

**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 INTERIM ORDER AND A FINAL ORDER (I) PROHIBITING UTILITY  
COMPANIES FROM DISCONTINUING, ALTERING OR REFUSING SERVICE ON  
ACCOUNT OF PRE-PETITION INVOICES, (II) DEEMING UTILITY COMPANIES  
TO HAVE ADEQUATE ASSURANCE OF FUTURE PAYMENT AND (III)  
ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL  
ASSURANCE PURSUANT TO BANKRUPTCY CODE §§ 105(a) AND 366**

The above-captioned debtor and debtor-in-possession (the “Debtor”), by and through its proposed undersigned counsel, hereby submit this motion (the “Motion”) for entry of (i) an interim order (the “Interim Order”) and (ii) a final order (the “Final Order”) pursuant to §§ 105(a) and 366 of the United States Bankruptcy Code (a) prohibiting all utility companies (the “Utility Companies”) from discontinuing, altering or refusing service to the Debtor on account of pre-petition invoices and (b) deeming the Utility Companies to have adequate assurance of future performance on the basis of payment of a Utility Deposit, as defined herein. In support of the Motion, the Debtor relies on the Declaration of Alan Kessman, the Debtor’s Chief Executive Officer, in Support of the Chapter 11 Petition and First Day Pleadings (the

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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.

“First Day Declaration”), filed concurrently herewith.<sup>2</sup> In further support of the Motion, the Debtor respectfully states as follows:

### **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. §§ 366 and 105(a).

### **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 businesses 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 First Day Declaration.

### **RELIEF REQUESTED**

7. By this Motion, the Debtor seeks entry of (i) an Interim Order, in the form of **Exhibit B** attached hereto, and (ii) a Final Order, in the form of **Exhibit C** attached hereto, pursuant to §§ 105(a) and 366 of the Bankruptcy Code, (a) prohibiting the Utility Companies

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed in the First Day Declaration.

from discontinuing, altering or refusing service to the Debtor except as set forth herein, (b) deeming the Utility Companies adequately assured of future performance on the basis of the establishment of a segregated account containing an amount equal to fifty percent (50%) of the Debtor's estimated monthly cost of utility service, and (c) establishing procedures for resolving requests for additional assurance of payment.

8. In the operation of its facilities, the Debtor incurs utility expenses in the ordinary course of business for, among other things, water, sewer service, electricity and gas. Prior to the Petition Date, on an annual basis, the Debtor spent approximately \$104,800 for various utility services, with an average monthly cost of approximately \$8,735. A non-exhaustive list of the Utility Companies and the estimated amount of the Utility Deposit (as defined herein) for each is attached hereto as Exhibit A.<sup>3</sup>

9. Uninterrupted utility services are essential to the Debtor's ongoing operations and, therefore, to the success of the Debtor's Chapter 11 efforts. Indeed, any disruption to the Debtor's offices by virtue of the cessation of utility services by the Utility Companies could bring the Debtor's operations to a halt. Should one or more of the Utility Companies refuse or discontinue service even for a brief period, the Debtor's operations would be severely disrupted. Such an interruption would adversely affect the Debtor's Chapter 11 efforts, to the detriment of its estate, creditors, and employees. It is therefore critical that utility services provided to the Debtor continue uninterrupted.

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<sup>3</sup> While the Debtor has exercised its best efforts to list all of the Utility Companies in Exhibit A, it is possible that certain Utility Companies may have been inadvertently omitted from this list. Accordingly, the Debtor reserves the right, pursuant to the terms and conditions of this Motion and without further order of the Court, to amend Exhibit A to add any Utility Companies that were omitted therefrom and to request that the relief requested herein apply to all such entities as well. In addition, the Debtor reserves the right to argue that any of the entities now or hereafter listed in Exhibit A are not "utilities" within the meaning of § 366(a) of the Bankruptcy Code.

