

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

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: Chapter 11
In re: :
: Case No. 09-14429 (CSS)
VION PHARMACEUTICALS, INC.,¹ :
: Hearing date: January 20, 2010 at 3:00 p.m. (ET)
Debtor. : 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 Authorization (I) To Pay Prepetition Claims of Critical Vendors and (II) To Authorize Financial Institutions to Honor and Process Related Checks and Transfers* (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. Dkt. No. 31
Filed: 12/22/09

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*

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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Debtor.¹ : Hearing date: January 20, 2010 at 3:00 p.m. (ET)
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**DEBTOR AND DEBTOR-IN-POSSESSION’S MOTION
FOR AUTHORIZATION (I) TO PAY PREPETITION CLAIMS
OF CRITICAL VENDORS AND (II) TO AUTHORIZE FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed undersigned counsel, hereby moves this Court pursuant to 11 U.S.C. §§ 105(a), 363(b), and 364 for entry of an order authorizing the Debtor to pay, in its discretion, the prepetition claims of critical vendors and critical service providers (the “Motion”). In support of the Motion, the Debtor relies on the Declaration of Alan Kessman, the Debtor’s Chief Executive Officer, in Support of Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”)² filed on December 17, 2009 (the “Petition Date”). In further support of the Motion, the Debtor respectfully states as follows:

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 defined herein shall have the meaning ascribed in the First Day Declaration.

JURISDICTION

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

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

BACKGROUND

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

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

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

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

RELIEF REQUESTED

7. By this Motion, the Debtor seeks entry of an order authorizing it, in its discretion, to pay the prepetition claims of critical vendors that delivered goods or provided services to the Debtor before the Petition Date up to \$380,000 (the "Critical Vendor Cap"). The Motion further seeks authorization for applicable banks and other financial institutions to process, honor and pay checks and transfer requests with respect to Critical Vendor Claims as set forth herein.

A. Critical Vendor Payments

8. Certain vendors (the "Critical Vendors")³ have claims for providing (i) essential goods to the Debtor that were received by the Debtor before the Petition Date and/or (ii) essential services that were rendered to the Debtor before the Petition Date (collectively, the "Critical Vendor Claims").

9. The Debtor believes that payment of the Critical Vendor Claims is vital to the Debtor's Chapter 11 efforts because the Critical Vendors are the only source from which the Debtor can procure certain goods and services within a timeframe and at a price that will permit the Debtor to continue its business. A failure to pay the Critical Vendor Claims would likely result in many of the Critical Vendors refusing to provide goods and services to the Debtor post-petition, and may force the Debtor to obtain such goods and services elsewhere at a higher price or not of the quantity or quality required by the Debtor.

10. The Debtor has examined whether the payment of Critical Vendor Claims is necessary and will ensure that the Debtor has access to adequate amounts of trade credit on a post-petition basis. Specifically, the Debtor has reviewed its accounts payable and undertaken a process to identify those vendors that are essential to the Debtor's operations. The Debtor has further developed certain procedures (for which it seeks this Court's approval) that, when implemented, will ensure that vendors receiving payment of Critical Vendor Claims will continue to supply trade credit necessary to the Debtor's operations on a post-petition basis.

11. The Debtor consulted with appropriate members of its management team and other personnel to identify those vendors that are essential to the Debtor's operations using

³ Attached hereto as Exhibit A is a list of the Debtor's known Critical Vendors. The Debtor anticipates that it may name additional parties to its Critical Vendor list, either by supplementing this Motion or seeking similar relief by separate motion, as appropriate, to include other "critical vendors" in particular those vendors that may become necessary to conduct (or provide goods and services relating to) clinical trials essential to preserve the value of the estate.

the following criteria: (a) which suppliers were sole-source or limited-source suppliers, without whom the Debtor could not continue to operate without disruption; (b) which suppliers would be prohibitively expensive to replace; (c) which suppliers present an unacceptable risk to the continuation of the Debtor's business should they cease the provision of services or supplies; and (d) the extent to which suppliers may be able to obtain or have obtained trade liens on equipment, supplies, or goods of the Debtor.

12. After carefully assessing its vendor list against the foregoing criteria, the Debtor estimated the total payments that would be necessary to ensure the continued supply of critical goods and services to the Debtor in calculating the Critical Vendor Cap.

13. The Debtor proposes to condition the payment of Critical Vendor Claims on the agreement of the individual Critical Vendor to continue supplying goods and services to the Debtor on terms that are as or more favorable to the Debtor as the most favorable trade terms, practices, and programs in effect between the Critical Vendor and the Debtor in the six (6) months prior to the Petition Date (the "Customary Trade Terms"), or such other trade terms as are agreed to by the Debtor and the Critical Vendor. The Debtor reserves the right to negotiate new trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim.

14. The Debtor further proposes to take appropriate efforts, in its business judgment, to cause each Critical Vendor to enter into an agreement (a "Trade Agreement") substantially in the form of Exhibit B attached hereto, which includes, without limitation, the following terms:

- (i) the amount of such Critical Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Critical

Vendor and the Debtor (but such amount shall be used only for purposes of the Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);

- (ii) the amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtor, subject to the terms and conditions as set forth in the Court's Order;
- (iii) the Critical Vendor's agreement to provide goods and/or services to the Debtor based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability and other applicable terms and programs), or such other favorable trade terms as mutually agreed to by the Debtor and such Critical Vendor, and the Debtor's agreement to pay the Critical Vendor in accordance with such terms;
- (iv) the Critical Vendor's agreement not to file or otherwise assert against the Debtor, its estate or any of its assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtor arising from goods or services provided to the Debtor prior to the Petition Date, and that, to the extent that the Critical Vendor has previously obtained such a Lien, the Critical Vendor shall immediately take all necessary actions to release such Lien;
- (v) the Critical Vendor's acknowledgment that it has reviewed the terms and provisions of the Order and consents to be bound thereby;
- (vi) the Critical Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and
- (vii) if a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply

goods to the Debtor on Customary Trade Terms or other favorable trade terms, any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding post-petition obligations owed to such Critical Vendor, and that such Critical Vendor shall immediately repay to the Debtor any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the post-petition obligations then outstanding, without the right of setoff or reclamation.

Such Trade Agreements may be in addition to any other agreements between the parties.

15. For those Critical Vendors who have agreed to provide goods or services to the Debtor on terms different from their Customary Trade Terms, the Debtor reserves the right to seek written acknowledgment of such terms on a case-by-case basis. Nothing in this Motion or any order of this Court approving this Motion should be construed as a waiver by the Debtor of its rights to contest any invoice of a Critical Vendor under applicable non-bankruptcy law.

16. If a Critical Vendor refuses to supply goods or services to the Debtor on Customary Trade Terms following payment of any portion of its Critical Vendor Claim, or fails to comply with any Trade Agreement it entered into with the Debtor, the Debtor hereby seeks authority to, according to its business judgment and without further order of the Court, (i) terminate any Trade Agreement between the Debtor and such Critical Vendor (if applicable) and (ii) deem any payments made to such Critical Vendor on account of its Critical Vendor Claim, whether pursuant to a Trade Agreement or otherwise, to have been in payment of then-outstanding post-petition claims of such Critical Vendor (the "Terminated Critical Vendor") without further order of the Court. If, however, the Debtor chooses not to terminate a Trade Agreement immediately upon a refusal by the participating Critical Vendor party to provide

goods and/or services in accordance with such Trade Agreement, the Debtor shall not be deemed to have waived the ability to terminate such Trade Agreement.

17. In the event the Debtor exercises either of the rights set forth in the preceding paragraph, the Debtor requests that the Terminated Critical Vendor be required to immediately return any payments made on account of its Critical Vendor Claim to the extent that such payments exceed the post-petition amounts then owed to such Terminated Critical Vendor, without giving effect to any rights of setoff or reclamation. In the event that a Terminated Critical Vendor refuses to acknowledge such recharacterization and to issue the repayment, the Debtor requests authorization to compel such recharacterization and repayment by a motion (on such notice as is required by this Court and/or by the Local Rules for the United States Bankruptcy Court for the District of Delaware).

B. Payment of Critical Vendor Claims is Essential

18. The Debtor believes that authority to pay the Critical Vendor Claims is vital to its reorganization efforts. If this Motion is not granted, the Debtor believes that many of the Critical Vendors will stop providing goods and services to the Debtor, thereby causing immediate and irreparable damage to the Debtor and its estate.

19. The Critical Vendors generally provide goods and/or services relating to manufacturing and distribution and contract research.

(a) One Critical Vendor is a single source storage and distribution provider for the Debtor's Onrigin™ drug inventories in the U.S. and Europe. As a result, it is critical that the services to store and supply the drug provided by this vendor remain uninterrupted during the Debtor's Chapter 11 efforts.

(b) The Debtor engages contract research organizations (“CROs”) for: (i) assistance with the management and monitoring of its clinical trials and (ii) the collection, database maintenance and final reporting of data from its clinical trials. In addition, it uses CROs to perform certain specialized tests related to its products and clinical trials. The cancellation of these services could result in a reduction of the value of the Debtor’s estate.

20. The Debtor also relies on certain vendors critical to its business operations who do not necessarily fall within one of the above categories.

21. The Debtor seeks authority to pay all such Critical Vendors on account of amounts invoiced for their prepetition deliveries of goods or provision of services, subject to the Critical Vendor Cap in accordance with this Motion.

C. Section 503(b)(9) Claimants

22. Moreover, any of the Debtor’s Critical Vendors (as defined below) that delivered goods to the Debtor within twenty (20) days of the Petition Date are entitled to request an administrative expense priority claim under § 503(b)(9) of the Bankruptcy Code (in such capacity, collectively, the “Section 503(b)(9) Claimants”).⁴ Because of the priority status accorded to the claims held by the Section 503(b)(9) Claimants, they would likely be paid upon confirmation of a Chapter 11 plan. Accordingly, the relief sought herein will likely affect only the timing, but not the amount, of any payment to Section 503(b)(9) Claimants.

⁴ Section 503(b)(9) of the Bankruptcy Code provides: “[a]fter notice and a hearing, there shall be allowed administrative expenses. . . including. . . the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.” 11 U.S.C. § 503(b)(9).

BASIS FOR RELIEF

A. **This Court May Authorize Critical Vendor Payments Pursuant to Bankruptcy Code §§ 363 and 364**

23. The Court may grant the relief requested herein pursuant to §§ 363 and 364 of the Bankruptcy Code. *See, e.g., In re UAL Corp.*, Case No. 02-48191, 2002 Bankr. LEXIS 1944 (Bankr. N.D. Ill. Dec. 11, 2002) (an essential trade motion generated by § 363 is “completely consistent with the Bankruptcy Code” and such payments have further support where the debtor seeks “the extension of credit under section 364 on different than usual terms, terms that might include payment of a prepetition obligation”); *In re James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (authorizing, pursuant to § 363, a contractor to pay prepetition claims of some suppliers who were potential lien claimants, because the payments were necessary for the general contractors to release funds owed to the debtors).

24. The relief requested in this Motion contemplates the payment of claims of those Critical Vendors who agree to provide post-petition goods and services to the Debtor on Customary Trade Terms or other terms acceptable to the Debtor. As a result, the payment of such vendor claims is consistent with and appropriate under §§ 363 and 364 of the Bankruptcy Code.

25. As detailed above, maintaining the goods and services provided by the Critical Vendors is vital to the Debtor’s continuing business operations and the success of this Chapter 11 case. In addition, the Debtor has conducted an extensive analysis and review of its immediate trade needs and supplier bases and has concluded that there is a significant risk that the Critical Vendors will cease doing business with the Debtor unless the Critical Vendor Claims are paid. Should any Critical Vendor stop supplying goods or services to the Debtor, or choose to significantly downgrade the Debtor’s trade terms, the Debtor’s business would be adversely

affected. As such, the Debtor submits that the amount of the Critical Vendor Cap is de minimis in comparison to the likely damage to the Debtor's business and estate should the relief requested herein not be granted. In light of the foregoing, the Debtor submits that payment of the Critical Vendor Claims is in the best interests of its estate and creditors.

B. This Court May Authorize Payment of the Critical Vendor Claims Pursuant to § 105 of the Bankruptcy Code

26. The Court's general equitable powers are codified in § 105(a) of the Bankruptcy Code. Section 105(a) empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). Under § 105(a) of the Bankruptcy Code, a court "can permit pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992). Maintaining favorable trade terms and credit is critical to the Debtor's reorganization and in the best interests of the Debtor's creditors. The payment of the prepetition Critical Vendor Claims is essential to assure such terms and credit. The Court should, therefore, exercise its equitable powers to grant the relief requested in this Motion.

C. The Court May Rely on the "Necessity of Payment" Doctrine to Grant the Relief Requested Herein

27. The "necessity of payment" doctrine further supports the relief requested in this Motion. That doctrine provides for payment of prepetition claims as necessary to facilitate the continued operation and rehabilitation of a debtor's business. *See Ionosphere Clubs*, 98 B.R. at 176 (applying necessity of payment rule to Chapter 11 debtors).

28. The “necessity of payment” doctrine “may be used to permit a debtor to pay the pre-petition claims of suppliers . . . whose continued cooperation is essential to the debtor’s successful reorganization.” See *In re UNR Indus., Inc.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992), *rev’d on other grounds*, 173 B.R. 149, 158-59 (Bankr. N.D. Ill. 1994); *Ionosphere Clubs*, 98 B.R. at 176.

29. Courts in this District and elsewhere have authorized payments to vital suppliers and trade creditors pursuant to the “necessity of payment” doctrine. See, e.g., *In re MFC Computers, LLC*, Case No. 08-12667 (PJW) (Bankr. D. Del. Nov. 10, 2008); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Feb. 13, 2008); *In re Calpine Corp.*, Case No. 05-60200 (Bankr. S.D.N.Y. Dec. 21, 2005); *In re Delphi Corp.*, Case No. 05-44481 (Bankr. S.D.N.Y. Oct. 13, 2005); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (Bankr. S.D.N.Y. Sept. 16, 2005).

D. This Court Should Authorize and Direct Financial Institutions to Honor and Process Checks Related to Critical Vendor Payments

30. The Debtor pays its Critical Vendors with funds drawn by checks (the “Checks”) or by means of electronic fund transfers (the “Electronic Transfers”). Before the Petition Date, the Debtor remitted Checks or Electronic Transfers on account of certain claims that may not have cleared as of the Petition Date. To the extent any of the Checks or Electronic Transfers have not cleared their respective banks or financial institutions (the “Banks”) as of the Petition Date, the Debtor requests that the Court authorize and direct the Banks, in the Debtor’s sole discretion, to receive, process, honor and pay the Checks or Electronic Transfers, without the need for further Court approval. If the Critical Vendors have not received payment for amounts in connection with the Critical Vendor Claims, the Debtor seeks authority to issue replacement Checks, resubmit Electronic Transfers, or otherwise make payment to such vendors

on account of the Critical Vendor Claims, without the need for further Court approval, provided that sufficient funds are available in such account to make such payment.

E. Failure to Pay the Critical Vendor Claims Within Twenty Days of the Petition Date Would Cause Immediate and Irreparable Harm

31. Pursuant to Bankruptcy Rule 6003, the Court may authorize payment of a pre-petition claim within 20 days after the Petition Date, if such relief is necessary to avoid immediate and irreparable harm. As explained above, satisfying the Critical Vendor Claims is essential to the continued, uninterrupted operation of the Debtor's business. Without satisfaction of these claims, the Debtor believes that the Critical Vendors will significantly downgrade trade terms and may stop supplying critical goods and services necessary in its operations, thereby hampering the Debtor's ability to successfully reorganize.

32. For the foregoing reasons, the Debtor submits that it has satisfied the requirements of Bankruptcy Rule 6003, and accordingly, the Court should grant the relief requested herein.

NOTICE

33. 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 on a consolidated basis, including U.S. Bank, N.A. the trustee under the indenture corresponding to the Debtor's 7.75% Convertible Seniors Notes due 2012. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

RESERVATION OF RIGHTS

34. The Debtor reserves all rights to supplement this Motion by naming additional Critical Vendors as discovered and determined thereby. The Debtor further reserves all rights to request an increase in the Critical Vendor Cap as it deems necessary in its business

judgment. For example, the Debtor has four ongoing clinical trials of Onrigin™ sponsored by cooperative research organizations and has certain clinical sites that have treated patients in the Debtor's clinical trials that could be important references and sources of information for the drug to any potential investor or acquirer of the Debtor or its' assets. Until the Debtor completes its Chapter 11 process, it is important that it continues its relationships with these vendors. Any impairment of these relationships could result in a reduction of the value of the Debtor's estate.

NO PRIOR REQUEST

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

WHEREFORE, the Debtor respectfully requests that the Court (i) enter an Order, in substantially the form attached hereto as Exhibit C, authorizing the Debtor to satisfy, in its discretion, the Critical Vendor Claims and (ii) grant such other and further relief as the Court deems just and proper.

Dated: December 22, 2009
Wilmington, Delaware

Respectfully submitted,

By: 

John H. Knight, Esq. (No. 3848)
Christopher M. Samis, Esq. (No. 4909)
Julie A. Finocchiaro, Esq. (No. 5303)
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-and-

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Proposed Counsel to the Debtor and Debtor-In-Possession

EXHIBIT A

DEBTOR'S CRITICAL VENDORS¹

Critical Vendor	Description of Critical Goods/Services Provided
American Express	Corporate Card Services
Almac Clinical Services, Inc. Almac Clinical Services, Ltd.	Product Distribution in U.S. and Europe
Covance Labs	Onrigin™ Product Quality and Clinical Research Testing
Ingenix division I3 Research	Onrigin Product Safety Database and Clinical Trial Management and Documentation
ABC Labs	Onrigin™ Product Quality Testing
Intralinks, Inc.	Electronic Document Storage
Iron Mountain	Hard Copy document Storage

¹ The Debtor reserves the right to supplement and/or amend its List of Critical Vendors.

EXHIBIT B

[Vion Pharmaceuticals, Inc. Letterhead]

TO: [Critical Vendor]
[Name]
[Address]

Dear Valued Supplier:

As you are aware, Vion Pharmaceuticals, Inc. (the "Company") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Case" and the "Bankruptcy Court," respectively) on **December 17, 2009** (the "Petition Date"). On the Petition Date, the Company requested the Bankruptcy Court's authority to pay the pre-bankruptcy claims of certain suppliers in recognition of the importance of the Company's relationship with such suppliers and its desire that the Bankruptcy Case have as little effect on the Company's ongoing business operations as possible. On **[insert date]**, the Bankruptcy Court entered an order (the "Order") authorizing the Company, under certain conditions, to pay the pre-petition claims of certain trade creditors that agree to the terms set forth below and to be bound by the terms of the Order. A copy of the Order is enclosed.

In order to receive payment on account of your pre-petition claims, you must agree to continue to supply goods and services to the Company based on "Customary Trade Terms." In the Order, Customary Trade Terms are defined as the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, normal product mix and availability, and other applicable terms and programs) that were most favorable to the Company and in effect between you and the Company during the six months prior to the Petition Date, or such other trade terms as you and the Company agree.

For purposes of administration of this trade program as authorized by the Bankruptcy Court, you and the Company both agree that:

1. The estimated balance of the pre-petition claim (net of any setoffs, credits or discounts) (the "Vendor Claim") that you will receive from the Company is \$_____.
2. You agree to waive any pre-petition general unsecured claim against the Company.
3. You will provide an open trade balance or credit line to the Company for shipment of post-petition goods and/pr provision of services in the amount of \$_____ (which shall not be less than the greater of the open trade balance outstanding: (a) on **[insert date]**, or (b) on normal and customary terms on a historical basis before and up to the Petition Date).
4. The terms of such open trade balance or credit line are as follows (if more space is required, attach additional pages):

5. During the pendency of the Bankruptcy Case you will continue to extend to the Company all Customary Trade Terms (as defined in the Order).

6. You will not demand a lump sum payment upon consummation of a plan of reorganization in the Bankruptcy Case on account of any administrative expense priority claim that you assert, but instead agree that such claims will be paid in the ordinary course of business after consummation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Company.

7. The undersigned, your duly authorized representative, has reviewed the terms and provisions of the Order and agrees that you are bound by such terms.

8. You will not separately seek payment for reclamation and similar claims outside of the terms of the Order unless your participation in the Critical Vendor payment program authorized by the Order (the "Critical Vendor Payment Program") is terminated.

9. You agree not to file or otherwise assert against the Company, the estate, or any other person or entity or any of their respective assets or property (real or personal) any lien (regardless of the statutory or other legal authority upon which such lien is asserted) related in any way to any remaining pre-petition amounts allegedly owed to you by the Company arising from agreements entered into prior to the Petition Date. Furthermore, to the extent filed or otherwise asserted, you agree to take (at your own expense) all necessary steps to remove any such lien as soon as possible.

10. If either the Critical Vendor Payment Program or your participation therein terminates as provided in the Order, or you later refuse to continue to supply goods or services to the Company on Customary Trade Terms during the pendency of the Bankruptcy Case, any payments you receive on account of your Vendor Claim (including claims arising under § 503(b)(9) of Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code")) will be deemed voidable post-petition transfers pursuant to § 549(a) of the Bankruptcy Code. You will immediately repay to the Company any payments made to you on account of your Vendor Claim to the extent that the aggregate amount of such payments exceeds the post-petition obligations then outstanding without giving effect to alleged setoff rights, recoupment rights, adjustments, or offsets of any type whatsoever. Your Vendor Claim shall be reinstated in such an amount so as to restore the Company and you to the same positions as would have existed if payment of the Vendor Claim had not been made.

11. Any dispute with respect to this letter agreement, the Order and/or your participation in the Critical Vendor Payment Program shall be determined by the Bankruptcy Court. If you have any questions about this Agreement or our financial restructuring, please do not hesitate to call (203) 498-4210.

Sincerely,

Vion Pharmaceuticals, Inc.

By: _____

Alan Kessman
Chief Executive Officer

Agreed and Accepted by:

[Critical Vendor]

By: _____

Its: _____

Dated: _____, 20xx

EXHIBIT C

**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 :
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**ORDER AUTHORIZING DEBTOR (I) TO PAY
OR HONOR PREPETITION OBLIGATIONS TO CERTAIN
CRITICAL VENDORS AND (II) TO AUTHORIZE FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the "Motion")² of the above-captioned debtor and debtor-in-possession (the "Debtor") for authority to pay in the ordinary course of business pre-petition claims of critical vendors, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding this Court can determine 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 due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor, it is hereby:

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

ORDERED that the relief requested in the Motion is hereby granted; and it is further

ORDERED that the Debtor is authorized, but not directed, in the reasonable exercise of its business judgment, to pay some or all of the prepetition claims, up to the amount of the Critical Vendor Cap of \$380,000, of those Critical Vendors who agree to continue to supply goods or services to the Debtor on such Critical Vendor's "Customary Trade Terms" for a period following the date of the agreement and on other such terms and conditions as are acceptable to the Debtor. As used herein, "Customary Trade Terms" means, with respect to a Critical Vendor, (a) the normal and customary trade terms, practices, and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reconciliation, availability, and other applicable terms and programs), that were most favorable to the Debtor and in effect between such Critical Vendor and the Debtor during the six (6) months prior to the Petition Date or (b) such other trade terms as agreed by the Debtor and such Critical Vendor; and it is further

ORDERED that after the date hereof, the Debtor shall determine, in the ordinary course of business, who is a Critical Vendor by considering, among other things, (a) which suppliers were sole-source or limited-source suppliers, without whom the Debtor could not continue to operate without disruption; (b) which suppliers would be prohibitively expensive to replace; (c) which suppliers present an unacceptable risk should they cease the provision of truly essential services or supplies; and (d) the extent to which suppliers may be able to obtain or have obtained trade liens on equipment, supplies, or goods of the Debtor; and it is further

ORDERED that if a Critical Vendor who has received payment of a prepetition claim subsequently refuses to supply goods or services to the Debtor on Customary Trade Terms,

any payments received by the Critical Vendor on account of its Critical Vendor Claim will be deemed to have been in payment of then outstanding post-petition obligations owed to such Critical Vendor, and such Critical Vendor shall immediately repay to the Debtor any payments received on account of its Critical Vendor Claim to the extent that the aggregate amount of such payments exceed the post-petition obligations then outstanding, without the right of setoff or reclamation; and it is further

ORDERED that each of the banks and financial institutions (the "Banks") at which the Debtor maintains its accounts relating to the payment of the claims that the Debtor requests authority to pay in the Motion are authorized to receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtor related thereto, to the extent that sufficient funds are on deposit in those accounts, and are authorized to rely on the Debtor's designation of any particular check as approved by this Order; and it is further

ORDERED that nothing contained in this Order shall be deemed to constitute an assumption of any executory contract or to require the Debtor to make any of the payments authorized herein; and it is further

ORDERED that notwithstanding the possible applicability of Rules 6004(h), 7062 and 9014 of the Federal Rules of Bankruptcy Procedure, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that this Court retains jurisdiction with respect to all matters from or related to the implementation of this Order.

Dated: January __, 2010
Wilmington, Delaware

Honorable Christopher S. Sontchi
United States Bankruptcy Judge