Authorization to implement the Key Employee Retention Plan will provide the Debtor's Key Employees with a greater sense of financial security, thereby

⁷ Additionally, to the extent applicable, the Management Performance Plan does not violate section 503(c)(3) because the payments are justified by the facts and circumstances of this case. See 11 U.S.C. § 503(c)(3).

⁸ Section 503(c) of the Bankruptcy Code is inapplicable. It provides in pertinent part, that “there shall be neither allowed, nor paid – (1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business” 11 U.S.C. § 503(c)(1). “Insider” is defined as, among other things, a director, officer or person in control of the debtor. See 11 U.S.C. § 101(31). Because no Employee is a director, officer or person in control of the Debtor (or any other category set forth in the definition of insider), section 503(c), by definition, does not apply to the Key Employee Retention Plan. Accordingly, this Court must analyze the Key Employee Retention Plan and proposed payments thereunder in accordance with section 363(b) of the Bankruptcy Code – i.e., the Court must determine whether a sound business justification exists.

minimizing the need to seek other employment that would otherwise distract the Key Employees from the tasks that need completing by the estate. Providing retention performances to encourage the Key Employees to remain with the Debtor, and to motivate them to provide optimal levels of performance, is necessary to successfully maintain the business and, more importantly, the value of the assets.

52. Additionally, the Debtor's Key Employees have been informed that the Debtor would seek Court approval of the Key Employee Retention Plan. Thus, the Debtor believes that failure to approve the plan would have an immediate and devastating impact on employee retention, morale and commitment, thereby causing significant and irreparable damage to the value of the estate. In short, retention of the Debtor's Key Employees, each of whom are essential non-insider personnel, is critical to preserving the value of the estate.

53. In light of the foregoing, the Debtor believes that the relief requested in this Motion is appropriate and in the best interests of the Debtor, its estate and its creditors.

E. Implementation Of The Plans May Additionally Be Authorized Pursuant To Section 105(a) Of The Bankruptcy Code

54. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(1).

55. As stated, the Debtor strongly and reasonably believes that the Management Performance Plan and the Key Employee Retention Plan are critical to its ability to maximize returns to creditors. With respect to the Management Performance Plan, the compensation payments are essential to reward Officers for their efforts to market and sell Debtor's assets. In turn, maximizing the value of a transaction hinges upon the Debtor's continued operations pending any sale or orderly liquidation of the estate, to maintain the morale of the Debtor's

workforce, and to ensure the focus of the Debtor's employees is centered on the Chapter 11 process. Accordingly, the Debtor submits that retention payments to the Key Employees are necessary to maximize value for the estate and its creditors.

56. The Debtor respectfully submits that the post-petition compensation described herein for its Employees is an appropriate exercise of the Debtor's business judgment, is necessary and in the best interest of the Debtor, its creditors, and the estate and should be approved under sections 105(a) and 363(b) of the Bankruptcy Code and allowed as administrative expenses under section 503(b) of the Bankruptcy Code.

V. 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.

VI. NO PRIOR REQUEST

58. No previous motion for the relief sought herein has been made to this or any other Court.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: December 22, 2009
Wilmington, Delaware

Respectfully submitted,

By: 
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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**

-----X
: *In re:* : Chapter 11
: :
: **VION PHARMACEUTICALS, INC.,** : Case No. 09-14429 (CSS)
: :
: Debtor.¹ :
: :
: :
-----X

**ORDER GRANTING 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**

Upon the Debtor's Motion (the "Motion") for 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 Management (the "Management Performance Plan") Pursuant to Sections 105(a) and 363 of the Bankruptcy Code; and the Court finding that (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334²; (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 herein, after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein, the Motion is hereby GRANTED; it is therefore:

ORDERED, that the Key Employee Retention Plan is approved; and it is further

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 not otherwise defined herein shall have the meanings ascribed in the Motion.

ORDERED, that the Debtor is authorized, but not directed, to fund the Retention Pool in the aggregate amount of \$225,999.00; and it is further

ORDERED, that the Debtor is authorized to pay, upon termination of employment out of the Retention Pool, each Key Employee a Retention Payment, as follows:

ANTICIPATED 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	\$255,476	\$170,317	3 months salary
		\$225,999	

Except that Key Employees terminated by the Debtor with cause, according to the Debtor's business judgment, shall not be entitled to any Retention Payment; and it is further

ORDERED that the Key Employee Retention Plan shall replace any prepetition incentive compensation plan, retention plan of and/or employment agreement from the Debtor in respect of the Key Employees (collectively, the "Prepetition Plans"), and all employees accepting a Retention Payment shall be deemed to have waived any claim under or against any Prepetition Plans; and it is further

ORDERED, that the Management Performance Plan is approved; and it is further

ORDERED, that the Debtor is authorized, but not directed, to fund the Management Performance Pool in the aggregate amount of \$611,204; and it is further

ORDERED, that the Debtor is authorized to pay a Performance Payment to its Officers in the event that (a) on or before May 31, 2010, the Court confirms a Chapter 11 plan for the Debtor; or (b) on or before April 30, 2010, the Debtor consummates one or more transactions for the sale of all or substantially all of the Debtor's assets in an amount equal to that percentage of the Officer's prepetition base salary, as specifically indicated in the Motion; and it is further

ORDERED, that the Management Performance Plan shall not replace any prepetition employment and/or compensation agreements with the Officers; and it is further

ORDERED, that the provision of post-petition payments pursuant to the Management Performance Plan and the Key Employee Retention Plan as authorized herein shall be administrative expenses of the estates pursuant to Bankruptcy Code section 503(b); and it is further

ORDERED, that the Management Performance Plan and the Key Employee Retention Plan comply with section 503(c) of the Bankruptcy Code; and it is further

ORDERED, that the Debtor is authorized and directed to take any actions that are necessary or appropriate in the exercise of the Debtor's business judgment to implement the Key Employee Retention Plan and Management Performance Plan; and it is further

ORDERED, that this Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this order; and it is further

ORDERED, that this Order is effective immediately upon entry.

Dated: January __, 2010
Wilmington, Delaware

Honorable Christopher S. Sontchi
United States Bankruptcy Judge