## ADEQUATE ASSURANCE OF PAYMENT

10. Section 366(a) of the Bankruptcy Code prohibits utilities from altering, refusing, or discontinuing service to a debtor for the first thirty (30) days of a bankruptcy case (the “Utilities Stay Period”). Upon expiration of the Utilities Stay Period, however, § 366(b) of the Bankruptcy Code provides that a utility company may (but need not) terminate services if a debtor has not provided such utility with adequate assurance of payment.<sup>4</sup>

11. To provide adequate assurance of payment for future services to the Utility Companies, the Debtor proposes to deposit a sum equal to fifty percent (50%) of the Debtor’s estimated monthly cost of utility service into an interest-bearing, newly created segregated account on or before twenty (20) days after the Petition Date (the “Utility Deposit”).

12. Additionally, the Debtor seeks to establish reasonable procedures by which Utility Companies may request additional adequate assurance of future payment, in the event that a Utility Company believes that the Utility Deposit does not provide satisfactory adequate assurances. The Debtor submits that reasonable procedures would provide that:

- (i) Absent any further order of this Court and except as otherwise provided herein, the Utility Companies may not alter, refuse or discontinue service to, or discriminate against, the Debtor on account of the commencement of this Chapter 11 case or any unpaid pre-petition charges, or request payment of an additional deposit or receipt of other security in connection with any unpaid pre-petition charges.
- (ii) The Debtor will serve the Motion and the Interim Order, if granted by the Court, via first-class mail, within five (5) business days after the date that the Interim Order is entered by the Court, on each of the Utility Companies identified on **Exhibit A**

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<sup>4</sup> Section 366(c)(1)(A) provides that the term “adequate assurance of payment” means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

attached hereto. In the event that any Utility Company was omitted from **Exhibit A**, the Debtor shall have the right to supplement **Exhibit A** and shall promptly provide notice of the Order upon learning of such Utility Company.

- (iii) Any Utility Company may request additional assurance of payment (an "Additional Payment Request") within thirty (30) days after the Petition Date (the "Additional Payment Request Deadline") by submitting the request to counsel to the Debtor, Richards, Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attention: John Knight, Esq. and Christopher Samis, Esq.
- (iv) Any Additional Payment Request must (i) be in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtor's payment history relevant to the affected account(s), including any security deposits or other prepayments or assurances previously provided by the Debtor, (iv) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment, and (v) include a proposal for what would constitute adequate assurance from the Debtor, along with an explanation of why such proposal is reasonable.
- (v) If a Utility Company makes a timely Additional Payment Request that the Debtor believes is reasonable, the Debtor shall be authorized in its sole discretion to comply with or negotiate an agreeable settlement regarding such request without further order of the Court.
- (vi) If the Debtor believes that an Additional Payment Request is unreasonable, then the Debtor shall file a motion pursuant to Bankruptcy Code Section 366(c)(2) of the Bankruptcy Code (a "Determination Motion"), seeking a determination from the Court that the Utility Deposit, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment.

- (vii) Pending resolution of a Utility Company's Additional Payment Request at a Determination Motion hearing, such Utility Company shall be prohibited from altering, refusing or discontinuing service to the Debtor.
- (viii) If a Utility Company fails to send an Additional Payment Request by the Additional Payment Request Deadline, the Debtor reserves the right to assert that such Utility Company has waived its right to make an Additional Payment Request and should be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code § 366(c)(1)(A)(vi) by virtue of the Utility Deposit (Utility Companies that do not send Additional Payment Requests to the Debtor's counsel as set forth above by the Additional Payment Request Deadline shall be collectively referred to herein as the "Consenting Utility Companies").
- (ix) A Utility Company shall be deemed to have adequate assurance of payment unless and until a future order of this Court is entered requiring further adequate assurance of payment.

13. The Debtor requests a final hearing on this Motion to be held within twenty-five (25) days of the Petition Date to ensure that, if a Utility Company argues it can unilaterally refuse service to the Debtor on the 31st day after the Petition Date, the Debtor will have the opportunity, to the extent necessary, to request that the Court make such modifications to the procedures described above (the "Procedures") in time to avoid any potential termination of utility service.

#### **BASIS FOR RELIEF**

14. This Court has the authority to grant the relief requested herein pursuant to §§ 105(a) and 366(a) of the Bankruptcy Code. Section 366 of the Bankruptcy Code is designed to protect debtors from utility service cutoffs, while also providing utility companies with adequate assurance that debtors will be able to pay for post-petition services. *See* H.R. Rep. No.

95-595, at 350 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Pursuant to this section, a utility may not, during the first thirty (30) days of the case, alter, refuse, or discontinue services to a debtor in a Chapter 11 case solely because of unpaid pre-petition amounts. However, the utility may do so thereafter unless the debtor furnishes “adequate assurance” of payment (which the Debtor seeks to do through this Motion), in the form of a deposit or otherwise, for postpetition services in a form “satisfactory” to the utility within twenty (20) days of the Petition Date.

15. In addition, § 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of § 105(a) is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction,” 2 Collier on Bankruptcy ¶ 105.01, at 105-06 (15th ed. rev. 2004).

16. The Debtor submits that the Court should use its § 105(a) powers in this Chapter 11 case because the relief requested herein is necessary to continue the Debtor’s normal business operations and to preserve the Debtor’s ability to effectuate an orderly restructuring of its business. Additionally, the relief requested herein is necessary because the Debtor could face a severe cash drain if the Utility Companies condition the provision of post-petition services to the Debtor upon the payment of burdensome and/or unreasonable deposits or other forms of adequate assurance.

17. Section § 366(c)(1)(A) of the Bankruptcy Code, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, provides that “adequate assurance of payment” means (i) a cash deposit; (ii) a letter of credit; (iii) a certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another form of security that

is mutually agreed on between the utility and the debtor or the trustee. Accordingly, while the statute now specifies the form of assurance that will be deemed to be adequate, it leaves the question of the amount of assurance that must be provided squarely within this Court's discretion.

18. Leaving the determination as to the amount of assurance that a debtor will need to provide in the discretion of the Court conforms with the 2005 pre-amendment case law, under which courts generally looked to the facts and circumstances of each case to ensure that utility companies were not subjected to an unreasonable risk of nonpayment for post-petition services. *See, e.g., In re Keydata Corp.*, 12 B.R. 156, 158 (1st Cir. BAP 1981). Courts construing § 366(b) of the Bankruptcy Code have long recognized that adequate assurance of payment does not constitute an absolute guaranty of the debtor's ability to pay. *See, e.g., In re Caldor, Inc. NY*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("§ 366(b) requires [a] [bankruptcy [c]ourt to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guaranty of payment.'" (citation omitted); *In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) (stating that § 366(b) "contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor's financial circumstances . . .").

19. Further, courts have recognized that, in determining what constitutes "adequate" assurance, a bankruptcy court must "focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources." *Virginia Elec. & Power Co. v. Caldor, Inc. NY*, 117 F.3d 646, 650 (2d. Cir. 1997) (quoting *Penn Jersey*, 72 B.R. at 985).

20. The Debtor submits that the procedures set forth herein provide an orderly process for providing adequate assurance of payment to the Utility Companies, without risking irreparable harm to its estate. Because the fundamental nature of § 366 has not been changed by the 2005 amendments — that the Court has discretion to modify any request for assurance of payment and that the assurance of payment need only be adequate in light of the facts and circumstances of a given case — the determination procedures are similar to those approved by courts prior to the 2005 amendments to the Bankruptcy Code. However, as set forth above, and in accordance with § 366(c)(1)(A) of the Bankruptcy Code, the Debtor will provide additional assurance of payment, if deemed necessary by the Court, if a Utility Company makes an Additional Payment Request.

21. As set forth above, if the Utility Companies are permitted to terminate utility services on the thirty-first (31st) day after the Petition Date, a substantial disruption to the Debtor's operations will occur, and the Debtor's business will be irreparably harmed. Without the procedures set forth herein, the Debtor could be forced to address numerous requests by Utility Companies in a haphazard manner at a critical period, while the Debtor is in the initial stages of this Chapter 11 case. The Debtor could be forced to capitulate to almost any demands made by the Utility Companies, or face the discontinuation of utility service and a potential shutdown of its business. The orderly process contemplated by the procedures set forth herein will avert such a potentially disastrous outcome, enabling the Debtor to make a smooth transition into Chapter 11, while ensuring a fair process for providing adequate assurance to the Utility Companies to the extent required.

22. The Debtor's proposed method of furnishing adequate assurance of payment for post-petition utility service is not prejudicial to the rights of any Utility Company,

and is in the best interest of its estate. This Court has granted similar relief to that requested herein following the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *See, e.g., In re National Dry Cleaners Inc.*, Case No, 08-11382 (Bankr. D. Del. July 1, 2008) (CSS) (deeming utilities adequately assured where the debtors established segregated account containing an amount equal to fifty percent (50%) of the debtors' estimated monthly cost of utility service); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (Bankr. D. Del. Feb. 27, 2008) (PJW) (same); *In re American Home Mortgage Holdings, Inc.*, No. 07-11047 (Bankr. D. Del. Sept. 4, 2007) (CSS) (same); *In re Global Home Products LLC*, No. 06-10340 (Bankr. D. Del. May 4, 2006) (KG) (same); *In re New Century TRS Holdings, Inc.*, No. 07-10416 (Bankr. D. Del. Apr. 24, 2007) (KJC) (deeming utilities adequately assured where debtor provided two weeks' deposit for utilities); *In re Pliant*, No. 06-10001 (Bankr. D. Del. Jan. 5, 2006) (PJW); *In re Nobex Corp.*, No. 05-20050 (Bankr. D. Del. Dec. 21, 2005) (PJW); *In re FLYi, Inc.*, No 05-20011 (Bankr. D. Del. Dec. 2, 2005) (PJW).

23. Accordingly, based on the foregoing facts and authorities, the Debtor believes that granting the relief requested herein will not prejudice the rights of the Utility Companies under § 366 of the Bankruptcy Code.

24. Moreover, the Debtor submits that, consistent with Bankruptcy Rule 6003(b), immediate entry of an order granting the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate. As provided above, uninterrupted utility services are essential to the Debtor's ongoing operations and, therefore, to the success of the Debtor's Chapter 11 efforts. Should one or more of the Utility Companies refuse or discontinue service even for a brief period, the Debtor's operations would be severely disrupted. Such an interruption would adversely affect the Debtor's Chapter 11 efforts, to the detriment of

its estate, creditors, and employees. It is thus critical that utility services provided to the Debtor continue uninterrupted; therefore, Bankruptcy Rule 6003 has been satisfied.

**NOTICE**

25. 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.

**NO PRIOR REQUEST**

26. 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 Interim Order, in substantially the form attached hereto as **Exhibit B**, and a Final Order, in substantially the form attached hereto as **Exhibit C**, (i) prohibiting the Utility Companies from discontinuing, altering or refusing service to the Debtor except as set forth herein, (ii) deeming the Utility Companies adequately assured of future performance on the basis of the establishment of a Utility Deposit, (iii) establishing procedures for resolving requests for additional assurance of payment, and (iv) granting such other and further relief as the Court deems just and proper.

Dated: December 17, 2009  
Wilmington, Delaware

Respectfully submitted,



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Christopher M. Samis (No. 4909)  
**RICHARDS LAYTON & FINGER, P.A.**  
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-and-

Paul Jacobs, Esq.  
Merrill M. Kraines, Esq.  
David L. Barrack, Esq.  
**FULBRIGHT & JAWORSKI L.L.P.**  
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New York, New York 10103  
Telephone: (212) 318-3000  
Facsimile: (212) 318-3400

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

# EXHIBIT A

**LIST OF UTILITIES**

<b>Name and Address of Utility</b>	<b>Account Number</b>	<b>Type of Service</b>	<b>Average Monthly Bill</b>	<b>Projected Estimated Monthly Bill</b>
The United Illuminating Company P. O. Box 1850 New Haven, CT 06508-1850	900000027000	Electric	\$2,849	\$2,849
Avaya, Inc. P. O. Box 5125 Carol Stream, IL 60197-5125	0101988418	Telephone Maint.	\$172	\$172
Avaya Financial Services P. O. Box 9300 Chicago, IL 60673-0001	X273670	Telephone Equip.	\$ 88	\$88
A T & T P. O. Box 8110 Aurora, IL 60507-8110	203 498-4212 334	Telephone Voice T-1	\$1,477	\$1,477
A T & T P. O. Box 13148 Newark, NJ 07101-5648	831-000-0708 336	IP Services Data T-1	\$593	\$593
A T & T Mobility P. O. Box 6463 Carol Stream, IL 60197-6463	824412162	Cellular Phones	\$2,623	\$2,623
Comcast PO Box 1577 Newark, NJ 07101-1577	8773 40 413 1531503	Internet Services Provider	\$89.00	\$89
MegaPath Inc PO Box 31785 Hartford, CT 06150-1785	2029	Internet Services Provider	\$322.90	\$322.90
Walker Solutions, Inc 2555 Whitney Ave. Farmington, CT 06032	N/A	Email Hosting Provider	\$519.40	\$519.40

# **EXHIBIT B**

**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> : :  
: :  
-----X

**INTERIM ORDER (I) PROHIBITING UTILITY COMPANIES FROM  
DISCONTINUING, ALTERING OR REFUSING SERVICE ON ACCOUNT  
OF PRE-PETITION INVOICES, (II) DEEMING UTILITY COMPANIES TO  
HAVE ADEQUATE ASSURANCE OF FUTURE PAYMENT AND (III)  
ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL  
ASSURANCE PURSUANT TO BANKRUPTCY CODE §§ 105(a) AND 366**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtor in the above-captioned case, for entry of an Interim Order and a Final Order pursuant to §§ 105(a) and 366 of the Bankruptcy Code (a) prohibiting all utility companies (the “Utility Companies”) from discontinuing, altering or refusing service to the Debtor on account of pre-petition invoices, (b) deeming the Utility Companies to have adequate assurance of future performance on the basis of payment of a Utility Deposit, and (c) establishing procedures for resolving requests for additional assurance of payment, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due notice of the Motion having been provided; and it appearing that no other or further notice of the Motion need be provided; and the Court having determined that the

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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.

relief sought in the Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and upon the Motion, the Declaration of Alan Kessman, the Debtor's Chief Executive Officer, in Support of Chapter 11 Petitions and First-Day Pleadings, and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED, that until such time as the Final Order is entered by the Court, the Procedures, as fully set forth in the Motion and as applicable to the interim nature of this Order, are approved; and it is further

ORDERED, that within twenty (20) days of the Petition Date, the Debtor shall deposit a sum equal to fifty percent (50%) of the Debtor's estimated monthly cost of utility service (the "Utility Deposit") into an interest-bearing, newly created segregated account (the "Utility Deposit Account"), with such Utility Deposit to be held in escrow, for the purpose of providing each Utility Company adequate assurance of payment of its postpetition utility services to the Debtor; and it is further

ORDERED, that until such time as the Final Order is entered by the Court, all Utility Companies are prohibited from discontinuing, altering or refusing service to the Debtor on account of any unpaid pre-petition charges, or discriminating against the Debtor, or requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtor's bankruptcy filings or any outstanding pre-petition invoices; and it is further

ORDERED, that the relief requested in the Motion and granted hereby is necessary to avoid immediate and irreparable harm to the Debtor and its estate and thus the requirements of Federal Bankruptcy Rule 6003(b) have been satisfied; and it is further

ORDERED, that the Motion and this Interim Order shall be served on each Utility Company the Debtor believes could be affected by the Motion and all other parties required to receive service under Del. Bankr. L.R. 2002-1 (b); and it is further

ORDERED, that the deadline by which objections to the final relief requested by the Motion must be filed is \_\_\_\_\_, 2010 at \_:00 .m. (ET). A final hearing, if required, on the Motion will be held on \_\_\_\_\_, 2010 at \_:00 .m. (ET). If no objections are filed to the Motion, the Court may enter the Final Order without further notice or hearing; and it is further

ORDERED, that this Court shall be effective immediately upon entry; and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters related to the interpretation and implementation of this Order.

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

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT C

**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> : :  
: :  
-----X

**FINAL ORDER (I) PROHIBITING UTILITY  
COMPANIES FROM DISCONTINUING, ALTERING OR  
REFUSING SERVICE ON ACCOUNT OF PRE-PETITION  
INVOICES, (II) DEEMING UTILITY COMPANIES TO HAVE  
ADEQUATE ASSURANCE OF FUTURE PAYMENT AND (III) ESTABLISHING  
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE  
PURSUANT TO BANKRUPTCY CODE §§ 105(a) AND 366**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtor in the above-captioned case, for entry of an Interim Order and a Final Order pursuant to §§ 105(a) and 366 of the Bankruptcy Code (a) prohibiting all utility companies (the “Utility Companies”) from discontinuing, altering or refusing service to the Debtor on account of pre-petition invoices, (b) deeming the Utility Companies to have adequate assurance of future performance on the basis of payment of a Utility Deposit, and (c) establishing procedures for resolving requests for additional assurance of payment, all as described more fully in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C §§ 157 and 1334; and due notice of the Motion having been provided; and it appearing that no

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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.

other or further notice of the Motion need be provided; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon the Motion and the Declaration of Alan Kessman, the Debtor's Chief Executive Officer, in Support of Chapter 11 Petition and First-Day Pleadings, and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion is granted on a final basis; and it is further

ORDERED, that the Debtor is authorized, but not directed, to pay on a timely basis and in accordance with its prepetition practices all undisputed invoices for postpetition utility services provided by the Utility Companies to the Debtor; and it is further

ORDERED, that to the extent not already deposited, the Debtor shall deposit a sum equal to fifty percent (50%) of the Debtor's estimated monthly cost of utility service (the "Utility Deposit") into an interest-bearing, newly created segregated account (the "Utility Deposit Account"), with such Utility Deposit to be held in escrow, for the purpose of providing each Utility Company adequate assurance of payment of its post-petition utility services to the Debtor; and it is further

ORDERED, that the Utility Deposit Account shall be maintained with a minimum balance equal to fifty percent (50%) of the Debtor's estimated monthly cost of utility service, which may be adjusted by the Debtor to account for the termination of utility services by the Debtor, regardless of any Additional Payment Requests, as defined below, and/or agreements with Utility Companies; and it is further

ORDERED, that except in accordance with the procedures set forth herein and absent further order of the Court, the Utility Companies are prohibited from altering, refusing, or

discontinuing Utility Services on the basis of the commencement of the Debtor's Chapter 11 case or on account of any unpaid invoice for Utility Services provided before the Petition Date, and requiring the Debtor to furnish any additional deposit or other security to the Utility Companies for the continued provision of utility services; and it is further

ORDERED, that the procedures for determining requests for additional assurance of payment as described in the Motion are approved as follows:

- (i) Absent any further order of this Court and except as otherwise provided herein, the Utility Companies may not alter, refuse or discontinue service to, or discriminate against, the Debtor on account of the commencement of this Chapter 11 case or any unpaid pre-petition charges, or request payment of an additional deposit or receipt of other security in connection with any unpaid pre-petition charges.
- (ii) The Debtor will serve the Motion and the Interim Order, if granted by the Court, via first-class mail, within five (5) business days after the date that the Interim Order is entered by the Court, on each of the Utility Companies identified on Exhibit A attached hereto. In the event that any Utility Company was omitted from Exhibit A, the Debtor shall have the right to supplement Exhibit A and shall promptly provide notice of the Order upon learning of such Utility Company.
- (iii) Any Utility Company may request additional assurance of payment (an "Additional Payment Request") within thirty (30) days after the Petition Date (the "Additional Payment Request Deadline") by submitting the request to counsel to the Debtor, Richards, Layton & Finger, One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attention: John Knight, Esq. and Christopher Samis, Esq.
- (iv) Any Additional Payment Request must (i) be in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtor's payment history relevant to the affected account(s), including any security deposits or other

prepayments or assurances previously provided by the Debtor, (iv) describe in sufficient detail the reason(s) why the treatment afforded pursuant to the procedures set forth herein does not constitute satisfactory adequate assurance of payment, and (v) include a proposal for what would constitute adequate assurance from the Debtor, along with an explanation of why such proposal is reasonable.

- (v) If a Utility Company makes a timely Additional Payment Request that the Debtor believes is reasonable, the Debtor shall be authorized in its sole discretion to comply with or negotiate an agreeable settlement regarding such request without further order of the Court.
- (vi) If the Debtor believes that an Additional Payment Request is unreasonable, then the Debtor shall file a motion pursuant to Bankruptcy Code Section 366(c)(2) (a "Determination Motion"), seeking a determination from the Court that the Utility Deposit, plus any additional consideration offered by the Debtor, constitutes adequate assurance of payment.
- (vii) Pending resolution of a Utility Company's Additional Payment Request at a Determination Motion hearing, such Utility Company shall be prohibited from altering, refusing or discontinuing service to the Debtor.
- (viii) If a Utility Company fails to send an Additional Payment Request by the Additional Payment Request Deadline,<sup>3</sup> the Debtor reserves the right to assert that such Utility Company has waived its right to make an Additional Payment Request and should be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code § 366(c)(1)(A)(vi) by virtue of the Utility Deposit (Utility Companies that do not send Additional Payment Requests to the Debtor's counsel as set forth above by the Additional

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<sup>3</sup> For any Utility Company not named in the Motion, but later named by supplement, the Additional Payment Request Deadline shall be thirty (30) days from the date upon which the Debtor provides notice of the Motion to such Utility Company.

Payment Request Deadline shall be collectively referred to herein as the “Consenting Utility Companies”).

- (ix) A Utility Company shall be deemed to have adequate assurance of payment unless and until a future order of this Court is entered requiring further adequate assurance of payment.

ORDERED, that nothing set forth herein is intended to, nor shall it, modify or alter the burdens of proof in connection with a hearing on a Determination Motion; and it is further

ORDERED, that pending notice and a hearing on a Determination Motion, the Utility Company that is the subject of the unresolved Additional Payment Request may not alter, refuse, or discontinue services to the Debtor; and it is further

ORDERED, that the Utility Deposit shall be deemed adequate assurance of payment unless and until a future order of the Court is entered requiring further assurance of payment; and it is further

ORDERED, that the Debtor is authorized, in its sole discretion, to amend the list of Utility Companies attached as Exhibit A to the Motion to add or delete any Utility Company; and it is further

ORDERED, that nothing in the Motion, Exhibit A thereto or this Order constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code; and it is further

ORDERED, that notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein shall be deemed: (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor’s right to dispute any claim on any grounds; (iii) a promise or requirement to pay any claim; (iv) an implication or admission that any particular

claim is of a type specified or defined hereunder; (v) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; or (vi) a waiver of the Debtor's rights under the Bankruptcy Code or any other applicable law; and it is further

ORDERED, that notwithstanding the relief granted herein and any actions taken pursuant hereto, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of, any claim held by any person; and it is further

ORDERED, that this Court shall be effective immediately upon entry; and it is further

ORDERED, that this Court shall retain jurisdiction over any and all matters related to the interpretation and implementation of this Order.

Dated: January \_\_, 2010  
Wilmington, Delaware

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THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE