

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 : Re: Docket No. 7
:
: Hearing Date: January 20, 2010 at 3:00 p.m. (ET)
: Objection Deadline: January 12, 2010 at 4:00 p.m. (ET)
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**NOTICE OF (A) ENTRY OF “INTERIM ORDER PURSUANT TO §§ 105(a), 363(b),
507(a)(8), AND 541 OF THE BANKRUPTCY CODE AUTHORIZING
THE DEBTOR TO REMIT AND PAY CERTAIN TAXES AND FEES” AND (B)
SCHEDULING OF A FINAL HEARING THEREON**

PLEASE TAKE NOTICE that, on December 17, 2009, the above-captioned debtor and debtor in possession (the “Debtor”) filed the **Debtor’s Motion Pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code For an Order Authorizing the Debtor and Debtor-in-Possession to Remit and Pay Certain Taxes and Fees [Docket No. 7]** (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “Court”). A copy of the Motion is attached hereto as Exhibit A.

PLEASE TAKE FURTHER NOTICE that, following an initial hearing to consider interim approval of the Motion, on December 21, 2009, the Court entered the **Interim Order Pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code Authorizing the Debtor to Remit and Pay Certain Taxes and Fees [Docket No. 22]** (the

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.

“Initial Order”). Pursuant to the Initial Order, the Court granted certain interim relief requested in the Motion. A copy of the Initial Order is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that objections or responses to the final relief requested in the Motion, if any, must be made in writing, filed with the Court, and served so as to be received by the undersigned proposed counsel to the Debtor on or before **January 12, 2010 at 4:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE that a further hearing with respect to the final relief requested by the Motion will be held before The Honorable Christopher S. Sontchi at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom 6, Wilmington, Delaware 19801 on **January 20, 2010 at 3:00 p.m. (Eastern Standard Time)**.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED, AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE FINAL RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: December 22, 2009
Wilmington, Delaware

Respectfully submitted,



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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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**DEBTOR’S MOTION PURSUANT TO §§ 105(a), 363(b), 507(a)(8), AND
541 OF THE BANKRUPTCY CODE FOR AN ORDER AUTHORIZING THE DEBTOR
AND DEBTOR-IN-POSSESSION TO REMIT AND PAY CERTAIN TAXES AND FEES**

Vion Pharmaceuticals, Inc. (the “Debtor”) hereby moves this Court (the “Motion”) for the entry of an interim order substantially in the form attached hereto as Exhibit A, and upon proper notice, a final order substantially in the form attached hereto as Exhibit B, pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (i) authorizing, but not directing, the Debtor to remit and pay certain sales, use, income/franchise, real and personal property, business and occupation taxes, and other similar taxes as the Debtor deems necessary, as well as fees for licenses, and other similar charges and assessments; (ii) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing; and (iii) granting such other and further relief as the Court deems just and proper. In support of the Motion, the Debtor relies on the Declaration of Alan Kessman, the

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.

Debtor's Chief Executive Officer, in Support of Chapter 11 Petition and First Day Pleadings (the "First Day Declaration").² In further support of the 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.

2. The statutory bases for the relief requested herein are §§ 105(a), 363(b), 507(a)(8), and 541 of the Bankruptcy Code and Rule 6003 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 this Chapter 11 case are set forth in the First Day Declaration.

RELIEF REQUESTED

7. By this Motion, the Debtor seeks entry of an interim order substantially in the form attached hereto as Exhibit A, and upon proper notice, a final order substantially in the form attached hereto as Exhibit B, pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of the

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

Bankruptcy Code and Rule 6003(b) of the Bankruptcy Rules, (i) authorizing, but not directing, the Debtor to remit and pay certain sales, use, income/franchise, real and personal property, business and occupation taxes, and other similar taxes as the Debtor deems necessary, as well as fees for licenses, and other similar charges and assessments; (ii) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing; and (iii) granting such other and further relief as the Court deems just and proper.

FACTS RELEVANT TO THIS MOTION

8. In the ordinary course of the Debtor's business, the Debtor (a) incurs taxes, including, but not limited to sales, use, income/franchise, real and personal property, business and occupation and other similar taxes in conducting its business (collectively, the "Taxes") payable to various taxing, licensing, and regulatory authorities (collectively, the "Authorities") and pays fees to such Authorities for licenses required to conduct the Debtor's business ("Fees"). The Taxes and Fees are paid to the respective Authorities in accordance with applicable state and federal laws and regulations.

9. Each of the Taxes and Fees incurred by the Debtor fall under one of the following categories: (a) sales and use taxes; (b) income/franchise taxes; (c) real and personal property taxes; and (d) business and occupation taxes and business license fees, and other fees.

A. Use Taxes

10. The Debtor may be responsible for remitting use taxes on account of the purchase of various supplies and office equipment. Use taxes typically arise if a supplier does not have business operations in the state in which it is supplying goods and does not charge state taxes.

11. While the amount the Debtor pays in use taxes fluctuates, the average monthly amount paid between January and the Petition Date was approximately \$500. The Debtor

typically pays these obligations as they arise in the ordinary course. As of the Petition Date, the Debtor estimates that it owes approximately \$400 with respect to use taxes incurred prior to the Petition Date, which, absent the commencement of this Chapter 11 case, would be paid to the Connecticut taxing authority in January 2010.

B. Franchise Taxes

12. The Debtor pays franchise taxes to the Authorities in the State of Delaware. Payment of the franchise taxes allows the Debtor to continue its corporate existence. Estimated taxes are paid quarterly; with the actual amount due calculated in February of each year and remitted together with the Debtor's annual franchise tax return. Thus far during 2009, the Debtor has paid \$44,500 of franchise taxes, including the last payment due on December 1, 2009. The next and final payment for 2009 is due February 28, 2010. The Debtor estimates the amount of this final payment will be approximately \$10,000. The final payment will cover the pre-petition period between December 2, 2009 and the Petition Date and the period between the Petition Date and December 31, 2009, as well as any required adjustment on the pre-petition estimated amounts paid.

C. Income Taxes

13. The Debtor on occasion pays income taxes to the Authorities in the State of Connecticut as well as the United States federal and foreign taxing Authorities. Due to its losses, lack of revenue and negative shareholders equity, the Debtor does not believe it owes any income taxes as of the Petition Date. Rather it may be entitled to a refund of a 2008 overpayment applied to 2009 from the State of Connecticut which will be ascertained as part of the 2009 state income tax return filing in 2010. The Debtor also anticipates that it may be required to pay certain income, franchise or similar taxes in connection with winding down of its Australian subsidiary.

D. Real and Personal Property Taxes

14. Under the terms of its lease, the Debtor reimburses its landlord for its pro rata share of real property taxes due to the Authorities in New Haven, Connecticut on account of real property it leases in such jurisdiction. The Debtor typically pays these real property taxes on a twice annual basis in January and July to coincide with local tax filing deadlines. In 2009, the Debtor paid approximately \$49,700 to reimburse the landlord in respect of real property taxes. The next payment of \$24,781 is due January 1, 2010. If payment is not made by the Debtor within five (5) days of January 1, 2010, pursuant to the terms of the operative lease, the Debtor will incur late payment penalties.³

15. The Debtor pays personal property taxes to the Authorities in New Haven, Connecticut on account of equipment and other personal property it maintains in that jurisdiction. The Debtor typically pays these property taxes on a twice annual basis. While the amount the Debtor pays in personal property taxes to the Authorities fluctuates yearly, in 2009 the Debtor paid approximately \$27,700 in personal property taxes. The next payment of \$12,428 is due on January 1, 2010, and may be paid on or before January 31, 2009 without penalty.

E. Business and Occupation Taxes, Business License Fees and Other Fees

16. In order to operate its business in certain taxing jurisdictions, including Connecticut, the Debtor is required to pay an annual business corporation tax.

17. While the amount the Debtor pays in business corporation taxes, licenses and similar fees fluctuates yearly, in 2009 the Debtor paid approximately \$3,000 in such taxes,

³ As of the filing of this Motion, the Debtor believes that the pro rata taxes due to its landlord are the only taxes falling due (with penalty for late payment) in the twenty (20) days following the Petition Date. Accordingly, the Debtor hereby is only seeking interim relief, as reflected by the attached proposed interim order, with respect to these taxes.

licenses and fees. The Debtor's records reflect that it is current with respect to its business and occupation taxes and business license fees.

18. In addition, the Debtor may be subject to certain audit investigations by the Authorities (the "Audits") over the course of this Chapter 11 proceeding that may result in additional amounts owed in prepetition taxes and/or fees (the "Audit Amounts") to certain Authorities. The Debtor also seeks authority, in its discretion, to satisfy any such Audit Amounts in the ordinary course of business. However, nothing contained herein or in the order approving this Motion constitutes or should be construed as an admission of liability by the Debtor with respect to any Audit or Audit Amount. The Debtor expressly reserves all rights with respect to any Audit. Furthermore, the Debtor reserves the right to contest the Audit Amounts, if any, claimed to be due as a result of the Audits.

19. The Debtor seeks the relief requested to the extent that any Taxes and Fees that accrued prepetition were not in fact paid or processed prepetition, or were paid in an amount that was less than is actually owed, or in the event that any payments made prepetition were rejected, lost, or otherwise not received in full by any of the Authorities. Further, there may be Taxes and Fees incurred or collected from sales and services provided prepetition that will come due after the commencement of this Chapter 11 case.

20. If the Debtor does not pay the Taxes or Fees in a timely manner, the respective Authorities may take actions that could have a wide-ranging and adverse effect on the Debtor's operations as a whole. The Debtor's failure to pay the Taxes and Fees could have a material adverse impact on the Debtor's business operations in several ways: (i) the Authorities may initiate audits of the Debtor, which would divert unnecessarily its attention away from the reorganization process; (ii) the Authorities may attempt to suspend the Debtor's operations, file

liens, seek to lift the automatic stay, or pursue other remedies that will harm the estates; and (c) certain directors and officers might be subject to personal liability, which would likely distract those key employees from their duties related to the Debtor's restructuring. In addition, unpaid taxes may result in penalties, accrual of interest, or both.

21. Moreover, many of these outstanding tax liabilities are for trust fund taxes that the Debtor has collected and holds in trust for the benefit of the Authorities. Therefore, the Debtor understands that these funds do not constitute property of its estate and could not otherwise be used by it.

22. In all cases, the Debtor's failure to pay the Taxes and Fees could have a material adverse impact on its ability to operate its business in the ordinary course. Accordingly, the Debtor seeks authority to pay, in its sole discretions, the Taxes and Fees to the relevant Authorities in the ordinary course of business.

BASIS FOR RELIEF

23. The Debtor submits that the relief requested is reasonable and necessary under the circumstances and justified by applicable law.

24. First, § 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d).

25. Some of the Taxes and Fees constitute “trust-fund” taxes, which are required to be collected by the Debtor and held in trust for payment to the Authorities. See, e.g., Begier v. Internal Revenue Serv., 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not the debtor's

property); City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95 (3d Cir. 1994); DeChiaro v. N.Y. State Tax Comm'n, 760 F.2d 432, 435-36 (2d Cir. 1985) (holding that sales taxes are trust fund taxes not subject to bankruptcy discharge); see also In re Shank, 792 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax and not released by bankruptcy discharge). To the extent these “trust fund” taxes are collected, they are not property of the Debtor’s estates under § 541(d). See, e.g., In re Am. Int’l Airways, Inc., 70 B.R. 102, 104-105 (Bankr. E.D. Pa. 1984), aff’d, sub. nom., Begier v. Krain Outdoor Adver., Inc., 1987 U.S. Dist. LEXIS 16856 (E.D. Pa. May 12, 1987); In re Dameron, 155 F.3d 718, 721-22 (4th Cir. 1998) (funds from various lenders held by closing agent in trust for designated third parties not property of debtor’s estate). The Debtor, therefore, generally does not have an equitable interest in funds held on account of such “trust fund” taxes, and the Debtor should be permitted to pay those funds to the Authorities as they become due.

26. Second, to the extent that any of the Taxes and Fees do not constitute “trust fund” taxes in a particular jurisdiction, the Court may rely on its general equitable powers to grant the relief requested herein. Section 363(b) provides that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on § 105(a) of the Bankruptcy Code. Section 105(a), which codifies the inherent equitable powers of the bankruptcy court, empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Id. § 105(a). Under § 105(a) of the Bankruptcy Code, courts may permit preplan payments of prepetition obligations when essential to the continued operation of the debtor’s business. Specifically, this Court may use its power under § 105(a) to authorize payment of

prepetition obligations pursuant to the 'necessity of payment' rule (also referred to as the 'doctrine of necessity').

27. The "doctrine of necessity" or the "necessity of payment" rule originated in railway cases and was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S. W. R. Co., 106 U.S. 286 (1882). The doctrine was expanded to non-railroad Debtors in the mid-century. See Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in hotel reorganization case, that the court was not "helpless" to apply the rule to supply creditors of non-railroad Debtors where alternative was cessation of operations).

28. The Third Circuit recognized the "necessity of payment" doctrine in In re Lehigh & New England Railway Co., 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. Id. (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); see also In re Penn Cent. Transp. Co., 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims . . . have been paid"); In re Just for Feet, Inc., 242 B.R. 821, 824-26 (D. Del. 1999) (noting that, in the Third Circuit, Debtor may pay prepetition claims that are essential to continued operation of business); In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).⁴

⁴ Additionally, the Bankruptcy Code contemplates prepetition payments in some circumstances. Section 549(a), which deals with postpetition transfers, provides that "the trustee may avoid a transfer of property of the estate ... that occurs after the commencement of the case . . . that is not authorized . . . by the court." 11 U.S.C. § 549(a). Thus, by necessary implication, a bankruptcy court may authorize limited postpetition payments to satisfy prepetition obligations. See In re Isis Foods, Inc., 37 B.R. 334, 336 n.3 (W.D. Mo. 1984) (noting that "proposed transfers [to pay prepetition claims may] be presented in advance to a bankruptcy court for its approval and would

29. Today, the rationale for the necessity of payment rule the rehabilitation of a debtor in a reorganization case – is “the paramount policy and goal of Chapter 11.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); see also Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); In re Just for Feet, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the Chapter 11 reorganization”); In re Quality Interiors, Inc., 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition worker’s compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 3 Collier on Bankruptcy § 105.04[5][a] (15th ed. rev. 2004) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment”

thereafter be insulated from attack” under § 549(a); see also 11 U.S.C. § 363(b)(1) (allowing the trustee, after notice and hearing, to “use, sell, or lease, other than in the ordinary course of business, property of the estate”).

rule to pay prepetition claims immediately). Accordingly, pursuant to § 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested herein.

30. Third, some or all of the Taxes and Fees are or may be entitled to priority status pursuant to § 507(a)(8) of the Bankruptcy Code and, therefore, must be paid in full under § 1129(a)(9)(C) of the Bankruptcy Code to confirm any Chapter 11 plan. Thus, the payment of such Taxes and Fees will give the Authorities no more than that to which they otherwise would be entitled under a Chapter 11 plan and will save the Debtor the potential interest expense (and penalties) that otherwise might accrue on such Personal Property Taxes and Fees as a result of statutory liens.

31. Fourth, in some cases, the Authorities may assert that the Debtor's directors and officers are personally liable if the Debtor fails to meet the obligations imposed upon it to remit Taxes and Fees. To the extent such accrued Taxes or Fees were unpaid as of the Petition Date, the Debtor's directors and officers may be subject to lawsuits in certain jurisdictions during the pendency of this Chapter 11 case, even if the failure to pay such Taxes and Fees was not a result of any malfeasance on its part. Such potential litigation would distract the Debtor, the named directors and officers, and the Court, which may be asked to entertain various motions seeking injunctions relating to potential court actions, from the reorganization efforts, causing the Debtor's estate immediate and irreparable harm. See In re Calpine Corp., 365 B.R. 401, 410 (S.D.N.Y. 2007) (holding that potential for distractions to employees constitutes "imminent irreparable harm" if they would impact the restructuring process).

32. Finally, courts in this District have granted similar relief in other Chapter 11 case with respect to prepetition tax and fee obligations. See, e.g., In re Hilex Poly Co., Case No. 08-10890 (Bankr. D. Del. May 7, 2008) (KJC); In re Linens Holding Co., Case No. 08-10832

(Bankr. D. Del. Mar 2, 2008) (CSS); In re Sharper Image Corp., Case No. 08-10322 (Bankr. D. Del. Feb. 20, 2008) (KG); In re Lillian Vernon Corp., Case No. 08-10323 (Bankr. D. Del. Feb. 21, 2008) (BLS); In re Buffets Holdings, Inc., Case No. 08-10141 (Bankr. D. Del. Jan. 23, 2008) (MFW); In re Am. Home Mortgage Holdings, Inc., Case No. 07-11047 (Bankr. D. Del. Aug. 7, 2007) (CSS); In re Pliant Corp., (06-10001), 2006 Bankr. LEXIS 4631 (Bankr. D. Del. Mar. 14, 2006) (MFW).

33. Nothing contained herein is intended or should be construed as: (i) an admission as to the validity or priority of any Taxes or Fees allegedly owing to the various Authorities; (ii) a waiver of the Debtor's rights to dispute any such claim on any grounds or assert any counterclaims or affirmative defenses; (iii) a promise to pay such a claim; or (iv) an implication or admission that any particular claim would constitute a claim for Taxes or Fees.

34. The Debtor also requests that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment and to honor all electronic payments requests made by the Debtor relating to the foregoing, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtor further requests that all such banks and financial institutions be authorized to rely on the Debtor's designation of any particular check or electronic payment request as approved pursuant to this Motion.

35. Bankruptcy Rule 6003(b) provides that "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease or otherwise incur any obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" As set forth above, the Debtor submits that because

the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein, Bankruptcy Rule 6003(b) has been satisfied.

36. 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

37. Notice of this Motion has been given to: (i) the United States Trustee for this District, (ii) the Debtor's thirty (30) largest unsecured creditors, including U.S. Bank, N.A., the trustee under the indenture corresponding to the Debtor's 7.75% Convertible Seniors Notes due 2012; and (iii) the Internal Revenue Service. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

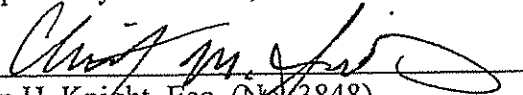
NO PRIOR REQUEST

38. 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 orders attached hereto; and (iii) grant such other and further relief as it deems 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

**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 : :
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**INTERIM ORDER PURSUANT TO §§ 105(a), 363(b), 507(a)(8),
AND 541 OF THE BANKRUPTCY CODE AUTHORIZING
THE DEBTOR TO REMIT AND PAY CERTAIN TAXES AND FEES**

Upon the motion dated December 17, 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, pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing, but not directing, the Debtor to remit and pay certain sales, use, income/franchise, real and personal property, business and occupation taxes, and other similar taxes as the Debtor deems necessary, as well as fees for licenses, and other similar charges and assessments; (ii) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing; and (iii) granting the Debtor such other and further relief as the Court deems just and proper; and upon consideration of the Declaration of Alan Kessman, the Debtor's Chief Executive Officer, in Support of Chapter 11 Petition and First Day

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.

Pleadings, filed concurrently with the Motion; 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 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 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 these proceedings; and after due deliberation;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtor is authorized, but not directed, to remit and pay its landlord for the pro rata share of real property taxes due to the Authorities in New Haven, Connecticut on account of real property the Debtor leases in such jurisdiction in the amount of \$24,781 on or before January 1, 2010.
3. The Debtor's banks and other financial institutions are authorized and directed to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the Taxes and Fees which are hereby authorized to be paid by the Debtor.
4. Nothing in the Motion or this Order, nor the Debtor's payment of claims pursuant to this Order, shall be deemed or construed as: (i) an admission as to the validity of any Taxes or Fees allegedly owing to the various Authorities; (ii) a waiver of the Debtor's rights to dispute any such claim on any grounds; (iii) a promise to pay such a claim; or (iv) an implication or admission that any particular claim would constitute a claim for Taxes or Fees.

5. The entry of this Order is necessary to avoid immediate and irreparable harm and, to the extent the relief granted herein implicates the use of property of the estate and § 363 of the Bankruptcy Code, the requirements under Bankruptcy Rule 6003(b) have been satisfied.

6. 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.

7. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) 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.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: December ___, 2009
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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.¹ :
: :
-----X

**FINAL ORDER PURSUANT TO §§ 105(a), 363(b), 507(a)(8),
AND 541 OF THE BANKRUPTCY CODE AUTHORIZING
THE DEBTOR TO REMIT AND PAY CERTAIN TAXES AND FEES**

Upon the motion dated December 17, 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, pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing, but not directing, the Debtor to remit and pay certain sales, use, income/franchise, real and personal property, business and occupation taxes, and other similar taxes as the Debtor deems necessary, as well as fees for licenses, and other similar charges and assessments; (ii) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing; and (iii) granting the Debtor such other and further relief as the Court deems just and proper; and upon consideration of the Declaration of Alan Kessman, the Debtor’s Chief Executive Officer, in Support of Chapter 11 Petition and First Day

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.

Pleadings, filed concurrently with the Motion; 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 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 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 these proceedings; and after due deliberation;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtor is authorized, but not directed, to remit and pay all undisputed prepetition Taxes and Fees consistent with its customary practices in the ordinary course of business in an aggregate amount not to exceed \$75,000.
3. The Debtor's banks and other financial institutions are authorized and directed to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the Taxes and Fees.
4. Nothing in the Motion or this Order, nor the Debtor's payment of claims pursuant to this Order, shall be deemed or construed as: (i) an admission as to the validity of any Taxes or Fees allegedly owing to the various Authorities; (ii) a waiver of the Debtor's rights to dispute any such claim on any grounds; (iii) a promise to pay such a claim; or (iv) an implication or admission that any particular claim would constitute a claim for Taxes or Fees.

5. Notwithstanding any provision in the Federal Rules of Bankruptcy Procedure to the contrary, (i) 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.

7. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: January __, 2010
Wilmington, Delaware

THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

ORIGINAL

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

-----X
: *In re:* : Chapter 11
: :
: **VION PHARMACEUTICALS, INC.,** : Case No. 09-14429 (CSS)
: :
: Debtor.¹ : Re: Docket No. 7
: :
-----X

**INTERIM ORDER PURSUANT TO §§ 105(a), 363(b), 507(a)(8),
AND 541 OF THE BANKRUPTCY CODE AUTHORIZING
THE DEBTOR TO REMIT AND PAY CERTAIN TAXES AND FEES**

Upon the motion dated December 17, 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, pursuant to §§ 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the "Bankruptcy Code") and Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (i) authorizing, but not directing, the Debtor to remit and pay certain sales, use, income/franchise, real and personal property, business and occupation taxes, and other similar taxes as the Debtor deems necessary, as well as fees for licenses, and other similar charges and assessments; (ii) authorizing and directing banks and other financial institutions to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the foregoing; and (iii) granting the Debtor such other and further relief as the Court deems just and proper; and upon consideration of the Declaration of Alan Kessman, the Debtor's Chief Executive Officer, in Support of Chapter 11 Petition and First Day

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.

Pleadings, filed concurrently with the Motion; 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 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 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 these proceedings; and after due deliberation;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtor is authorized, but not directed, to remit and pay its landlord for the pro rata share of real property taxes due to the Authorities in New Haven, Connecticut on account of real property the Debtor leases in such jurisdiction in the amount of \$24,781 on or before January 1, 2010.
3. The Debtor's banks and other financial institutions are authorized ~~and directed~~ to receive, process, honor and pay checks presented for payment and electronic payment requests relating to the Taxes and Fees described in the Motion which are hereby authorized to be paid by the Debtor.
4. Nothing in the Motion or this Order, nor the Debtor's payment of claims pursuant to this Order, shall be deemed or construed as: (i) an admission as to the validity of any Taxes or Fees allegedly owing to the various Authorities; (ii) a waiver of the Debtor's rights to dispute

any such claim on any grounds; (iii) a promise to pay such a claim; or (iv) an implication or admission that any particular claim would constitute a claim for Taxes or Fees.

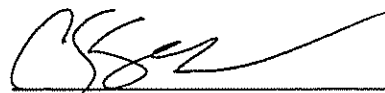
5. The entry of this Order is necessary to avoid immediate and irreparable harm and, to the extent the relief granted herein implicates the use of property of the estate and § 363 of the Bankruptcy Code, the requirements under Bankruptcy Rule 6003(b) have been satisfied.

6. The deadline by which objections to the final relief requested by the Motion must be filed and served on proposed counsel for the Debtor is January 12, 2010 at 4:00 p.m. (ET). A final hearing, if required, on the Motion will be held on January 20, 2010 at 3:00 p.m. (ET). If no objections are filed to the Motion, the Court may enter the Final Order without further notice or hearing.

7. Consistent with the provisions of the Federal Rules of Bankruptcy Procedure, (i) 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.

8. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: December 21, 2009
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

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