

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 an Order Authorizing the Debtor to Retain Professionals Used in the Ordinary Course of Business Nunc Pro Tunc to the Petition Date* (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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Christopher M. Samis (No. 4909)
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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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In re: : Chapter 11
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VION PHARMACEUTICALS, INC., : Case No. 09-14429 (CSS)
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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 AN ORDER
AUTHORIZING THE DEBTOR TO RETAIN PROFESSIONALS USED IN THE
ORDINARY COURSE OF BUSINESS *NUNC PRO TUNC* TO THE PETITION DATE**

Vion Pharmaceuticals, Inc. (“Vion”) as debtor and debtor-in-possession (the “Debtor”), hereby moves this Court (the “Motion”) for the entry of an order (the “Order”) substantially in the form attached hereto as Exhibit A, pursuant to §§ 105(a) and 327 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing the Debtor’s retention, payment of compensation and reimbursement and payment of expenses for certain professionals used in the ordinary course of the Debtor’s business *nunc pro tunc* to the Petition Date (as defined below) and (ii) granting it such other and further relief as the Court deems just and proper. In support of this Motion the Debtor respectfully represents as follows:

JURISDICTION

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

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. The statutory bases for the relief requested herein are §§ 105(a) and 327 of the Bankruptcy Code and Rule 2014 of the Bankruptcy Rules.

BACKGROUND

3. On December 17, 2009 (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 the Chapter 11 case are set forth in the Declaration of Alan Kessman, the Debtor's Chief Executive Officer in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration"), filed on the Petition Date.²

RELIEF REQUESTED

7. By this motion, the Debtor seeks authorization to retain, pay compensation to and reimburse the expenses of certain professionals who render services to the Debtor in the ordinary course of its business.

8. The Debtor retains various attorneys, accountants, consultants and other professionals in the ordinary course of its business (each, an "Ordinary Course Professional" or "OCP" and, collectively, the "OCPs") to render services relating to numerous issues that arise in

² Capitalized terms used but not defined herein have the meanings ascribed to them in the First Day Declaration.

the Debtor's business.³ A list of the Debtor's current OCPs is attached to the proposed Order as **Exhibit 1**, containing the name, address, and a brief description of the type of services rendered by each OCP.

9. These OCPs include attorneys, accountants, and consultants used by the Debtor to address issues related to, among other things: accounting services, auditing and tax services, tax and finance strategy, intellectual property, employee benefits and other areas. The Debtor has many such outstanding issues to address in the ordinary course of its business and fully expect many more to arise during this Chapter 11 case. Sufficient attention to these issues, however, cannot continue without the relief requested herein, because few OCPs would be willing to continue their vital work for the Debtor without the assurance that the relief requested herein will provide.

10. For the purposes of administrative efficiency, the Debtor seeks to retain, pay compensation to and reimburse and pay the expenses of, *nunc pro tunc* to the Petition Date, under various standard terms, including on retainer, the OCPs without having to file formal retention or fee applications for each of the OCPs pursuant to §§ 327, 328, 329 and 330 of the Bankruptcy Code. In light of the number of OCPs, it would be unduly burdensome to both the Debtor and the Court to require the Debtor to apply separately to this Court for approval of the retention of each individual OCP. Similarly, it would be unduly burdensome on the Court for each OCP to separately apply for compensation and reimbursement of expenses. Moreover, many of the OCPs are unfamiliar with the fee application process employed in a bankruptcy case and might be less inclined to work with the Debtors if they were forced to adhere to such requirements in order to be compensated for services rendered.

³ Certain of the Debtor's law firms retain additional advisors and consultants, such as patent agents, and present the bills for such advisors and consultants to the Debtor as an additional cost.

11. Additionally, and again in light of the number of OCPs retained by the Debtor and the significant costs associated with the preparation of retention applications for each OCP who will receive relatively modest fees, it would be impractical, inefficient, and extremely costly to require the Debtor and its legal advisors to prepare and submit individual applications and proposed retention orders for each OCP. The relief requested herein will obviate the need for such applications and separate orders.

12. The Debtor proposes to pay each OCP, without formal application to the Court by any OCP individually, 100% of fees for services rendered to the Debtor on or after the Petition Date, and associated costs and disbursements, after such OCP (a) files with the Court and serves upon the Notice Parties (as defined below) a verified statement made pursuant to Bankruptcy Rule 2014 (the "Rule 2014 Statement") substantially in the form attached to the proposed Order as Exhibit 2 and (b) submits to the Debtor an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date and calculated in accordance with such OCP's standard billing practices, including project billing; provided that each OCP's fees, excluding costs and disbursements, do not exceed \$ 15,000 per month (the "Monthly Cap"), \$15,000 per project (the "Project Cap"), in the case of OCPs who customarily bill by project, or \$150,000 per calendar year (the "Annual Cap") while this Chapter 11 case is pending.

13. The Debtor proposes that in the event that the payments of fees to any OCP exceed the Monthly Cap, the Project Cap or the Annual Cap during the course of this Chapter 11 case, payment of such fees, as well as any costs and disbursements, would become subject to approval upon application to the Court for allowance of compensation and reimbursement of expenses pursuant to §§ 330 and 331 of the Bankruptcy Code, and in accordance with the Bankruptcy Rules, the Local Rules of Bankruptcy Practice and Procedure of the United States

Bankruptcy Court for the District of Delaware, the Fee Guidelines promulgated by the Executive Office of the United States Trustee and any order entered by the Court governing the payment of compensation and reimbursement of expenses in this Chapter 11 case. Notwithstanding the foregoing, the Debtor seeks permission to pay such professionals in the ordinary course for fees incurred prior to the time such thresholds are reached.

14. Each OCP that the Debtor is authorized to retain will file with the Court a Rule 2014 Statement, setting forth the OCP's connections with the Debtor, the Debtor's creditors, and any other party in interest, its respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee. The Rule 2014 Statement also shall be served on counsel to the Office of the United States Trustee for the District of Delaware, when appointed, counsel to the Committee, and counsel to any other statutorily appointed committee in this case (collectively, the "Notice Parties").

15. The Debtor also seeks permission to retain additional professionals as may be needed from time to time to assist the Debtor in the ordinary course of its business (each an "Additional Ordinary Course Professional" or "Additional OCP" and, collectively, the "Additional OCPs"), without the need to file individual retention applications for each such Additional OCP, by filing a supplement to Exhibit 1 to the proposed Order with the Court without the need for any further hearing or notice to any other party. All OCPs and Additional OCPs will be required to file a Rule 2014 Statement with the Court and serve it upon the Notice Parties before they can be paid by the Debtor.

16. The Debtor proposes that the Notice Parties shall have ten (10) days after the filing by an OCP or Additional OCP of a Rule 2014 Statement (the "Objection Deadline") to object to the retention of such OCP or Additional OCP. The objecting Notice Party shall serve

any such objections upon the Debtor, the OCP or Additional OCP, as the case may be, and the other Notice Parties on or before the Objection Deadline. If any such objection cannot be resolved within fifteen (15) days, the matter shall be scheduled for a hearing before the Court at the next regularly scheduled omnibus hearing date or other date otherwise agreeable to the OCP or Additional OCP, the Debtor and the Notice Parties. If no objection is received from the Notice Parties by the Objection Deadline, the Debtor shall be deemed authorized to retain and compensate such OCP or Additional OCP without further notice or hearing.

BASIS FOR RELIEF

17. The Debtor is authorized to retain the OCPs under § 327(a) of the Bankruptcy Code as to accountants and all other professionals, and § 327(e) of the Bankruptcy Code as to attorneys that have previously represented the Debtor. This Court is authorized to grant the relief requested herein pursuant to § 105(a) of the Bankruptcy Code.

