

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

In re:

AKORN, INC.,¹

Debtors.

)
) Chapter 11
)
) Case No. 20-11177 (KBO)
)
) (Jointly Administered)
)
) **Re: Docket No. 130**

**ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN
KURTZMAN CARSON CONSULTANTS LLC AS ADMINISTRATIVE
ADVISOR EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting the employment and retention of Kurtzman Carson Consultants LLC (“KCC”) as administrative advisor (“Administrative Advisor”) effective as of the Petition Date pursuant to section 327(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1(a), 2016-1, and 9013-1(f) all as more fully described in the Application; and upon the Jordan Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.



of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and, if necessary, at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is granted as set forth herein.
2. The Debtors are authorized to retain KCC as Administrative Advisor pursuant to section 327(a) of the Bankruptcy Code effective as of the Petition Date under the terms of the Retention Agreement, and KCC is authorized to perform the bankruptcy administration services described in the Application and set forth in the Retention Agreement.
3. KCC is authorized to take such other action to comply with all duties set forth in the Application.
4. KCC shall apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with the Debtors' chapter 11 cases in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, Local Rules, and any other applicable procedures and orders of the Court. KCC also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the *Guidelines for Reviewing Applications*

for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases Effective as of November 1, 2013 (the “Revised UST Guidelines”), both in connection with the Application and the interim and final fee applications to be filed by KCC in these chapter 11 cases.

5. The Debtors shall indemnify KCC in accordance with the terms of the Retention Agreement, as modified pursuant to this Order.

6. KCC shall not be entitled to indemnification, contribution or reimbursement pursuant to the Retention Agreement for services other than the services provided under the Retention Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

7. All requests by KCC for the payment of indemnification as set forth in the Retention Agreement shall be made by means of an application to this Court and shall be subject to review by this Court to ensure that payment of such indemnity conforms to the terms of the Retention Agreement and is reasonable under the circumstances of the litigation or settlement in respect of which indemnity is sought; *provided*, that in no event shall KCC be indemnified in the case of its own bad-faith, self-dealing, breach of fiduciary duty, gross negligence, or willful misconduct.

8. Notwithstanding anything to the contrary in the Retention Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (a) judicially determined (the determination having become final) to have arisen from KCC’s gross negligence or willful misconduct; (b) for a contractual dispute in which the Debtors allege the breach of KCC’s contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant

to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (c) settled prior to a judicial determination under (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution or reimbursement under the terms of the Retention Agreement as modified by this Order.

9. In the event that KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Retention Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, and these invoices and time records shall be subject to the Revised UST Guidelines and the approval of this Court pursuant to sections 330 and 331 of the Bankruptcy Code without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code, and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

10. KCC shall not be entitled to reimbursement by the Debtors for any fees, disbursements, or other charges of KCC's counsel other than those incurred in connection with a request of KCC for payment of indemnity.

11. Notwithstanding any provision to the contrary in the Retention Agreement, any dispute relating to the services provided by KCC shall be referred to arbitration consistent with the terms of the Retention Agreement only to the extent that this Court does not have, retain, or exercise jurisdiction over the dispute.

12. Notice of the Application satisfied the requirements set forth in Bankruptcy Rule 6004(a).

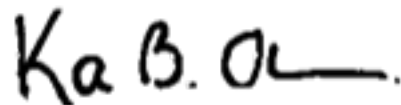
13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

14. The Debtors and KCC are authorized to take all actions necessary to carry out the relief granted in this Order in accordance with the Application.

15. In the event of any inconsistency between the Retention Agreement, the Application, and this Order, the terms of this Order shall govern.

16. This Court retains exclusive jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: June 23rd, 2020
Wilmington, Delaware

A handwritten signature in black ink, appearing to read "Ka B. Owens", with a stylized flourish at the end.

KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE