

**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.<sup>1</sup> :   
:   
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**DEBTOR AND DEBTOR-IN-POSSESSION'S  
MOTION FOR ENTRY OF AN ORDER (I) APPROVING  
CONTINUED USE OF CASH MANAGEMENT SYSTEM, (II)  
AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND  
EXISTING CHECKS, AND (III) GRANTING INTERIM RELIEF FROM THE  
REQUIREMENTS CONTAINED IN BANKRUPTCY CODE § 345(b)**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed undersigned counsel, hereby submits this motion (the “Motion”) for entry of an order (i) authorizing and approving the Debtor’s continued use of its existing cash management system and to provide protection to cash management banks, (ii) authorizing the Debtor to continue using pre-petition bank accounts and existing checks, and (iii) granting interim relief from the requirements contained in Bankruptcy Code § 345(b). 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”), filed concurrently herewith.<sup>2</sup> In further support of the Motion, the Debtor respectfully states as follows:

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<sup>1</sup> 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.

<sup>2</sup> 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), 345(b), and Rule 2015-2 of the Local Rules and Procedures of the United States Bankruptcy Court for the District of Delaware (the "Local 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 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 (i) authorizing the continued use of its existing cash management system and protection for cash management banks, (ii) authorizing the continued use of its existing bank accounts and existing forms, and (iii) granting interim relief from the requirements contained in Bankruptcy Code § 345(b). In connection therewith, the Debtor respectfully requests relief from certain of the operating guidelines established by the Office of the United States Trustee for the District of Delaware that

require the Debtor to close all pre-petition bank accounts, and open new accounts designated as debtor-in-possession accounts. The Debtor also requests that the Court grant relief from the requirements of Bankruptcy Code § 345(b) on an interim basis and permit the Debtor to maintain its deposits in its accounts in accordance with its existing deposit practices until such time as the Debtor obtains this Court's approval to deviate from the guidelines imposed under Bankruptcy Code § 345(b) on a final basis.

### **BASIS FOR RELIEF**

#### **A. Request for Authority to Continue Using Existing Cash Management System and to Provide Protection to Cash Management Banks**

8. The Debtor maintains a cash management and disbursement system in the ordinary course of its business operations (the "Cash Management System"). In order to lessen the disruption caused by the bankruptcy filings and maximize the value of its estate in this Chapter 11 proceeding, it is vital to the Debtor that it maintains its system of managing cash.

9. Prior to the commencement of this Chapter 11 case, in the ordinary course of its business, the Debtor maintained bank accounts including, an investment account, disbursements (checking) account, and a money market account. A list of the Debtor's bank accounts (the "Bank Accounts") is attached hereto as **Exhibit A**. The Debtor submits that to the best of its knowledge all of the Bank Accounts are maintained with financially stable banking institutions.

10. The Debtor utilizes the following processes to manage its cash:

- (i) The Debtor maintains an investment account with UBS Financial Services, Inc. ("UBS") which is currently invested in the following three money market funds – (a) Federated U.S. Treasury Cash Reserves, CUSIP 60934N682; (b) AIM STIT Liquid Assets Portfolio, CUSIP 825252729 and (c) UBS RMA Money Market Fund, CUSIP RMA. The investment account holds substantially all of

Debtor's available cash. Wire transfers are made weekly from this account to the Debtor's disbursements account at Citibank, N.A., ("Citibank") and also periodically to vendors for large payments, for interest payments [on the Debtor's 7.75% Convertible Senior Notes] or for payments where a federal reference number is needed. There are 3 account signatories – the Debtor's Chief Executive Officer, President and Chief Financial Officer, and Vice President of Finance. Each authorized signatory may individually approve outgoing wires up to and including \$500,000; wires over \$500,000 require the approval of two authorized signatories.

- (ii) The Debtor also maintains a disbursements account and a money market with Citibank. The disbursements account is used for, among other things, making payroll, satisfying various employee benefit programs, making various general corporate expenditures and for depositing miscellaneous receipts. On a weekly basis, the Debtor's Vice President of Finance determines the Debtor's cash needs with respect to those net obligations and authorizes funds to be transferred via interbank wire transfer from the Debtor's UBS investment account to the disbursements account accordingly. Funds are disbursed from the disbursements account via ACH for payroll/payroll tax fundings and certain tax payments, via wire transfer using Citibank's online banking system for benefit programs and payments to foreign vendors, and via check for all other vendor disbursements including employee travel reimbursements. Payroll direct deposits to employee bank accounts and payroll tax deposits are made by Checkpoint HR LLC, a payroll service provider, after receipt of ACH funding from the Debtor. The money market account is maintained at about a \$50,000 balance and is used infrequently to transfer immediately available funds to the disbursements account for immediate disbursements or overdrafts. There are 3 account signatories for the Citibank accounts – the Debtor's Chief Executive Officer, President and Chief Financial Officer, and Vice President of Finance. Each authorized signatory may individually approve

disbursements up to and including \$100,000. Disbursements over \$100,000 require the approval of two authorized signatories.

11. The Debtor maintains current and accurate accounting records of cash transactions and submits that maintenance of this Cash Management System will prevent undue disruption to the Debtor's business operations while protecting the Debtor's cash for the benefit of the estate.

12. The Cash Management System utilizes the Bank Accounts to effectively and efficiently collect, invest, transfer, and disburse funds as needed in the Debtor's general business operations. The Cash Management System provides significant benefits to the Debtor, including the ability to: (i) closely track, and thus control, all corporate funds; (ii) ensure cash availability; and (iii) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate account balance and presentment information. Indeed, a disruption in the Cash Management System could cause delays in the collection, investment and disbursement of funds, thus impeding the Debtor's ability to carry out its normal business operations.

13. The Cash Management System allows the Debtor to manage all of its cash flow needs and includes the necessary accounting controls to enable the Debtor, as well as its creditors and this Court, to trace funds through the system and ensure that all transactions are adequately documented and readily ascertainable. The Debtor will continue to maintain detailed records reflecting all transfers of funds.

14. Therefore, it is both essential and in the best interests of the Debtor's estate and creditors that the Cash Management System be maintained. Furthermore, the Debtor's Chapter 11 case will be facilitated by preserving the "business as usual" atmosphere and

avoiding the distractions that would inevitably be associated with a substantial disruption in the Cash Management System. Accordingly, the Debtor respectfully requests that the Court authorize the continued use of the Cash Management System.

15. This Court has the authority to grant the requested relief pursuant to its equitable powers under § 105(a) of the Bankruptcy Code. Section 105(a) provides, in relevant part, that “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). The relief requested herein is both necessary and appropriate to allow the Debtor to successfully prosecute this Chapter 11 case, to optimize its postpetition business performance, and to maximize the value of its estate.

16. Courts in this Circuit have recognized that allowing a debtor to maintain its existing cash management system is often appropriate. *See, e.g., In re Genesis Health Ventures, Inc.*, 402 F.3d 416 (3d Cir. 2005); *In re Kindred Healthcare, Inc.*, 2003 Bankr. LEXIS 1308 (Bankr. D. Del. Oct. 9, 2003). Bankruptcy courts routinely grant Chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as relatively “simple matters.” *See In re Baldwin United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987).

17. Allowing a debtor to utilize its pre-petition cash management systems is entirely consistent with applicable provisions of the Bankruptcy Code. Delaware bankruptcy courts have recognized that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d. Cir. 1993), *cert. denied*

*sub nom, Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994). The Third Circuit has agreed, emphasizing the “huge administrative burden” and economic inefficiency of requiring the debtors to maintain all accounts separately. *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (maintaining existing cash management system allows debtor “to administer more efficiently and effectively its financial operations and assets”).

18. The Debtor also requests that no bank participating in the Cash Management System (collectively, the “Cash Management Banks”) that honors a pre-petition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtor, (b) in a good faith belief that the Court has authorized such pre-petition check or item to be honored or (c) as a result of an innocent mistake made despite implementation of reasonable item-handling procedures, be deemed liable to the Debtor or to its estate on account of such pre-petition check or other item being honored post-petition. The Debtor believes that such flexibility accorded the Cash Management Banks is necessary in order to induce the Cash Management Banks to continue providing cash management services without additional credit exposure.

19. The Debtor requests that the Court authorize the payment of any costs or expenses associated with the maintenance of the Cash Management System. The Debtor further requests the authority to implement ordinary-course changes to its Cash Management System. The Debtor may conclude that changes in the Cash Management System are beneficial to its business operations and therefore seeks authority to make such changes without further order of the Court. In addition, the Debtor requests authority to open and close bank accounts as may be appropriate to avoid unnecessary fees and costs. With such authorization, the Debtor will

promptly notify any committee appointed in this case, the United States Trustee, and any other party entitled to notice of the Debtor's closing or opening of bank accounts.

**B. Request for Authority to Maintain Existing Bank Accounts and Continue to Use Existing Forms**

20. The United States Trustee for Region 3, who administers bankruptcy cases filed in the District of Delaware, has issued certain Chapter 11 operating guidelines pursuant to 28 U.S.C. § 586. These guidelines require that Chapter 11 debtors, among other things: (a) close all existing bank accounts upon filing of their petitions and open new "debtor-in-possession" accounts in certain financial institutions designated as authorized depositories by the U.S. Trustee; (b) establish one debtor-in-possession account for all estate monies required for the payment of taxes; and (c) maintain a separate debtor-in-possession account for cash collateral.

21. The Debtor seeks relief from the U.S. Trustee's requirement that its bank accounts be closed and that new post-petition bank accounts be opened. If enforced in this case, such requirements would cause enormous disruption in the Debtor's business and would impair the Debtor's Chapter 11 efforts. As described in detail above, the Debtor's bank accounts comprise part of an established Cash Management System that the Debtor needs to maintain in order to ensure smooth investment of its cash, collections and disbursements in the ordinary course of its business operations. Therefore, to avoid delays in paying debts incurred post-petition, and to ensure as smooth a transition into Chapter 11 as possible, the Debtor should be permitted to continue to maintain the existing bank accounts and, if necessary, to open new accounts and close existing accounts in the normal course of business operations. Otherwise, transferring the bank accounts will be disruptive, time-consuming and unnecessarily expensive.

22. Accordingly, the Debtor requests that this Court waive the strict enforcement of the requirement that the Debtor opens new bank accounts. The Debtor further

requests that the Bank Accounts be deemed debtor-in-possession accounts and that the Debtor be authorized to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as those employed during the pre-petition period.

23. In other cases, this Court has waived the strict enforcement of bank account closing requirements and replaced them with an alternative procedure that provides the same protection. *See, e.g., In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Jan. 23, 2008); *In re Delta Financial Corp.*, Case No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); *In re Prorythm, Inc.*, Case No. 07-11861 (KJC) (Bankr. D. Del. Dec. 13, 2007); and *In re Quaker Fabric Corp.*, Case No. 07-1146 (KG) (Bankr. D. Del. Aug. 20, 2007).

24. The Debtor represents that if the relief requested herein is granted, it will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtor prior to the Petition Date other than those authorized by this Court. To prevent the possible inadvertent payment of pre-petition claims, except those otherwise authorized by the Court, the Debtor will work closely with the Cash Management Banks to ensure appropriate procedures are in place to prevent checks issued pre-petition from being honored absent this Court's approval.

25. Rule 2015-2(a) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") provides that a debtor may, with Court approval, continue to use its existing check stock and business forms without imprinting "DIP" or "Debtor-in-Possession" thereon until such forms are depleted. In accordance with Local Rule 2015-2(a), the Debtor requests that it be authorized to continue to use all correspondence, business forms (including, but not limited to, letterhead, purchase orders, and invoices), and checks existing immediately before the Petition Date without reference to the

Debtor's status as a debtor-in-possession. Parties doing business with the Debtor undoubtedly will be aware of the Debtor's status as a debtor-in-possession due to the open nature of the bankruptcy process. If the Debtor was required to change its preprinted correspondence and business forms, it would be forced to choose generic forms rather than the current forms with which the Debtor's vendors are familiar. Such a change in operations would create a sense of disruption and potential confusion within the Debtor's organization and confusion for the Debtor's employees and vendors. The Debtor believes that it would be costly and disruptive to cease using all existing forms and to purchase and begin using new stationery and business forms.<sup>3</sup> The Debtor respectfully submits that doing so would be unnecessary and that appropriate care can be taken to assure the proper use of the existing forms. *See, e.g., In re Gold Standard Baking, Inc.*, 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (holding United States Trustee's requirement prohibiting issuance of checks without "debtor in possession" designation to be unenforceable); *In re Johnson*, 106 B.R. 623, 624 (Bankr. D. Neb. 1989) (debtors not always required to obtain new checks imprinted with "debtor-in-possession" legend).