18. Because the OCPs will not be involved in the administration of this Chapter 11 case, the Debtor does not believe that the OCPs are “professionals” within the meaning of § 327 of the Bankruptcy Code, whose retention must be approved by the Court. See In re First Merchants Acceptance Corp., 1997 Bankr. LEXIS 2245, 8-9 (Bankr. D. Del. Dec. 15, 1997). The First Merchants criteria are consistent with those utilized by other courts when examining the types of duties to be undertaken by a “professional.” See, e.g., Elstead v. Nolden (In re That’s Entm’t Mktg. Group), 168 B.R. 226, 230-231 (N.D. Cal. 1994) (only retention of professionals whose duties are central to administration of estate requires prior court approval under § 327); In re Madison Mgmt. Group, Inc., 137 B.R. 275, 283-84 (Bankr. N.D. Ill. 1992) (same); In re Riker Indus., Inc., 122 B.R. 964, 973 (Bankr. N.D. Ohio 1990) (no need for § 327 approval of fees of management and consulting firm that performed only “routine administrative functions” and whose “services were not central to [the] bankruptcy case”); In re D’Lites of Am.

Inc., 108 B.R. 352, 355 (Bankr. N.D. Ga. 1989) (§ 327 approval not necessary for “one who provides services to the debtor that are necessary whether the petition was filed or not”); In re Fretheim, 102 B.R. 298, 299 (Bankr. D. Conn. 1989) (only those professionals involved in the actual reorganization effort, rather than debtor’s ongoing business, require approval under § 327); In re Pacific Forest Indus., Inc., 95 B.R. 740, 743 (Bankr. C.D. Cal. 1989) (same); In re Babcock Dairy Co., 70 B.R. 691, 692-93 (Bankr. N.D. Ohio 1987) (holding that an expert witness was not a “professional person” under § 327 because his testimony did not measurably affect the administration of the estate); In re Johns-Manville Corp., 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (only those professionals involved in the actual reorganization effort, rather than debtor’s ongoing business, require approval under § 327).

19. Nevertheless, out of abundance of caution and due to the essential nature of the OCPs to the Debtor’s business, the Debtor seeks the relief requested in this Motion to avoid any subsequent controversy as to the Debtor’s employment and payment of the OCPs during the pendency of this Chapter 11 case. The Debtor is also seeking specific Court authority under § 327 to employ other professionals involved in the actual administration of this Chapter 11 case, and will continue to do so as needed in this Chapter 11 case.

20. The relief sought herein is not unusual considering the size and complexity of this case. In fact, this court has granted similar relief in similar cases. See, e.g., In re DBSI, Inc., Case No. 08-12687 (PJW) (Bankr. D. Del. Dec. 2, 2008); In re SemCrude, L.P., Case No. 08-11525 (BLS) (Bankr. D. Del. Aug. 19, 2008); In re Global Motorsport Group Inc., Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 29, 2008); In re Wickes Holdings, LLC, Case No. 08-10212 (KJC) (Bankr. D. Del. Feb. 27, 2008); In re Delta Financial Corp., Case No. 07-11880 (CSS) (Bankr. D. Del. Feb. 14, 2008); In re Nutritional Sourcing Corp., Case No. 07-11038 (PJW)

(Sept. 25, 2007); In re Northwest Suburban Community Hospital, Inc., Case No. 07-11018 (KG) (Bankr. D. Del. Aug. 23, 2007); In re Hancock Fabrics, Inc., Case No. 07-10353 (BLS) (Bankr. D. Del. Apr. 13, 2007).

21. Any OCP holding a prepetition claim against the Debtor will agree to waive the same in order to qualify as an OCP. Therefore, an OCP's ownership of a prepetition claim against the Debtor will not hinder the OCP from rendering services during the pendency of this Chapter 11 case.

22. The Debtor respectfully submits that the continued retention and compensation of the OCPs and the payment of compensation on the basis set forth herein is in the best interests of its estate, creditors, and other parties in interest. The OCPs are performing necessary services for the Debtor that do not relate to conducting this Chapter 11 case, and in order for the Debtor to continue to operate its business, the Debtor needs the OCPs to continue to perform such services. In light of the nature of the services rendered, and the relatively small amount each OCP is expected to invoice, it would be inefficient, and create an unnecessary burden on the OCPs, the Debtor, the Court and all interested parties for the OCPs to be subjected to the fee application process.

23. Indeed, if the Debtor cannot pay its invoices in the ordinary course on a regular basis, some of the OCPs would no doubt cease working for the Debtor. This would force the Debtor to incur additional and unnecessary expenses in educating replacement professionals about the matters for which they could be rendering services, and require Debtor's limited personnel who would otherwise be devoting their time to the Debtor's Chapter 11 efforts to spend time bringing new professionals up to speed, causing immediate and irreparable harm to the Debtor's estate. The Debtor's estate and its creditors are best served by avoiding any

disruption in the professional services that are required for the day-to-day operation of the Debtor's business.

24. Further, to successfully implement the foregoing, the Debtor requests that, pursuant to Bankruptcy Rule 6004(h), the Court direct that the order granting the relief requested herein be effective immediately upon entry.

25. Based on the foregoing, the Debtor submits that the relief requested herein is essential, appropriate, and in the best interests of the Debtor's estate and its creditors, and therefore should be granted in this Chapter 11 case.

NOTICE

26. 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.

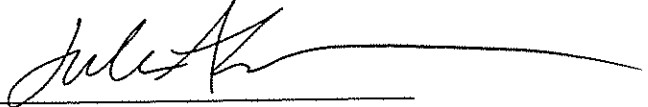
NO PRIOR REQUEST

27. No prior request for the relief sought herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that this Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed order attached hereto; and (iii) grant such other and further relief as it deems just and proper.

Dated: Wilmington, Delaware
December 22, 2009

Respectfully submitted,

By: 

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Christopher M. Samis, Esq. (No. 4909)
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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**

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In re: : Chapter 11
: :
VION PHARMACEUTICALS, INC., : Case No. 09-14429 (CSS)
: :
Debtor.¹ : :
: :
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**ORDER AUTHORIZING THE DEBTORS TO RETAIN
AND EMPLOY PROFESSIONALS USED IN THE ORDINARY
COURSE OF BUSINESS *NUNC PRO TUNC* TO THE PETITION DATE**

Upon the motion dated December 22, 2009 (the "Motion"),² of Vion Pharmaceuticals, Inc., as debtor-in-possession in the above-captioned case (the "Debtor"), for the entry of an order (the "Order"), pursuant to §§ 105(a) and 327 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing the Debtor's retention, payment of compensation and reimbursement and payment of expenses for certain professionals used in the ordinary course of the Debtor's business *nunc pro tunc* to the Petition Date, and (ii) granting such other and further relief as the Court deems just and proper; and adequate notice of the Motion having been given as set forth in the Motion; and it appearing that no other or further notice is necessary; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having determined that consideration of the Motion is a

¹ The Debtor in this case, along with the last four digits of the federal tax identification number for the Debtor, is Vion Pharmaceuticals, Inc. (1221). The Debtor's corporate offices are located at 4 Science Park, New Haven, Connecticut 06511.

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief requested in the Motion, and that such relief is in the best interests of the Debtor, its estate, its creditors and the parties in interest; and upon the record in this proceeding; and after due deliberation and sufficient cause appearing therefor, it is hereby:

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

ORDERED, that the Debtor is authorized and empowered to retain, pursuant to §§ 105 and 327 of the Bankruptcy Code, the OCPs listed on Exhibit 1 attached hereto, *nunc pro tunc* to the Petition Date, which list may be supplemented as set forth herein without the need for any further hearing, and without the need to file an individual retention application for each such OCP; and it is further

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

ORDERED, that in the event an OCP seeks more than the Monthly Cap in a single month, more than the Project Cap for a single project or more than the Annual Cap in any calendar year during the pendency of this Chapter 11 case, then such OCP shall file a fee application in accordance with the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware, the Fee Guidelines Promulgated by the Executive Office of the United Trustee and any order entered by the Court governing the payment of compensation and reimbursement of expenses in this chapter 11 case; and it is further

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

ORDERED, that each OCP shall file a statement pursuant to Bankruptcy Rule 2014 (the "Rule 2014 Statement") in substantially the same form as the sample attached hereto as **Exhibit 2**. The Rule 2014 Statement shall be filed as promptly as reasonably practicable or

necessary after the entry of this Order or the filing of a Supplement (hereinafter defined). Notwithstanding anything to the contrary herein, the Debtors shall not make any payments to an OCP until such OCP has filed a Rule 2014 Statement and, as to any Additional OCP (hereinafter defined), the Objection Deadline (hereinafter defined) has expired and no objections have been filed or the Court enters an order authorizing the Debtor to retain a party as an Additional OCP; and it is further

ORDERED, that the Debtor may seek to retain an OCP not presently listed in **Exhibit A** (an “Additional Ordinary Course Professional” or an “Additional OCP” and, collectively, the “Additional OCPs”) by filing with the Court a supplement to **Exhibit 1** (the “Supplement”), listing the name and address of the Additional OCP, along with a brief description of the services to be rendered. Each Notice Party shall have ten (10) days after the filing by an Additional OCP of a Rule 2014 Statement (the “Objection Deadline”) to object to the retention of such Additional OCP. Any Notice Party objecting the Debtor’s proposed employment and retention of any Additional OCP shall file with the Court and serve any such objection upon the Debtor, the Additional OCP, and the other Notice Parties on or before the Objection Deadline. If no such objection is filed by the Objection Deadline, then the Debtor is authorized, without the need for further Order or hearing, to employ and retain such Additional OCP and the terms of this Order shall otherwise govern the retention and payment of the applicable Additional OCP. If any such objection cannot be resolved within ten (10) days after the objection is filed, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date or other date otherwise agreeable to the OCP, the Debtor and the Notice Party filing the objection. If the Court overrules or otherwise denies such

objection then the terms of this Order shall govern the retention and payment of the applicable Additional OCP; and it is further

ORDERED, that approximately every 90 days, the Debtor shall file with the Court and serve on the Notice Parties a report detailing the fees and expenses paid to date to OCPs which report shall include: the name of each OCP and the monthly or project and annual amount paid as compensation for services rendered, and as reimbursement or payment of expenses, costs and disbursements, incurred by each OCP during the 90 day period ending on the last day of the prior calendar month (the "Quarterly Statement"). The first Quarterly Statement shall be filed on or about April 15, 2010, and shall cover the period from the Petition Date to March 30, 2009. Each Quarterly Statement shall be served by first-class mail on the Notice Parties; and it is further

ORDERED, that nothing in the Motion or this Order, nor the Debtor's payment of OCP fees pursuant to this Order, shall be deemed or construed as: (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise to pay any claim; (iv) an implication or admission that any particular claim would constitute an OCP fee; or (v) a request to assume any executory contract or unexpired lease, pursuant to § 365 of the Bankruptcy Code; and it is further

ORDERED, that notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) pursuant to Bankruptcy Rule 6004(h) the terms of this Order shall be immediately effective and enforceable upon its entry, (ii) the Debtor is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and (iii) the Debtor may, in its discretion and without further delay, take any action and perform any act authorized under this Order; and it is further

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

ORDERED, that this Order is effective immediately upon entry.

Dated: January _____, 2010
Wilmington, Delaware

Honorable Christopher S. Sontchi
United States Bankruptcy Judge

EXHIBIT 1

OCP LIST

Supplier Name	Address	Service	Anticipated Payment Method	Basis for Retention
Abacus Benefits Consultants	Attn: Bob Chin 55 Stamp Farm Rd. Cranston, RI 02921 Tel: 401-942-4900	Benefits Consultants	Hourly fee	§ 327(a)
Coleman, Sudol, Sapone P.C.	Attn: Henry Coleman 714 Colorado Avenue Bridgeport, CT 06605 Tel: 203-366-3560	IP Counsel	Hourly fee	§ 327(e)
Cooper Grace Ward	Attn: Andrew Corkhill Central Plaza Two, Level 23 66 Eagle Street Brisbane 4000 Australia Tel: 617-3231-1285	Australian Counsel	Hourly fee	§ 327(e)
Law Office of Albert Wai-Kit Chan, LLC	Attn: Albert Wai-Kit Chan World Plaza, Suite 604 141-07 20th Avenue Whitestone, NY 11357 Tel: 718-357-8836	IP Counsel	Hourly fee	§ 327(e)
R.K. Hills	Cardiff University School of Medicine Heath Park Cardiff UK CF144XN Tel: 44 (0) 29 2074 4647	Statistical Consultant	Hourly fee	§ 327(a)
Simmons & Simmons	City Point One Ropemaker Street London, UK EC2Y955 Tel: 02076282020	EU lawyers	Hourly fee	§ 327(e)

Supplier Name	Address	Service	Anticipated Payment Method	Basis for Retention
UHY Advisors NE, LLC	Attn: Richard Gesseck Maritime Center 555 Long Wharf Drive, 12th floor New Haven, CT 06511 Tel: 203-401-2108	Audit Consultant	Hourly fee	§ 327(a)
Walker System Support	20 Waterside Drive Farmington, CT 06032 Tel: 860-678-3530	IT Consultant	Hourly fee	§ 327(a)
Wiggin and Dana, LLP	Attn: Patricia Melick P. O. Box 1832 New Haven, CT 06508-1832 Tel: 203-363-7615	IP Counsel/ Connecticut law issues, including labor and unemployment	Hourly fee	§ 327(e)
Tanya Lewis & Company, LLC	149 Lucas Drive Stoughton, MA 02072 Tel: 781-436-5295	Regulatory Consultant	Hourly fee	§ 327(a)

EXHIBIT 2

connection with providing professional services to the Debtor, it does not have any connection with the Debtor, the creditors, the United States Trustee, any person employed by the United States Trustee or any other party with an actual or potential interest in the Debtor's Chapter 11 case or the Debtor's respective attorneys or accountants.

5. Pursuant to the Order, the Company/Firm hereby confirms that it does not represent any interest adverse to the Debtor or the Debtor's estate in the matters upon which it is engaged.

6. The Company/Firm may have performed services in the past, may currently perform services, and may perform services in the future, in matters unrelated to conducting this chapter 11 case, for persons that are parties in interest in this chapter 11 case. As part of its customary practice, the Company/Firm is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be retained by the Debtor, claimants and parties in interest in this chapter 11 case. The Company/Firm does not perform services for any such person in connection with conducting this chapter 11 case or have any relationship with any such person, its attorneys or accountants that would be adverse to the Debtor or its estate.

7. Neither I nor any principal, partner, director or officer of, or professional retained by the Company/Firm has agreed to share or will share any portion of the compensation to be received from the Debtor, other than reimbursing disbursements or costs owed to third parties on account of services provided to the Debtor, with any other person other than the principal and regular employees of the Company/Firm.

8. Neither I nor any principal, partner, director or officer of, or professional retained by the Company/Firm, insofar as I have been able to ascertain, holds or represents any interest

adverse to the Debtor or its estate with respect to the matter(s) upon which this Company/Firm is to be retained.

9. The Debtor owes the Company/Firm \$_____ for prepetition services, the payment of which is subject to limitations contained in the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

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

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2010

By: _____
Name: _____