

**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. 133**

**ORDER AUTHORIZING THE RETENTION AND COMPENSATION OF
CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), authorizing the Debtors to retain and compensate the professionals utilized in the ordinary course of business (each, an “OCP,” and collectively, the “OCPs”) that are listed on the OCP List attached hereto as **Exhibit 1** and **Exhibit 2** (as may be amended or supplemented by the Debtors from time to time) pursuant to the OCP Procedures on a postpetition basis, all as more fully set forth in the Motion; and upon the First Day 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 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 Motion in this district is proper pursuant to 28 U.S.C. §§ 1408

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 otherwise defined herein have the meanings ascribed to them in the Motion.



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and 1409; and this Court having found that the relief requested in the Motion 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 Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion 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 Motion is granted as set forth herein.
2. The Debtors are authorized to retain and compensate the OCPs identified on the OCP List attached hereto as **Exhibit 1** and **Exhibit 2** (as may be amended or supplemented by the Debtors from time to time in accordance with this Order), in the ordinary course of business, in accordance with the following compensation procedures (collectively, the "OCP Procedures"):
 - (a) Each OCP on the list attached as **Exhibit 1** or **Exhibit 2** to this Order (as may be amended or supplemented from time to time, the "OCP List") shall file with the Court a declaration of disinterestedness (each a "Declaration of Disinterestedness"), substantially in the form attached as **Exhibit 3** to this Order, within 30 days after the later of (i) the date of entry of this Order, (ii) the date on which such OCP commences services for the Debtors, and (iii) the date on which such OCP is added to the OCP List. Each OCP shall serve the Declaration of Disinterestedness upon: (a) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, Christopher M. Hayes, and Dan Latona, and Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (b) proposed co-counsel to the Debtors, Richards, Layton & Finger P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath, Amanda R. Steele, Zachary I. Shapiro, and Brett M. Haywood; (c) counsel

to the Term Loan Agent, Wilmer Cutler Pickering Hale and Dorr LLP, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, Attn: Andrew Goldman; (d) counsel to the Ad Hoc Group, Gibson Dunn & Crutcher, 200 Park Avenue, New York, New York 10166, Attn: Scott J. Greenberg and Michael J. Cohen, and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: Robert S. Brady; (e) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy; and (f) counsel to any statutory committee appointed in these chapter 11 cases (each a “Notice Party,” and collectively, the “Notice Parties”).

- (b) The Notice Parties shall have 14 days after the date of filing of each OCP’s Declaration of Disinterestedness (the “Objection Deadline”) to object to the retention of such OCP. The objecting party shall file any such objection and serve such objection upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within 14 days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date that is no less than 14 days from that date or on a date otherwise agreeable to the parties. The Debtors shall not be authorized to retain and compensate such OCP until all outstanding objections have been withdrawn, resolved, or overruled by order of the Court.
- (c) If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP, the Debtors shall be authorized to: (i) retain such OCP as of the date such OCP commenced providing services to the Debtors; and (ii) compensate such OCP as set forth below.
- (d) The Debtors reserve the right to amend or supplement the OCP List from time to time during these chapter 11 cases by: (i) including such OCPs on an amended version of the OCP List that is filed with the Court and served on the Notice Parties; and (ii) having such OCPs comply with the OCP Procedures. Each additional OCP listed in the OCP List shall file with this Court and serve a Declaration of Disinterestedness, substantially in the form attached hereto as **Exhibit 3**, on the Notice Parties as provided in the OCP Procedures. If no objections are timely filed to any such additional OCP’s Declaration of Disinterestedness, then retention of such OCPs shall be deemed approved by this Court pursuant to the Order without a hearing or further order.

- (e) The Debtors shall be authorized to pay, without formal application to the Court by any OCP, 100 percent of fees and disbursements to each of the OCPs retained by the Debtors pursuant to the OCP Procedures upon submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses incurred after the Petition Date; *provided* that the fees paid to any OCP set forth on **Exhibit 1** attached hereto, excluding costs and disbursements, may not exceed \$150,000.00 per month on average over a rolling three-month period while these chapter 11 cases are pending (the “Tier 1 OCP Monthly Cap”), and that the fees of any OCP set forth on **Exhibit 2** attached hereto, excluding costs and disbursements, may not exceed \$75,000.00 per month on average over a rolling three-month period while these chapter 11 cases are pending (the “Tier 2 OCP Monthly Cap” and, together with the Tier 1 OCP Monthly Cap, the “OCP Monthly Caps”) (it being understood and agreed that there shall be no application of a rolling three-month average for the first month); *provided, further*, that the total amount disbursed per three-month period, for each OCP does not exceed \$450,000.00 per OCP (the “OCP Quarterly Cap” together with the OCP Monthly Caps, collectively, the “OCP Caps”). The OCP Caps may be increased by mutual agreement between the Debtors, the Committee, and the U.S. Trustee.
- (f) To the extent that fees payable to any OCP exceed the applicable OCP Cap, the applicable OCP shall file a fee application (a “Fee Application”) with the Court for the amount in excess of the applicable OCP Cap in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the fee guidelines promulgated by the Office of the United States Trustee, and any applicable orders of the Court, unless the U.S. Trustee agrees otherwise.
- (g) Beginning on the three-month period ending July 31, 2020, and for each three-month period thereafter during which these chapter 11 cases are pending, the Debtors shall within thirty (30) days thereof file with the Court and serve on the Notice Parties a statement with respect to each OCP paid during the immediately preceding quarterly period (the “Quarterly Statement”). Each Quarterly Statement shall include: (i) the name of the OCP; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by that OCP during the reported quarter; and (iii) a general description of the services rendered by that OCP.

3. All monthly payments to the OCPs will be reflected on the Debtors' monthly operating reports.

4. Nothing contained herein shall affect the Debtors' or any appropriate party in interest's ability to dispute any invoice submitted by an OCP, and nothing contained herein shall preclude the Debtors from seeking authority to pay any OCP in an amount greater than the OCP Caps, subject to the rights of any party in interest to oppose any such request.

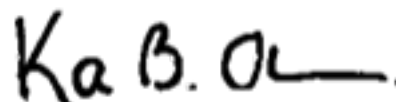
5. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of the Court.

6. The Debtors reserve the right to amend or supplement the OCP List, from time to time as necessary. In the event the Debtors amend or supplement the OCP List, the Debtors shall file a notice with this Court and serve it on the Notice Parties.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. 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

EXHIBIT 1

Tier 1 Ordinary Course Professionals

Tier 1 Ordinary Course Professionals

OCP Name	Service	Address
BDO USA LLP	Financial Statement Review / 401k Audit	330 N Wabash Ave Suite 3200, Chicago, IL 60611
CONRAD O'BRIEN PC	Litigation counsel	1500 Market St. Suite 3900, Philadelphia, PA 19102
CRAVATH SWAINE & MOORE LLP	Litigation/Securities litigation/SEC	825 Eighth Avenue, New York, NY 10019
POLSINELLI PC	General legal, including regulatory, employment, real property, contracts, healthcare, litigation	150 N. Riverside Plaza Suite 3000, Chicago, IL 60606

EXHIBIT 2

Tier 2 Ordinary Course Professionals

Tier 2 Ordinary Course Professionals

OCP Name	Service	Address
ADVANCED DISCOVERY INC	Litigation	P.O. Box 102242, Atlanta, GA, 30368
BAKER & MCKENZIE AUSTRALIA	Legal - Regulatory (Australia)	Level 19 181 William Street, Melbourne, VIC 3009
BAKER DONELSON BEARMAN CALDWELL & BEROWI	Litigation Counsel	100 Light Street, 19th floor, Baltimore, MD, 21202
BORDEN LADNER GERVAIS LLP	Legal International – Canadian	22 Adelaide Street West Suite 3400, Toronto, ON, M5H 4E3
BRYAN CAVE LEIGHTON PAISNER LLP	Intellectual Property	161 North Clark Street, Suite 4300, Chicago, IL 60601
CANADIAN HEALTHCARE LAW (DUNN) INC	Legal - Regulatory (Canada)	620 rue du Bourgogne, Rosemère, QC J7A 4R7
CORNERSTONE RESEARCH INC	Investigation and Litigation Consultants / expert witnesses	181 W. Madison, 4th Floor, Chicago, IL 60602
DLA Piper	Legal representation of Audit Committee	444 West Lake Street Suite 900, Chicago, IL 60606
FIGLIULO AND SILVERMAN PC	Legal	10 S LaSalle Suite 3600, Chicago, IL 60603
FOLEY & LARDNER LLP	Legal - Regulatory	150 East Gilman Street Suite 5000, Madison, WI 53703
FTI CONSULTING (SC) INC	Strategic communications and financial services	88 Pine Street, 32nd Floor, New York, NY 10005
HYMAN PHELPS & MCNAMARA PC	Legal - Regulatory	700 Thirteenth Street, N.W., Suite 1200, Washington, DC 20005
JONES WALKER LLP	Corporate governance counsel in Louisiana,	201 St. Charles Ave, New Orleans, LA 70170
KHAITAN & CO	Legal international - India	Ashoka Estate, 12th Floor, 24 Barakhamba Road , New Delhi, India 110 001
KING & SPALDING LLP	Legal government / Regulatory / Litigation	1700 Pennsylvania Avenue, NW Suite 200, Washington, DC 20006
LEGILITYL	Litigation Counsel	216 Centerview Drive Suite 250, Brentwood, TN 37072

OCP Name	Service	Address
LEWIS BRISBOIS BISGAARD & SMITH LLP	Legal - Employment Matters	550 E. Swedesford Road, Suite 270, Wayne, PA 19087
MALIK AND POPIEL	Legal - Immigration	7606 Transit Rd. Suite 200, Buffalo, NY 14221
MANSUKHLAL HIRALAL AND CO	Intellectual Property – India	Surya Mahal, 2nd Floor, 5, Burjorji Bharucha Marg, Fort, Mumbai 400 023
MORRIS NICHOLS ARSHT & TUNNELL	Delaware Litigation Counsel	1201 North Market Street, Wilmington, DE 19801
NARDELLO & CO LLC	Investigation Consultants	565 Fifth Ave, New York, NY 10017
PESTALOZZI ATTORNEYS AT LAW LTD	Legal international – Switzerland	Loewenstrasse 1, CH-8001, Zurich, Switzerland
QUIGG PARTNERS	Legal regulatory – New Zealand	36 Brandon Street, Level 7, Wellington, New Zealand 6140
ROPES & GRAY LLP	Legal regulatory	2099 Pennsylvania Avenue, N.W., Washington, DC 20006
SCHIFF HARDIN LLP	Legal IP / government / Regulatory / Litigation	233 South Wacker Drive Suite 7100, Chicago, IL 60606
SCHNADER HARRISON SEGAL & LEWIS LLP	Litigation Counsel	220 Lake Drive East Suite 200, Cherry Hill, NJ, 08002
STERNE KESSLER GOLDSTEIN & FOX PLLC	Intellectual Property	1100 New York Avenue, NW, Washington, DC 20005
SUGHRUE MION PLLC	Intellectual Property	2000 Pennsylvania Ave., N. W., Washington, DC 20006
TAFT STETTINIUS & HOLLISTER	Legal employment matters	111 E. Wacker Drive, Suite 2800, Chicago, IL 60601
TAYLOR PORTER BROOKS & PHILLIPS LLP	Litigation	450 Laurel Street, 8th Floor, Baton Rouge, LA 70801
WACHTELL LIPTON ROSEN & KATZ	Legal	51 West 52nd Street, New York, NY 10019

EXHIBIT 3

Form of Declaration of Disinterestedness

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

In re:)	
)	Chapter 11
AKORN, INC., <i>et al.</i> , ¹)	
)	Case No. 20-11177 (KBO)
Debtors.)	(Jointly Administered)
)	

**DECLARATION OF DISINTERESTEDNESS OF [ENTITY] PURSUANT
TO THE ORDER AUTHORIZING THE RETENTION AND COMPENSATION OF
CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

I, _____, declare under penalty of perjury:

1. I am a [Position] of [Company], located at [Street, City, State, Zip Code] (the “Company”).

2. Akorn, Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”), have requested that the Company provide [specific description] services to the Debtors, namely [specific Debtor(s) for which services are being provided], and the Company has consented to provide such services.

3. The Company may have performed services in the past, may currently perform services and may perform services in the future, in matters unrelated to these chapter 11 cases for persons that are parties in interest in the Debtors’ chapter 11 cases. The Company does not perform services for any such person in connection with these chapter 11 cases, or have any relationship

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with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates with respect to the matter on which the Company is proposed to be employed.

4. As part of its customary practice, the Company is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants, and parties in interest in these chapter 11 cases.

5. Neither I nor any principal, partner, director, officer, etc., of or professional employed by, the Company has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Company.

6. Neither I nor any principal, partner, director, officer, of or professional employed by, the Company, insofar as I have been able to ascertain, holds, or represents any interest adverse to the Debtors or their estates with respect to the matter(s) upon which this Company is to be employed.

7. The Debtors owe the Company \$_____ for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. §§ 101–1532.

8. I understand that the amount owed by any of the Debtors to the Company for prepetition services will be treated as a general unsecured claim, and as such, the Company may file a proof of claim.

9. I further understand that this Declaration will not suffice as the Company's proof of claim.

10. As of [DATE], 2020, which was the date on which the Debtors commenced these chapter 11 cases, the Company [was/was not] party to an agreement for indemnification with certain of the Debtors. [A copy of such agreement is attached as **EXHIBIT 1** to this Declaration.]

11. The Company is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

[Remainder of page intentionally left blank]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: _____, 2020

[DECLARANT]