26. In other cases, courts in this district have allowed debtors to use their prepetition checks without the "debtor-in-possession" label, at least until the debtors' existing supply of checks were depleted. *See, e.g., In re National Dry Cleaners Inc.*, Case No. 08-11382 (CSS) (Bankr. D. Del. July 8, 2007); *In re Delta Financial Corp.*, Case No. 07-11880 (CSS) (Bankr. D. Del. Dec. 19, 2007); *In re Prorythm, Inc.*, Case No. 07-11861 (KJC) (Bankr. D. Del. Dec. 13, 2007); *In re Quaker Fabric Corp.*, Case No. 07-1146 (KG) (Bankr. D. Del. Aug. 20, 2007); *In re HomeBanc Mortgage Corp.*, Case No. 07-11079 (KJC) (Bankr. D. Del. Aug. 14, 2007).

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<sup>3</sup> Following the depletion of the Debtor's business form stock, the Debtor will obtain new check stock reflecting its status as a debtor-in-possession.

27. The Debtor should therefore be authorized to use its existing checks. To require the Debtor to replace all of its existing checks would be unduly burdensome and costly, particularly when appropriate care can be taken to assure the proper usage of the existing checks.

**C. Interim Relief from Bankruptcy Code § 345(b) Requirements**

28. The Debtor requests that the Court grant relief from the requirements of Bankruptcy Code § 345(b) on an interim basis and permit the Debtor to maintain its deposits in the Bank Accounts in accordance with existing deposit practices until such time as it obtains this Court's approval to deviate from the guidelines imposed under Bankruptcy Code § 345(b) on a final basis. The Debtor's existing deposit practices are significantly less burdensome and more appropriately tailored to its business needs than the practices otherwise required under the Bankruptcy Code and by the U.S. Trustee Guidelines. Accordingly, the Debtor submits that strict compliance with Bankruptcy Code § 345 and the U.S. Trustee's Guidelines would be overly burdensome and restrict the Debtor's investment and banking options to the detriment of its estate and creditors.

29. Bankruptcy Code § 345 governs a debtor's deposits and investments during its bankruptcy case and authorizes deposits and investments of money of an estate in such manner as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). However, for deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," Bankruptcy Code § 345(b) requires the estate to obtain from the entity with which such money is deposited or invested, a bond in favor of the United States secured by the undertaking of an adequate corporate surety. In the alternative, the estate may require that the entity deposit government securities in accordance with 31 U.S.C § 9303.

30. Deposits and investments in strict compliance with the requirements of Bankruptcy Code § 345(b) would, in some cases, be inconsistent with the requirement of § 345(a) that they be deposited or invested in the manner that “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). It is for this reason that in 1994, Congress amended Bankruptcy Code § 345 to allow the requirements of subsection (b) to be waived or modified if a court so orders “for cause.” 11 U.S.C. § 345(b). As the legislative history indicates, Congress believed that strict application of § 345(b) could “needlessly handcuff larger, more sophisticated debtors.” 140 Cong. Rec. H 10,767 (October 4, 1994). Consistent with Bankruptcy Code § 345(b), Local Rule 2015-2(b) provides that “if a motion for such waiver is filed on the first day of a Chapter 11 case in which there are more than 200 creditors, the Court may grant an interim waiver until a hearing on [the debtor’s] motion can be held.”

31. At times, the individual balances in Debtor’s Bank Accounts may exceed the current limits of governmental insurance. Therefore, these accounts may be subject to the bonding or collateralization requirements of Bankruptcy Code § 345(b) and the U.S. Trustee’s Guidelines unless those requirements are modified.

32. In determining whether ‘cause’ exists for a waiver, the Court should consider the “totality of circumstances,” including the following factors:

- (1) The sophistication of the debtor’s business;
- (2) The size of the debtor’s business operations;
- (3) The amount of the investments involved;
- (4) The bank ratings (Moody’s and Standard and Poor) of the financial institutions where debtor-in-possession funds are held;
- (5) The complexity of the case;

- (6) The safeguards in place within the debtor's own business of insuring the safety of the funds;
- (7) The debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (8) The benefit to the debtor;
- (9) The harm, if any, to the estate; and
- (10) The reasonableness of the debtor's request for relief from Bankruptcy Code § 345(b) requirements in light of the overall circumstances of the case.

*In re Service Merchandise Company, Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

33. The Debtor believes it would be in the best interests of the estate's creditors to continue following the existing deposit practices, notwithstanding the requirements of Bankruptcy Code § 345(b) and the U.S. Trustee's Guidelines, the Debtor further submits that the Debtor's deposit practices are commercially reasonable and appropriate, consistent with the intent of Bankruptcy Code § 345.<sup>4</sup>

34. This Court has granted relief from the strict requirements of Bankruptcy Code § 345(b) and the U.S. Trustee's Guidelines in order to permit Chapter 11 debtors an interim waiver, like that sought by the Debtor herein. *See, e.g., In re Skybus Airlines, Inc.*, Case No. 08-10637 (CSS) (Bankr. D. Del. April 5, 2008); *In re Buffets Holdings, Inc., et al.*, Case No. 08-10141 (MFW) (Bankr. D. Del. Jan. 23, 2008); *In re Copeland's Enter. Inc.*, Case No. 06-10853 (MFW) (Bankr. D. Del. Aug. 16, 2006); and *In re Rotec Indus. Inc.*, Case No. 06-10542 (KG) (Bankr. D. Del. June 2, 2006). The Debtor submits that cause for a similar relief exists in this case.

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<sup>4</sup> To that end, the Debtor is seeking a final waiver of the requirements of Bankruptcy Code § 345 if no objections are received to such request within 30 days of the service of proposed form of order attached hereto as **Exhibit B**.

**NOTICE**

35. 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.

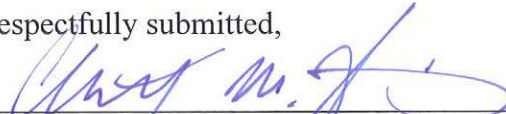
**NO PRIOR REQUEST**

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

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto as **Exhibit B** and grant such other and further relief as the Court may deem just and proper.

Dated: December 17, 2009  
Wilmington, Delaware

Respectfully submitted,



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*Proposed Counsel to the Debtor and Debtor-In-Possession*

# EXHIBIT A

### Bank Account Listing

<b>Bank</b>	<b>Type</b>	<b>Acct #</b>	<b>Address</b>	<b>Tel #</b>
UBS Financial Services Inc.	Investment	CP 34647 KL	One North Wacker Drive Suite 2500 Chicago, IL 60606	(312) 525-4500
Citibank, N.A.	Checking Account	47654853	1275 Post Road Fairfield, CT 06824	(203) 256-7715
Citibank, N.A.	Money Market Account	45357468	1275 Post Road Fairfield, CT 06824	(203) 256-7715

# **EXHIBIT B**

**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.<sup>1</sup> :  
: :  
-----X

**ORDER (I) APPROVING CONTINUED USE OF  
CASH MANAGEMENT SYSTEM, (II) AUTHORIZING  
USE OF PREPETITION BANK ACCOUNTS AND EXISTING  
CHECKS AND (III) GRANTING INTERIM RELIEF FROM THE  
REQUIREMENTS CONTAINED IN BANKRUPTCY CODE § 345(b)**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the debtor and debtor-in-possession (the “Debtor”) in the above-captioned case for the entry of an order (i) authorizing and approving the Debtor’s continued use of its existing Cash Management System and protections for the relevant cash management banks, (ii) authorizing and approving the Debtor to continue using pre-petition bank accounts and existing checks, and (iii) granting interim relief from the requirements contained in Bankruptcy Code § 345(b); and upon consideration of the Motion and all pleadings related thereto; and the Court finding that (a) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and (c) proper and adequate notice of the Motion and the hearing thereon has been given under the circumstances and that no other or further notice is necessary; and the Court finding that the relief requested in the Motion is in the best interests of

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

the Debtor, its estate and creditors; and after due deliberation and good and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion is granted; and it is further

ORDERED, that this Order shall be final in all respects except as to relief granted relating to 11 U.S.C. § 345(b), which shall be interim in nature, effective from the Petition Date through and including the date of any final hearing on the Motion (or any subsequently filed motion seeking relief from section 345(b)) (the “Interim Period”); and it is further

ORDERED, that the Debtor is authorized, in the reasonable exercise of its business judgment, to (i) designate, maintain, and continue to use, with the same account numbers, all of its bank accounts in existence on the Petition Date, including, without limitation, the bank accounts identified in Exhibit A of the Motion, (ii) use its present forms and other documents related to the Bank Accounts, (iii) treat such Bank Accounts for all purposes as accounts of the Debtor as debtor-in-possession account, and (iv) preserve the reporting and accounting mechanisms used by the Debtor in respect of the Bank Accounts; and it is further

ORDERED, that the Cash Management Banks are hereby authorized to continue to service and administer all such accounts as accounts of the Debtor as a debtor-in-possession without interruption and in the usual and ordinary course, and to receive, process, honor, and pay any and all checks and drafts drawn on, or electronic transfer requests made on, said account after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtor before the Petition Date may be honored by any bank only if specifically authorized by order of this Court and only to the extent of funds available in such Bank Account; and it is further

ORDERED, that, except for those checks that may be honored and paid to comply with any order(s) of this Court authorizing payment of certain pre-petition claims, no checks or drafts issued on the Bank Accounts before the Petition Date but presented for payment after the Petition Date shall be honored or paid; and it is further

ORDERED, that the operation of the Cash Management System in accordance with the Debtor's normal and customary practice is adequate and sufficient; and it is further

ORDERED, that, notwithstanding any other provision of this Order, no Cash Management Bank that honors a pre-petition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtor, (b) in good-faith belief that the Court has authorized such pre-petition check or item to be honored or (c) as the result of an innocent mistake made despite implementation of reasonable item-handling procedures, shall be deemed to be liable to the Debtor or otherwise in violation of this Order; and it is further

ORDERED, that nothing contained herein shall prevent the Debtor from opening any new bank accounts or closing any Bank Accounts as it may deem necessary and appropriate; provided, that the Debtor shall promptly notify the United States Trustee and any official committee prior to making any change to the Cash Management System, including the opening and closing of Bank Accounts; and it is further

ORDERED, that the Debtors are authorized to continue to use their existing checks without alteration and without the designation "Debtor-in-Possession" imprinted upon them, provided, however, that following the depletion of the Debtor's business form stock, the Debtor will obtain new check stock reflecting its status as a debtor-in-possession; and it is further

ORDERED, that the Debtor is authorized to make disbursements from the Bank Accounts other than by check, to the extent consistent with the Debtor's existing cash management practices; and it is further

ORDERED, that, effective as of the Petition Date, the Cash Management Banks shall be and hereby are authorized and directed to receive, process, honor, and pay any and all pre-petition and post-petition checks drawn on and electronic transfers authorized for payment by the Court, provided that funds are available in the applicable Bank Account; and it is further

ORDERED, that the Debtor shall maintain records in accordance with its normal and customary practices reflecting all transfers of funds under the terms and conditions provided by the existing agreements with the institutions participating in the Debtor's Cash Management System. In connection with the ongoing utilization of its Cash Management System, the Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be ascertained, traced, and recorded properly on the applicable accounts; and it is further

ORDERED, that, through the Interim Period, the Debtor is authorized to deposit the estate's money in accordance with the deposit practices set forth in the Motion or a commercially comparable practice, notwithstanding that such practice may not strictly comply in all instances with the requirements of Bankruptcy Code § 345 or the U.S. Trustee's Guidelines; provided, however, that the Debtor shall serve a copy of this Order upon (a) the United States Trustee; (b) the Debtor's thirty largest unsecured creditors as identified in the Chapter 11 petition; and (c) those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (collectively, "Notice Parties"), and if no objection is filed and served on Debtor's proposed counsel by the Notice Parties within thirty (30) days of said service,

the Debtor shall file a certification of counsel so stating and this provision of the Order shall become final without any further order and notice; and it is further

ORDERED, that, to the extent any objection is received by the Debtor, a final hearing with respect to relief requested in the Motion with respect to Bankruptcy Code § 345(b) shall take place before The Honorable \_\_\_\_\_ at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, \_\_\_<sup>th</sup> Floor, Courtroom \_\_\_, Wilmington, Delaware 19801, on \_\_\_\_\_, 2010, at \_:\_.m. (ET); and it is further

ORDERED, that, notwithstanding the relief granted herein and any actions taken hereunder, nothing contained herein shall constitute, nor is intended to constitute, an assumption of any executory contract under Bankruptcy Code § 365; and it is further

ORDERED, that this Order is effective immediately upon entry; and it is further

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

Dated: December \_\_, 2009  
Wilmington, Delaware

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE