

**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. 129

**ORDER AUTHORIZING DEBTORS TO
EMPLOY AND RETAIN ALIXPARTNERS, LLP AS
THEIR FINANCIAL 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”) for authority to employ and retain AlixPartners, LLP (“AlixPartners”) as restructuring advisor in these chapter 11 cases effective as of the Petition Date, pursuant to section 327(a) and 328 of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Rule 2014-1, as more fully set forth in the Application; and of the Orlofsky Declaration; and the Court having found that AlixPartners is a “disinterested person” as such term is defined under section 101(14) of the Bankruptcy Code, as supplemented by section 1107(b) of the Bankruptcy Code; and this court having found the terms and conditions of AlixPartners’ employment, including but not limited to the Fee and Expense Structure set forth in the Engagement Letter and Application, are reasonable under section 330 of the Bankruptcy Code;

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 Capitalized terms used but not defined herein have the meanings given to such terms in the Application.



and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and consideration of the Application and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Court having reviewed the Application; and the Court having held a hearing on the Application; and the Court having determined that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and it appearing that the relief requested in the Application is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is approved as set forth herein.
2. Pursuant to sections 327(a), 328 and 1107(b) of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016 and Local Rules 2014-1 and 2016-1, the Debtors are hereby authorized to employ and retain AlixPartners as their financial advisor in these chapter 11 cases as of the Petition Date, and in accordance with the terms and conditions set forth in the Engagement Letter attached to the Application as Exhibit B.
3. The terms of the Engagement Letter are approved in all respects except as explicitly limited or modified herein.
4. AlixPartners is authorized to apply the Retainer to satisfy any unbilled or other remaining prepetition fees and expenses AlixPartners becomes aware of during its ordinary course billing review and reconciliation. The Retainer held by AlixPartners shall be treated as an

evergreen retainer and be held by AlixPartners as security throughout these Chapter 11 Cases until AlixPartners' fees and expenses are fully paid.

5. AlixPartners shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court.

6. AlixPartners commits to a flat weekly rate, as detailed in the Engagement Letter and Application, for the core engagement team on this matter, consisting of David Orlofsky, William Kocovski, Jon Baluzy and Neethling McGrath (the "Core Team"). Any additional AlixPartners Personnel, outside of the Core Team, providing services under this matter will be billed at their standard hourly rates in effect when services are rendered.

7. The Fee and Expense Structure is approved, and the Debtors will reimburse AlixPartners for reasonable expenses incurred in connection with the performance of its engagement under the Engagement Letter including, without limitation, fees, disbursements, and other charges by AlixPartners' counsel to the extent provided for in the Engagement Letter as modified by this Order (including, without limitation, pursuant to the Indemnification Provisions as modified by this Order), which counsel shall not be required to be retained pursuant to section 327 of the Bankruptcy Code or otherwise; *provided*, further, that in the event that AlixPartners seeks reimbursement from the Debtors for attorneys' fees and expenses consistent with the terms of this Order, the invoices and supporting time records from such attorneys shall be included in AlixPartners' own applications, both interim and final, and they shall be subject to the U.S. Trustee Fee Guidelines and the approval of the Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code.

8. The Indemnification Provisions included in the Engagement Letter are approved, subject to the following:

- a. subject to the provisions of subparagraphs (b) and (c), *infra*, the Debtors are authorized to indemnify, and to provide contribution and reimbursement to, and shall indemnify, and provide contribution and reimbursement to, any indemnified person (as defined in the Engagement Letter) in accordance with the Engagement Letter for any claim arising from, related to, or in connection with the services provided for in the Engagement Letter;
- b. notwithstanding subparagraph (a) above or any provisions of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify AlixPartners or provide contribution or reimbursement to AlixPartners (i) for any claim or expense that is either judicially determined (the determination having become final and no longer subject to appeal) to have arisen from AlixPartners' self-dealing, gross negligence, willful misconduct, breach of fiduciary duty (if any), or bad faith; (ii) for a contractual dispute in which the Debtors allege breach of the obligations of AlixPartners or another indemnified person under the Engagement Letter unless this 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 sub-clauses (i) or (ii) above, but determined by this Court, after notice and a hearing pursuant to subparagraph (c) hereof to be a claim or expense for which AlixPartners should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Letter as modified by this Order; and
- c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 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, AlixPartners believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution or reimbursement obligations under the Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, AlixPartners must file an application before this Court and the Debtors may not pay any such amounts to AlixPartners before the entry of an order by this Court approving the payment; *provided, however*, that for the avoidance of doubt, this subparagraph (c) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses for indemnification, contribution, and/or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions to, AlixPartners or any other indemnified person. All parties-in-interest, including the U.S. Trustee, shall retain the right to any

request for indemnification, contribution or reimbursement by AlixPartners or any other indemnified person.

9. Any limitation of liability pursuant to the terms and conditions set forth in the Engagement Letter, or otherwise, are hereby eliminated for the duration of these chapter 11 cases.

10. The relief granted herein shall be binding upon any chapter 11 trustee appointed in these chapter 11 cases, or upon any chapter 7 trustee appointed in the event of a subsequent conversion of these chapter 11 cases to cases under chapter 7.

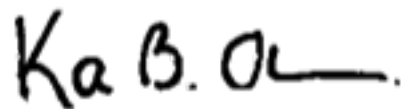
11. To the extent that there is any inconsistency between the Engagement Letter, the Application and this Order, the provisions of this Order shall apply.

12. The Debtors and AlixPartners are authorized to take all steps necessary or appropriate to carry out this Order.

13. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

14. This Court shall retain 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