UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re **Inspiration Biopharmaceuticals, Inc.,** **Debtor.**	**Chapter 11** **Case No. 12-18687 (WCH)**

APPLICATION OF THE DEBTOR AND DEBTOR-IN-POSSESSION FOR AN ORDER AUTHORIZING THE EMPLOYMENT AND RETENTION OF EVERCORE GROUP L.L.C. AS INVESTMENT BANKER FOR A LIMITED PURPOSE (Request for Hearing on November 21, 2012)

The above-captioned debtor and debtor-in-possession (the "Debtor"), hereby applies to the Court for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 327(a), 328(a) and 330 of the Bankruptcy Code as provided herein, Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2014-1 of the Local Rules of the United States Bankruptcy Court for the District of Massachusetts (the "MBLR"), (i) authorizing them to employ and retain Evercore Group L.L.C. ("Evercore") as its investment banker, jointly and severally with Ipsen Pharma, S.A.S. ("Ipsen"), for the limited purpose of a sale, as more fully described herein, in accordance with the terms and conditions set forth in that certain engagement letter dated as of November 7, 2012 (the "Engagement Letter"), a copy of which is attached as **Exhibit 1** to the proposed form of order attached as **Exhibit A**,[1] (ii) approving the terms of Evercore's employment and retention by the Debtor, including the fee and expense structure and the indemnification, contribution, reimbursement and related

[1] Descriptions of the Engagement Letter in this Application are provided for convenience only. In the event of any inconsistency between the terms of the Engagement Letter (as modified by the retention order) and this Application, the terms of the Engagement Letter (as modified by the retention order) shall control. Initially capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Engagement Letter.

provisions set forth in the Engagement Letter, (iii) modifying certain informational requirements of MBLR 2016-1(a) and (iv) granting such other and further relief as is just and proper. In support of this Application, the Debtor submits the Declaration of Stephen Goldstein, a Senior Managing Director (the "Goldstein Declaration"), which is attached hereto as **Exhibit B** and incorporated herein and further respectfully states as follows:

Jurisdiction and Background

1. This Court has jurisdiction to hear and determine this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On October 30, 2012 (the "Petition Date"), the Debtor commenced a reorganization proceeding under chapter 11 of the Bankruptcy Code, in this Court. The Debtor is continuing in possession of its properties and is operating and managing its businesses, as a debtor-in-possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. The Debtor, which was founded in 2006, is a Delaware corporation with a place of business at One Kendall Square in Cambridge, Massachusetts.

4. The Debtor, a developmental stage pharmaceutical company focused on the treatment of hemophilia, has filed this case to implement an orderly sale of all or substantially all of its assets pursuant to the provisions of 11 U.S.C. § 363, as well as certain assets of Ipsen, its principal secured creditor, that are related to the Debtor's assets.

5. Because the Debtor is in the clinical stage of development, it has no operating revenues. It has financed its operations principally though debt and equity financing by Ipsen.

6. Ipsen has agreed to provide debtor-in-possession financing on a limited basis to allow the Debtor to orchestrate an orderly sale of its assets as a going concern. Ipsen has also

agreed, in connection with the sale process, to: (i) establish a credit bid threshold, such that it will waive its right to assert a credit bid if an arm's length third party bid exceeds an agreed upon amount; (ii) contribute to the sale process certain assets of Ipsen which are related to and complementary of the assets being marketed for sale by the Debtor; and (iii) establish a "waterfall" for the distribution of any sale proceeds to allow for a recovery to unsecured creditors and equityholders, notwithstanding that Ipsen will not be paid in full on account of its secured claim.

7. Additional information respecting the background of the Debtor and the objective of these proceedings is set forth in the Affidavit of John P. Butler in Support of First Day Motions and Applications, which is incorporated by reference.

8. The terms of this Application, as well as the terms of the order requested by this Application and entered pursuant hereto, shall apply to any and all affiliates of the Debtor that have not yet filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code as of the Petition Date, but which subsequently file such a petition during the pendency of this chapter 11 case.

Evercore's Qualifications

9. The Debtor seeks to retain Evercore as its investment banker for the limited purpose described below because, among other things, Evercore has extensive experience and an excellent reputation in providing high quality investment banking services to debtors in bankruptcy reorganizations and other restructurings.

10. Established in 1996, Evercore is a leading independent investment banking advisory and investment management firm. Evercore's investment banking business includes its advisory business, which counsels multinational corporations on mergers and acquisitions,

divestitures, special committee assignments, recapitalizations, restructurings and other strategic transactions. In addition, through its investment banking business, Evercore provides capital markets advice, underwrites securities, raises funds for financial sponsors, and offers equity research and agency-only equity securities trading for institutional investors. Evercore's investment management business includes private equity investing, institutional asset management and wealth management. Evercore and its affiliates serve a diverse set of clients around the world from its offices in Boston, New York, Chicago, Los Angeles, Washington D.C., San Francisco, Houston, Minneapolis, Hong Kong, London, Aberdeen, Mexico City, Monterrey, São Paulo and Rio De Janeiro. Since the beginning of 2000, Evercore's corporate advisory and restructuring advisory groups have advised on over $1.2 trillion of transactions. Its restructuring professionals provide investment banking services in financially distressed situations, including advising debtors, creditors and other constituents in chapter 11 proceedings and out-of-court restructurings.

11. Evercore and its professionals have extensive experience working with financially troubled companies from a variety of industries in complex financial restructuring, both out of court and in chapter 11 cases. Evercore professionals have actively been retained as investment bankers and financial advisors in numerous cases, including, among others: *In re Broadview Networks Holdings, Inc.*, Case No. 12-13581 (Bankr. S.D.N.Y. Sept. 14, 2012); *In re Circus and Eldorado Joint Venture*, Case No. 12-51156 (Bankr. D. Nev. July 6, 2012); *In re Delta Petroleum Corp.*, Case No. 11-14006 (Bankr. D. Del. Dec. 16, 2011); *In re Trico Marine Services, Inc.*, Case No. 10-12653 (Bankr. D. Del. Aug. 5, 2010); *In re CIT Group Inc.*, Case No. 09-16565 (Bankr. S.D.N.Y. Nov. 1, 2009); *In re General Motors Corp.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 1, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 6, 2009); *In re PRC, LLC*, Case No. 08-10239 (Bankr. S.D.N.Y. Jan. 23, 2008); *In re Delphi*

Corp., Case No. 05-44481 (Bankr. S.D.N.Y. Oct. 8, 2005); *In re Northwest Airlines Corp.*, Case No. 05-17930 (Bankr. S.D.N.Y. Sept. 14, 2005); *In re Adelphia Commc'ns Corp.*, Case No. 02-41729 (Bankr. S.D.N.Y. June 25, 2002); *In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002); *In re ICH Corp.*, Case No. 02-10485 (Bankr. S.D.N.Y. Feb. 5, 2002).

12. The resources, capabilities and experience of Evercore in providing investment banking for the limited purpose described herein is crucial to the Debtor's chapter 11 strategy. An investment banker with a deep bench of experience, such as Evercore, fulfills a critical need that complements the services offered by the Debtor's other restructuring professionals. The Debtor requires the services of a capable and experienced investment banker such as Evercore.

13. Beginning with its retention on November 7, 2012, Evercore will provide services in connection with a possible sale of the Debtor's assets in connection with the Debtor's filing of this chapter 11 case. As a result, Evercore is acquiring knowledge of the Debtor and its business and will become familiar with the Debtor's assets and business operations. In providing these services, Evercore will work closely with the Debtor's senior management and its other advisors and develop familiarity with the other major stakeholders that will be involved in this chapter 11 case. Accordingly, Evercore is developing relevant experience and expertise regarding the Debtor that (i) makes Evercore a natural selection as the Debtor's investment banker for the limited purpose described below and (ii) will assist Evercore in providing effective and efficient service in this chapter 11 case.

Limited Services to Be Provided by Evercore

14. Evercore will not be acting as the Debtor's financial advisor or investment banker for general purposes. Instead, in connection with the proposed joint sale (the "Proposed Sale") of the Debtor's assets together with certain assets of Ipsen related to the treatment of hemophilia,

the Debtor and Ipsen propose to jointly and severally retain Evercore to provide limited services in support of the Proposed Sale. The parties have entered into the Engagement Letter, which governs the relationship among the Debtor, Ipsen and Evercore. The terms and conditions of the Engagement Letter were negotiated among the Debtor, Ipsen and Evercore and reflect the parties' agreement as to the substantial efforts that will be required in this engagement. Under the Engagement Letter, in consideration for the compensation contemplated thereby, Evercore has provided and has agreed to provide the following services:

(a) Advising and assisting the Debtor and Ipsen in a Sale transaction, if the Debtor and Ipsen determine to undertake such a transaction;

(b) Providing testimony in any proceedings under the Bankruptcy Code that are pending before the Bankruptcy Court, as necessary, with respect to a Sale and/or with respect to the procedures and processes to be employed in connection with a Sale;

(c) If the Debtor and Ipsen pursue a Sale, assisting the Debtor and Ipsen in: structuring and effecting a Sale; reviewing and analyzing the business, operations and financial projections of the Assets involved in a Sale; identifying interested parties and/or potential acquirors and, at the Debtor's and Ipsen's request, contacting such interested parties and/or potential acquirors; and, advising the Debtor and Ipsen in connection with negotiations with potential interested parties and/or acquirors and aiding in the consummation of a Sale.

15. The Debtor believes that the services that Evercore will provide to the Debtor are necessary to enable the Debtor to maximize the value of its estate. The Debtor believes that the services will not duplicate the services that other professionals will be providing to the Debtor in this chapter 11 case. Specifically, Evercore will carry out unique functions and will use reasonable efforts to coordinate with the Debtor's other retained professionals to avoid the unnecessary duplication of services.

Professional Compensation and Fee Applications

16. In consideration of the services to be provided by Evercore, and as more fully described in the Engagement Letter, Ipsen and, subject to the Court's approval, the Debtor have jointly and severally agreed to pay Evercore the proposed compensation set forth in the Engagement Letter (the "Fee and Expense Structure"):

(a) The Debtor will pay a monthly fee of $125,000 (a "Monthly Fee"), upon execution of the Engagement Letter and on the 1st day of each month thereafter until the earlier of the consummation of a Sale or the termination of Evercore's engagement, unless otherwise extended by the Sellers in writing.

(b) The Debtor will pay a fee (the "Sale Fee") as follows: (i) $2 million, due upon the first consummation of a Sale, plus an "Incremental Amount" equal to five percent of the amount by which Aggregate Consideration exceeds the Threshold, due upon each Realization (each as defined below) or (ii) $1 million, due upon confirmation of a Sale, if, in connection with such Sale, all or substantially all of the Debtor's assets are directly and/or indirectly transferred to Ipsen, in which case no other Sale Fee shall be payable. "Aggregate Consideration" means, with respect to any and all Sales, the total of (i) all consideration paid or payable, or otherwise distributed, to, or received, directly or indirectly, by the Debtor, its Bankruptcy estate, its creditors and/or the security holders of the Debtor in connection with such Sale(s) including all (a) cash, securities and other property, (b) debt of the Debtor assumed, satisfied, or paid by a purchaser or which remains outstanding at closing (including, without limitation, the amount of any indebtedness, securities or other property "credit bid" in any Sale and any other indebtedness and obligations, including tax claims that will actually be paid, satisfied, or assumed by a purchaser from the Debtor or the security holders of the Debtor, but excluding, for the avoidance of doubt, any fee to be paid to Evercore) and (c) amounts placed in escrow and deferred, contingent and installment payments, plus (ii) all consideration received or to be received by Ipsen or its affiliates (including amounts placed in escrow and deferred, contingent and installment payments) in connection with such Sale. However, excluded from Aggregate Consideration is any royalty, milestone or other payments, paid, payable or due to third party licensors (e.g., Emory, Octagen and UNC) by the Debtor, Ipsen and/or a buyer, upon assumption of the same. The "Threshold" means the nominal amount of Aggregate Consideration that, if adjusted to the aggregate net present value of consideration received by the Sellers, calculated by discounting at 9.56% per annum the amount of each actual receipt of consideration by the Sellers from the date of such receipt to the date of closing, would equal $250 million. "Realization" means actual receipt of consideration by either Seller, not contingent upon future events (including any earn-outs or with respect to amounts paid into escrow). For the

avoidance of doubt, no more than one Incremental Amount will be due on account of any one portion of Aggregate Consideration.

(c) In addition to any fees that may be payable to Evercore and, regardless of whether any transaction occurs, the Debtor shall promptly reimburse to Evercore (a) all reasonable expenses (including travel and lodging, data processing and communications charges, courier services and other appropriate expenditures) and (b) other documented reasonable fees and expenses, including expenses of counsel. Such expenses shall not exceed $50,000 in the aggregate without the prior written consent of the Sellers (which shall not be unreasonably withheld or delayed); provided that such limitation shall not limit or affect the obligations of the Debtor or Ipsen under Schedule I or Schedule II attached to the Engagement Letter.

(d) To the extent that any amount due Evercore pursuant to the Fee and Expense Structure is not actually paid to Evercore by the Debtor or from the proceeds received at closing of any Sale, Ipsen will be liable to and pay Evercore therefor, on the terms of the Fee and Expense Structure. (However, except as set forth in the Engagement Letter, Ipsen shall not be liable to nor pay Evercore for any amounts accrued after termination of Evercore by Ipsen if the Debtor has not also terminated the engagement and continues to engage Evercore pursuant to the Engagement Letter.)

17. In the event the Debtor is obliged and seek to pay any amount to Evercore pursuant to the Fee and Expense Structure, it will do so only pursuant to applications by Evercore to this Court for approval of such compensation or reimbursement.

The Fee and Expense Structure Is Appropriate and Reasonable and Should Be Approved Under Section 328(a) of the Bankruptcy Code

18. The Debtor believes that the Fee and Expense Structure is comparable to those generally charged by financial advisors and investment bankers of similar stature to Evercore for comparable engagements, both in and out of bankruptcy proceedings, and reflects a balance between a fixed, monthly fee and a contingency amount, which is tied to the consummation and closing of the transactions and services contemplated in the Engagement Letter.

19. The Fee and Expense Structure summarized above and described fully in the Engagement Letter is consistent with Evercore's normal and customary billing practices for comparably sized and complex cases and transactions, both in and out of court, involving the

services to be provided in connection with this chapter 11 case. Moreover, the Fee and Expense Structure is consistent with and typical of arrangements entered into by Evercore and other financial advisors and investment banks in connection with the rendering of comparable services to clients such as the Debtor. Evercore, the Debtor and Ipsen believe that the Fee and Expense Structure is both reasonable and market-based.

20. To induce Evercore to represent the Debtor and Ipsen, the Fee and Expense Structure was established to reflect the difficulty of the assignment Evercore has undertaken and expects to undertake and to account for the potential for an unfavorable outcome resulting from factors outside of Evercore's control.

21. The Debtor, Ipsen and Evercore negotiated the Fee and Expense Structure to function as an interrelated, integrated unit, in correspondence with Evercore's services, which Evercore renders not in parts, but as a whole. It would be contrary to the intention of the parties to the Engagement Letter for any isolated component of the Fee and Expense Structure to be treated as sufficient consideration for any isolated portion of Evercore's services. Instead, the parties to the Engagement Letter intend that Evercore's services be considered as a whole that is to be compensated by the Fee and Expense Structure in its entirety.

22. Evercore's relevant expertise was an important factor in determining the Fee and Expense Structure. The ultimate benefit to the Debtor derived from the services provided by Evercore hereunder cannot be measured by a reference to the number of hours expended by Evercore's professionals.

23. The Fee and Expense Structure has been agreed upon in anticipation that a substantial commitment of professional time and effort will be required of Evercore and its professionals and in light of the fact that (i) such commitment may foreclose other opportunities for Evercore and (ii) the actual time and commitment required of Evercore and its professionals

to perform its services may vary substantially from week to week and month to month, creating "peak load" issues for Evercore.

24. In light of the foregoing and given the numerous issues that Evercore may be required to address in the performance of its services hereunder, Evercore's commitment to the variable level of time and effort necessary to address all such issues as they arise, and the market prices for Evercore's services for engagements of this nature both in the in and out-of-court contexts, the Debtor believes that the Fee and Expense Structure is fair and reasonable and market-based under the standards set forth in section 328(a) of the Bankruptcy Code.

Record Keeping and Applications for Compensation

25. It is not the general practice of financial advisory and investment banking firms, including Evercore, to keep detailed time records similar to those customarily kept by attorneys and required by MBLR 2016-1(a)(1). Accordingly, the proposed order would excuse Evercore from limited aspects of these informational requirements. First, as Evercore does not ordinarily maintain contemporaneous time records in tenth-hour (.10) increments, Evercore should instead be permitted to maintain time records in half-hour (0.50) increments, not decimal hours, setting forth, in a summary format, a description of the services rendered by each professional and the amount of time spent on each date by each such individual in rendering services on behalf of the Debtor. Second, as Evercore does not charge by the hour and no hourly rates are associated with its professionals, Evercore should be excused from providing the information described in MBLR 2016-1(a)(2)(C)-(D).

26. Evercore will maintain detailed records of any actual and necessary costs and expenses incurred in connection with the aforementioned services. In the event that the Debtor seeks to pay Evercore pursuant to the Fee and Expense Structure, it will do so only as permitted

by this Court and pursuant to Evercore's applications for compensation and expenses, submitted in accordance with MBLR 2016-1, as modified by the retention order, and any procedures established by the Court.

Payments to Evercore

27. The Debtor has made no payments to Evercore at any time, nor is any retainer associated with Evercore's engagement. As there was no prepetition engagement of Evercore, the Debtor does not owe Evercore for any fees or expenses incurred prior to the Petition Date.

Indemnification Provisions

28. Pursuant to Schedule I to the Engagement Letter, the Debtor has agreed, among other things, to indemnify, hold harmless and provide contribution and reimbursement to Evercore and its affiliates, counsel and other professional advisors, and the respective directors, officers, controlling persons, agents and employees of each of the foregoing, under certain circumstances.[2] The proposed retention order modifies certain terms of the Debtor's indemnification of Evercore.

29. The Debtor and Evercore believe that the indemnification provisions contained in Exhibit A to the Engagement Letter are customary and reasonable for financial advisory and investment banking engagements, both in and out of court, and reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions. *See, e.g., In re Women's Apparel Group, LLC*, Case No. 11-16217 (Bankr.

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[2] Schedule I to the Engagement Letter provides, in part, that the Debtor will indemnify and hold harmless Evercore and each Indemnified Party (as defined in the Engagement Letter) from and against any losses, claims or proceedings, directly or indirectly related to or arising out of Evercore's engagement by the Debtor (but not by Ipsen), except to the extent that any such loss, claim, damage, liability or expense is finally judicially determined to have resulted primarily from such Indemnified Party's willful misconduct, fraud or gross negligence. To the extent that the description in this Application and the terms of Schedule I to the Engagement

D. Mass. Aug. 10, 2011); *In re GPX International Tire Corp.*, Case No. 09-20170 (Bankr. D. Mass. Nov. 23, 2009); *see also In re Broadview Networks Holdings, Inc.*, Case No. 12-13581 (Bankr. S.D.N.Y. Sept. 14, 2012); *In re Circus and Eldorado Joint Venture*, Case No. 12-51156 (Bankr. D. Nev. July 6, 2012); *In re Delta Petroleum Corp.*, Case No. 11-14006 (Bankr. D. Del. Dec. 16, 2011); *In re Trico Marine Services, Inc.*, Case No. 10-12653 (Bankr. D. Del. Aug. 5, 2010); *In re CIT Group Inc.*, Case No. 09-16565 (Bankr. S.D.N.Y. Nov. 1, 2009); *In re General Motors Corp.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 1, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 6, 2009).

30. The terms and conditions of the Engagement Letter were negotiated by the parties at arm's length and in good faith. The Debtor respectfully submits that the indemnification, contribution, exculpation, reimbursement and other provisions contained in Schedule 1 to the Engagement Letter, viewed in conjunction with the other terms of Evercore's proposed retention, are reasonable and in the best interests of the Debtor, its estate and economic stakeholders in light of the fact that the Debtor requires Evercore's services to successfully pursue its sale strategy. Accordingly, as part of this Application, the Debtor requests that the Court approve the Engagement Letter.

Basis for Relief

31. The Debtor seeks authority to jointly employ and retain Evercore with Ipsen as their investment banker for the limited purpose of the Sale, pursuant to section 327 of the Bankruptcy Code, which provides that a debtor is authorized to employ professional persons "that do not hold or represent an interest adverse to the estate, and that are disinterested persons,

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Letter (as modified by the retention order) are inconsistent, the terms of Schedule I to the Engagement Letter (as modified by the retention order) shall control.

to represent or assist the [Debtor] in carrying out [its] duties under this title" and further provides that "a person is not disqualified for employment . . . solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest." 11 U.S.C. § 327(a), (c).

32. Approval of Evercore's joint retention for the limited purpose of the Sale is appropriate because (i) it is a disinterested person under the definition set forth in section 101(14) of the Bankruptcy Code, and (ii) the limited joint representation for purposes of a sale gives rise to no actual conflict of interest, as set forth in section 327(c) of the Bankruptcy Code. Ipsen is, of course, the most significant creditor of the Debtor. However, with respect to the joint Sale – which will go forward only if approved by this Court – the interest of Ipsen and of the Debtor is aligned. Evercore will jointly represent the Debtor and Ipsen *solely* with respect to such Sale, and only pursuant to the orders of this Court relating to that Sale and to Evercore's retention.

33. Moreover, as a practical matter, consummation of the joint Sale – which the Debtor believes is the best path to realizing value for the estate and its economic interest holders – requires a qualified professional to conduct that joint Sale. A joint engagement limited to the Sale best achieves this purpose.

34. The United States Trustee and other parties in interest will retain all rights to object to any interim and final fee applications (including expense reimbursement and any request for counsel fees) filed by Evercore seeking payment from the Debtor based upon the reasonableness standard in section 330 of the Bankruptcy Code.

35. Section 1107(b) of the Bankruptcy Code elaborates upon sections 101(14) and 327(a) of the Bankruptcy Code in cases under chapter 11 of the Bankruptcy Code and provides

that "a person is not disqualified for employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b).

36. In addition, the Debtor seeks approval of the Engagement Letter (including, without limitation, the Fee and Expense Structure and the indemnification provisions in Schedule I) pursuant to section 328(a) of the Bankruptcy Code, which provides, in relevant part, that the Debtor "with the court's approval, may employ or authorize the employment of a professional person under section 327. . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. . . ." 11 U.S.C. § 328(a). Section 328 of the Bankruptcy Code permits the compensation of professionals, including financial advisors and investment bankers, on more flexible terms that reflect the nature of their services and market conditions. As the United States Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrett Sec. Corp. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.)*, 123 F.3d 861 (5th Cir. 1997):

> Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants "reasonable compensation" based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

Id. at 862 (citations omitted), *cited in Riker, Danzig, Scherer, Hyland & Perretti LLP v. Official Comm. of Unsecured Creditors (In re Smart World Techs. LLC)*, 383 B.R. 869, 874 (S.D.N.Y. 2008). Owing to this inherent uncertainty, courts have approved similar arrangements that contain reasonable terms and conditions under section 328 of the Bankruptcy Code. *See,*

e.g., *In re U.S. Airways, Inc.*, Case No. 02-83984 (SJM) (Bankr. E.D. Va. Aug. 12, 2002); *see also In re J.L. French Auto. Castings, Inc.*, Case No. 06-10119 (MFW) (Bankr. D. Del. March 24, 2006).

37. Furthermore, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 amended section 328(a) of the Bankruptcy Code, which now provides as follows:

> The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis*, or on a contingent fee basis.

11 U.S.C. § 328(a) (amendment emphasized). This change makes clear that the Debtor is able to retain a professional on a fixed or percentage fee basis, such as the Fee and Expense Structure, with bankruptcy court approval.

38. The Engagement Letter appropriately reflects (i) the nature and scope of services to be provided by Evercore, (ii) Evercore's substantial experience with respect to the investment banking services to be provided and (iii) the fee and expense structures typically utilized by Evercore and other leading financial advisors and investment bankers that do not bill their clients on an hourly basis.

39. Similar fixed and contingency fee arrangements have been approved and implemented by courts in other large chapter 11 cases. *See, e.g.*, *In re Women's Apparel Group, LLC*, Case No. 11-16217 (Bankr. D. Mass. Aug. 10, 2011); *In re GPX International Tire Corp.*, Case No. 09-20170 (Bankr. D. Mass. Nov. 23, 2009); *see also In re Broadview Networks Holdings, Inc.*, Case No. 12-13581 (Bankr. S.D.N.Y. Sept. 14, 2012); *In re Circus and Eldorado Joint Venture*, Case No. 12-51156 (Bankr. D. Nev. July 6, 2012); *In re Delta Petroleum Corp.*, Case No. 11-14006 (Bankr. D. Del. Dec. 16, 2011); *In re Trico Marine Services, Inc.*, Case No.

10-12653 (Bankr. D. Del. Aug. 5, 2010); *In re CIT Group Inc.*, Case No. 09-16565 (Bankr. S.D.N.Y. Nov. 1, 2009); *In re General Motors Corp.*, Case No. 09-50026 (Bankr. S.D.N.Y. June 1, 2009); *In re Lyondell Chem. Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Jan. 6, 2009). Accordingly, the Debtor believes that Evercore's retention on the terms and conditions proposed herein is appropriate.

Evercore's Disinterestedness

40. To the best of the Debtor's knowledge and except to the extent disclosed herein and in the Goldstein Declaration: (i) Evercore is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code, as required by section 327(a) of the Bankruptcy Code, and does not hold or represent an interest materially adverse to the Debtor's estate; and (ii) Evercore has no connection to the Debtor, its creditors or other parties in interest in this chapter 11 case.

41. As set forth in further detail in the Goldstein Declaration, Evercore has certain connections with creditors, equity security holders and other parties in interest in this chapter 11 case. All of these matters, however, are unrelated to this chapter 11 case. Evercore does not believe that any of these matters represent an interest materially adverse to the Debtor's estate or otherwise create a conflict of interest regarding the Debtor or this chapter 11 case.

42. To the extent that any new relevant facts or relationships bearing on the matters described herein during the period of Evercore's retention are discovered or arise, Evercore will use reasonable efforts to file promptly a supplemental declaration, as required by Bankruptcy Rule 2014(a).

Notice

43. No trustee, examiner or statutory committee has been appointed in this chapter 11 case. The Debtor served notice of this Application on the twenty largest unsecured creditors, any known secured creditors, the Office of the United States Trustee, the Debtor, and parties having filed notices of appearance. In light of the relief requested, the Debtor submits that no further notice is needed.

44. The Debtor requests that this application be heard on November 21, 2012, contemporaneously with several other pending matters.

No Prior Request

45. No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit A: (i) granting the relief sought herein; and (ii) granting to the Debtor such other and further relief as the Court may deem proper.

Respectfully submitted,

INSPIRATION BIOPHARMACEUTICALS, INC.

By its proposed counsel,

/s/ Andrew G. Lizotte

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