

**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. 132**

**ORDER AUTHORIZING THE DEBTORS TO
RETAIN AND EMPLOY GRANT THORNTON LLP AS TAX,
VALUATION AND FINANCIAL REPORTING CONSULTANTS
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”) pursuant to sections 327(a) and 328(a) of title 11 of the United States Code (the “Bankruptcy Code”), authorizing the Debtors to retain and employ Grant Thornton LLP (“Grant Thornton”) as tax, valuation and financial reporting consultants effective as of the Petition Date on the terms set forth in the Tax Engagement Letter attached as Exhibit B to the Application, the Tax Statements of Work attached as Exhibit C to the Application, the Advisory Engagement Letter and Corporate Advisory and Valuation Services Statement of Work attached as Exhibit D to the Application, all as more fully set forth in the Application, and upon the Fasel Declaration, attached

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC (N/A); 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 (N/A). The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.



as Exhibit E to the Application; 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 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 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. Pursuant to sections 327(a) and 328 of the Bankruptcy Code, the Debtors are hereby authorized to employ and retain Grant Thornton as tax, valuation and financial reporting consultant effective as of the Petition Date in accordance with the terms and conditions set forth in the Application and in the Agreements, as modified by this Order.
3. The indemnification provisions of the Agreements are approved, subject during the pendency of these chapter 11 cases to the following:
 - (a) Grant Thornton shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Agreements for services other than the

services set forth in the Agreements, unless such additional services and indemnification, contribution, or reimbursement therefor are approved by the Court;

- (b) the Debtors shall have no obligation to indemnify Grant Thornton, or provide contribution or reimbursement to Grant Thornton for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Grant Thornton's gross negligence or willful misconduct, or fraud; (ii) for a contractual dispute with the Debtors in which the Debtors allege the breach of Grant Thornton's contractual obligations unless the Court determines that indemnification, contribution or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii), but determined by the Court, after notice and a hearing to be a claim or expense for which Grant Thornton should not receive indemnity, contribution, or reimbursement under the terms of the Agreements as modified by this Order;
- (c) if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, Grant Thornton believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Agreements (as modified by this Order), including without limitation the advancement of defense costs, Grant Thornton must file an application therefor in this Court, and the Debtors may not pay any such amounts to Grant Thornton before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Grant Thornton for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, Grant Thornton. All parties-in-interest shall retain the right to object to any demand by Grant Thornton for indemnification, contribution, and/or reimbursement; and
- (d) any limitation on liability or any amounts to be contributed by the parties to the Agreements under the terms of the Agreements shall be eliminated.

4. Grant Thornton shall file fee applications for interim and final allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, such Bankruptcy Rules, or Local Rules as may then be applicable, and any other applicable orders and procedures of this Court.

5. Prior to any increases in Grant Thornton's rates for any individual retained by Grant Thornton and providing services in these cases, Grant Thornton shall file a supplemental affidavit with the Court and provide ten business days' notice to the Debtors, the U.S. Trustee and any official committee. The supplemental affidavit shall explain the basis for the requested rate increases in accordance with Section 330(a)(3)(F) of the Bankruptcy Code and state whether Debtors have consented to the rate increase. The U. S. Trustee retains all rights to object to any rate increase on all grounds including, but not limited to, the reasonableness standard provided for in section 330 of the Bankruptcy Code and all rates and rate increases are subject to review by the Court.

6. During the course of these chapter 11 cases, any provision in the Application, the Agreements, or the Fasel Declaration requiring payment of a percentage of fees as a payment of expenses shall have no force or effect. Grant Thornton shall be entitled to request reimbursement only of its actual expenses incurred, and all such requests shall comply with Rule 2016-2(e) of the Local Rules of this Court.

7. Notwithstanding anything to the contrary in the Application, the Agreements, or the Fasel Declaration, if services are to be performed by any Grant Thornton affiliate, or employees of any Grant Thornton affiliate, that affiliate shall promptly file all disclosures required by Bankruptcy Rule 2014(a), and Local Rules 2014-1, including disclosures of connections they may have with Potential Parties-in-Interest (as defined in the Fasel Declaration) which may be supplemented in the course of these cases, as well as disclosure regarding their disinterestedness.

8. In the event that, during the pendency of these chapter 11 cases, Grant Thornton seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in Grant Thornton's fee applications and such

invoices and time records shall be in compliance with Rule 2016-2(f) of the Local Rules of this Court, and shall be subject to the U.S. Trustee Guidelines and approval of the Bankruptcy Court under the standards of sections 330 and 331 of the Bankruptcy Code, without regard to whether such attorney has been retained under section 327 of the Bankruptcy Code and without regard to whether such attorney's services satisfy section 330(a)(3)(C) of the Bankruptcy Code; *provided, however*, that Grant Thornton shall not seek reimbursement of any fees incurred defending any of Grant Thornton's fee applications in these cases.

9. Grant Thornton shall use reasonable efforts to avoid any duplication of services provided by any of the Debtors' other retained professionals in these chapter 11 cases.

10. To the extent there is inconsistency between the terms of the Agreements, the Application, and this Order, the terms of this Order shall govern.

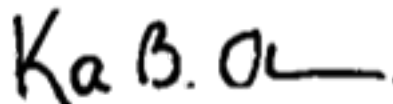
11. The Debtors and Grant Thornton are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

12. Notice of the Application is deemed to be good and sufficient notice of such Application, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by the contents of the Application.

13. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 7062, and 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: June 23rd, 2020
Wilmington, Delaware


KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE