

**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. 6
: :
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**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")² 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 [Docket No. 6], 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

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 not defined herein shall have the meanings ascribed to them in the Motion.

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 as provided herein; 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,³ 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

³ 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.

referred to herein as the "Consenting Utility Companies").

- (xi) 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 20, 2010
Wilmington, Delaware



THE HONORABLE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

LIST OF UTILITIES

Name and Address of Utility	Account Number	Type of Service	Average Monthly Bill	Projected Estimated Monthly Bill
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