

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

	X	
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<i>In re:</i>	:	Chapter 11
	:	
VION PHARMACEUTICALS, INC.,	:	Case No. 09-14429 (CSS)
	:	
Debtor. ¹	:	Re: Docket No. 43
	:	
	X	

**ORDER PURSUANT TO §§ 327(a), 328 AND 1107 OF
THE BANKRUPTCY CODE AND RULE 2014 OF THE BANKRUPTCY
RULES AUTHORIZING THE EMPLOYMENT OF ROTH CAPITAL PARTNERS, LLC
AS FINANCIAL ADVISOR TO THE DEBTOR *NUNC PRO TUNC*
TO THE PETITION DATE AND WAIVING CERTAIN REPORTING
REQUIREMENTS PURSUANT TO DELAWARE LOCAL RULE 2016-2**

Upon consideration of the Application² of Vion Pharmaceuticals, Inc. (the “Debtor”) for entry of an Order pursuant to §§ 327(a), 328 and 1107 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2014 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”) (i) authorizing the retention and employment of Roth Capital Partners, LLC (“Roth Capital”), effective as of the Petition Date, as financial advisor to the Debtor and (ii) waiving certain reporting requirements pursuant to Delaware Local Rule 2016-2 (as amended, the “Local Rules”) [Docket No. 43] (the “Application”); and upon consideration of the Declaration of John Chambers in support of the Application; and the Court being satisfied that Roth Capital represents no interest adverse to the Debtor in the matters with respect to which Roth Capital is to be employed and that Roth Capital is a “disinterested person”

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 shall have the meanings ascribed to them in the Motion unless otherwise defined herein.

as set forth in § 327(e) of the Bankruptcy Code; and notice of the Application being sufficient; and sufficient cause appearing therefor; it is hereby:

ORDERED that the Application is approved as provided herein; and it is further

ORDERED that, pursuant to § 327(a) and 328(a) of the Bankruptcy Code, the Debtor is authorized to employ and retain Roth Capital *nunc pro tunc* to the Petition Date to serve as the Debtor's financial advisor in the above-captioned case in accordance with the terms and conditions set forth in the Engagement Letter; and it is further

ORDERED that Roth Capital shall be compensated and reimbursed pursuant to section 328(a) of the Bankruptcy Code and the Debtor is authorized to pay and reimburse Roth Capital in accordance with the terms and conditions and at the times specified in the Engagement Letter; and it is further

ORDERED that Roth Capital shall file interim and final fee applications for approval of its compensation and expenses in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and such other procedures as may be fixed by order of this Court; and it is further

ORDERED that any fee applications submitted by Roth Capital shall be subject to review in accordance with section 330 of the Bankruptcy Code; and it is further

ORDERED that notwithstanding anything to the contrary in the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, orders of this Court or any guidelines regarding submission and approval of fee applications, in light of services to be provided by Roth Capital, and the structure of Roth Capital's compensation pursuant to the Engagement Letter, Roth Capital and its professionals shall be granted a limited waiver of the hourly-based billing and information requirements set forth in Local Rule 2016-2, and Roth Capital and its professionals

shall only be required to maintain time records for services rendered postpetition in half-hour increments; and it is further

ORDERED that Roth Capital shall not, however, be entitled to contribution or reimbursement pursuant to the Engagement Letter for services or expenses, unless such contribution or reimbursement are approved by the Court; and it is further

ORDERED that Roth Capital shall not be permitted to render or charge the Debtor for the Fairness Opinion described in paragraph 3, subsection iv of the Engagement Letter and paragraph 14 of the Application; and it is further

ORDERED that the indemnification obligations of the Debtor appended to the Engagement Letter, which is attached as Exhibit C to the Application, is approved, subject during the pendency of this chapter 11 case to the following:

- a. Roth Capital shall not be entitled to indemnification, contribution or reimbursement pursuant to the Agreement for services, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court;
- b. The Debtor shall have no obligation to indemnify Roth Capital, or provide contribution or reimbursement to Roth Capital, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Roth Capital's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtor alleges the breach of Roth Capital's contractual obligations unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to Roth Capital's gross negligence, willful misconduct, breach of fiduciary duty, or bad faith or self-dealing but determined by this Court, after notice and a hearing to be a claim or expense for which Roth Capital should not receive indemnity, contribution or reimbursement under the terms of the Agreement as modified by this Order;
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in this case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing this Chapter 11 case, Roth Capital believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution and/or reimbursement obligations under

the Agreement (as modified by this Order), including without limitation the advancement of defense costs, Roth Capital must file an application therefore in this Court, and the Debtor may not pay any such amounts to Roth Capital before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Roth Capital for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify Roth Capital. All parties in interest shall retain the right to object to any demand by Roth Capital for indemnification, contribution or reimbursement; and

- d. Any limitation of liability or limitation on any amounts to be contributed by the parties to the Agreement under the terms of the Agreement shall be eliminated.

ORDERED that to the extent that there may be any inconsistency between the terms of the Application, the Engagement Letter and this Order, the terms of this Order shall govern; and it is further

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

Dated: 1/20, 2010
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE