

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

In re:

AKORN, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 20-11177 (KBO)
)
) (Jointly Administered)
)

**DECLARATION OF DISINTERESTEDNESS OF FTI CONSULTING PURSUANT
TO THE ORDER AUTHORIZING THE RETENTION AND COMPENSATION OF
CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

I, Rachel Chesley, declare under penalty of perjury:

1. I am a Managing Director of FTI Consulting, located at 88 Pine St., 32nd Floor, New York, NY 10005 (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 strategic communications consulting services to the Debtors, namely Akorn, Inc., 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

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.



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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 \$0 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 May 20, 2020, which was the date on which the Debtors commenced these chapter 11 cases, the Company was 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: June 17, 2020

A handwritten signature in black ink, appearing to read "Michael C.", is written above a horizontal line.

[DECLARANT]

**Strategic Communications**

Wall Street Plaza, 88 Pine Street, 32nd Floor, New York, NY 10005
 T +1 (212) 850-5600 F +1 (212) 850-5790

February 6, 2019

Douglas Boothe
 President and Chief Executive Officer
 Akorn Pharmaceuticals
 1925 West Field Court, Suite 300
 Lake Forest, IL 60045

This letter shall serve to confirm our Agreement as follows:

1. Akorn Pharmaceuticals, including its subsidiaries (collectively, "Akorn" or "Client") hereby retains FTI Consulting (SC), Inc. ("FTI") effective as of February 1, 2019 to provide integrated communications services. The services shall be performed by FTI or by any subsidiary of FTI, as FTI shall determine, provided however, FTI's subsidiary Compass Lexecon shall not work on the services nor be privy to the services or information shared hereunder. References herein to FTI and its employees shall be deemed to apply also, unless the context shall otherwise indicate, to employees of each such subsidiary.
2. The initial term of this Agreement shall be for the period commencing on February 1, 2019 and expiring on January 31, 2020 ("Initial Term"). The term of this Agreement shall automatically be extended for one (1) additional year at the end of the Initial Term, and then again after each successive one (1) year period thereafter. However, either party may terminate this Agreement upon sixty (60) days prior written notice of termination to the other party. During said sixty (60) day notice period, the parties shall continue to perform all of their obligations under this Agreement.
3. The scope of each project will be defined in an attachment and/or a statement of work referenced herein as a Schedule. Each Schedule will delineate the services to be provided, specific rates, fees, expense estimates and timetables, as applicable. Each Schedule is subject to the general terms and conditions of this Agreement.

FTI Standard Hourly Charge-Out Rates

Sr. Managing Director	\$775-\$875/hour
Managing Director	\$675-\$725/hour
Sr. Director	\$575-\$625/hour
Director	\$475-\$525/hour
Sr. Consultant	\$375-\$425/hour
Consultant	\$275-\$325/hour
Administration	\$125/hour

FTI's rates shall remain unchanged for the initial 12 month period of this Agreement. After the initial 12 month period, FTI will provide Client thirty days written notice if a rate adjustment is being made and Akorn shall have the ability to accept the increase or terminate the Agreement at the end of that thirty day period. Further, if any work needs to be performed by FTI personnel in our international offices, such work will be billed at the standard rates set forth for the specific international office upon Akorn's prior written approval.

4. Client shall be responsible for all reasonable and necessary disbursements made by FTI on behalf of Client, including travel and meals expenses provided such expenses over \$1,000 per expenditure are pre-approved by Akorn in writing and entered into in accordance with the *Travel, Entertainment & General Reimbursement Policy for Akorn's Consultant/Vendor*, a copy of which has been provided to FTI.

At the end of each month, FTI shall bill Client for all expenses and disbursements made on behalf of Client in the prior month. All expenses and disbursements incurred will be itemized in each monthly invoice.



5. Invoices are due and payable within 45 days of receipt. The name and address of the Client designee to receive and approve FTI's invoices is indicated on the signature page of this latter. In addition to the remedies set forth above and any other remedies available at law, FTI reserves the right to defer rendering services until payment is received on past-due invoices unless Akorn is disputing such payments in good faith.
6. FTI represents and warrants that: (i) all of its employees, agents or representatives who will provide any services under this Agreement (a) are qualified to provide such services and have been have appropriately trained by FTI, (b) have passed appropriate background checks and have no history of criminal activity, and (c) will provide the services in accordance with the highest industry standards that may be applicable to such services; (ii) FTI shall follow all applicable rules, laws and regulations and, when onsite at Akorn, will follow all internal safety policies and instructions, including cGMP standards (if applicable); and (iii) the services provided by FTI to Akorn will not violate or infringe upon any patent, copyright, trade secret, or other contractual, employment or confidentiality right of a third party.

Client will furnish to FTI certain material, non-public information concerning Client. As a condition of receiving such information, FTI agrees to treat any such information confidential in accordance with the terms and conditions of that certain Confidentiality and Non-Disclosure Agreement dated February 1, 2019 between the parties (the "Confidentiality Agreement") which agreement is incorporated herein in its entirety. The preceding paragraphs potentially to the contrary notwithstanding, FTI will be entitled to list Client's name, its logo, as well as a general description of the services being provided to Client, in FTI's materials upon Akorn's prior written consent. FTI will be permitted to disseminate such information, among other ways, in its brochures, in its Website, and in its proposals to other actual or prospective clients.

The Client shall notify FTI in writing if Client delivers to FTI any personally identifiable information or equivalent and the Client shall instruct FTI if any additional measures (i.e. data transfer protections) are required. Upon the earlier of (a) two (2) years from the date of the final invoice issued hereunder or (b) upon written notice to the Client, FTI will, at its option, destroy or return to the Client all materials provided by the Client to FTI, and all materials created by FTI specifically for the Client under this Agreement; provided, however, that with respect to back-up media, such materials will be overwritten or destroyed, subject to FTI's normal schedule for overwriting and destruction, as the case may be.

7. Akorn is and shall be, the sole and exclusive owner of all right, title and interest throughout the world in and to all the results and proceeds of the services performed under this Agreement, including all patents, copyrights, trademarks, trade secrets and other intellectual property rights (collectively "Intellectual Property Rights") therein. All deliverables are hereby deemed a "work made for hire" as defined in 17 U.S.C. § 101 for Akorn. If, for any reason, the deliverables do not constitute a "work made for hire," FTI hereby irrevocably assigns to Akorn all right, title and interest throughout the world in and to such deliverables, including all Intellectual Property Rights therein. Upon the reasonable request of Akorn, FTI shall promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist Akorn to prosecute, register, perfect, record or enforce its rights.

Notwithstanding the above, FTI shall retain ownership of such preexisting materials and hereby grant to Akorn an irrevocable, worldwide, unlimited, royalty-free license to use, publish, reproduce, display, distribute copies of, and prepare derivative works based upon, such preexisting materials and derivative works thereof. Akorn may assign, transfer and sublicense such rights to others without FTI's approval.

During the course of performing services, FTI may collect, generate or obtain via license, data such as, but not limited to, communications performance data, media reports, social media, media analytics, primary research data, publicly available data, opt-in subscriber data, and target audience lists. Where FTI has not been provided this data by the client under the definition of confidential "information" (as defined in Section 6), FTI retains ownership of any and all rights to this data and its derivatives but will not share this data with its subsidiaries or affiliates or use in any such manner such data would be used for purposes adverse to Akorn. Further, FTI may not use this data in affiliation with the client's name for any purpose outside the scope of this agreement without prior, expressed written prior consent from Akorn.



8. Client agrees to promptly notify FTI if it extends (or solicits the possible interest in receiving) an offer of employment to an employee of FTI at the director level or above who has been directly and substantively involved in providing services hereunder and agrees that, if such employee begins such new employment at Akorn, it will pay FTI a cash fee equal to 25% of the starting annual base salary (excluding benefits, commissions, bonuses and any other form of compensation) to be paid to FTI's former employee that the Client hires at any time up to one year subsequent to the date of such person providing services under this agreement; Nothing contained herein shall preclude the hiring of any such employee who responds to a general solicitation of employment through a published advertisement, public notice, or internal or external websites or job search engines not targeted specifically at such party or its employees.
9. FTI Consulting (SC) Inc. is a wholly owned subsidiary of FTI Consulting, Inc., a global firm with numerous worldwide practices. Affiliated entities of FTI may be engaged by parties with interests that are adverse to and may not be consistent with the interests of Client. Absent your prior approval, FTI Consulting (SC) Inc. employees will not provide services to a party that is adverse to you in this matter. If employees of other FTI Consulting, Inc. entities provide services to you as part of this engagement team in this matter, those employees will be subject to these same restrictions. Notwithstanding the above, Akorn and FTI hereby acknowledge that there exists a current conflict of interests between FTI's subsidiary Compass Lexecon and its representation of Fresenius Kabi and or its affiliates in a matter adverse to Akorn, which conflict FTI and Akorn each hereby waives as of the date hereof.
10. This Agreement (including all schedules) and the Confidentiality and Non-Disclosure Agreement dated February 1, 2019 between the parties constitute the entire understanding and Agreement between the parties with respect to the subject matter covered herein and all prior or contemporaneous understandings, negotiations and agreements are herein merged.
11. The Agreement may not be altered, extended, or modified nor any of its provisions waived, except by a document in writing duly signed by both parties.
12. A waiver by either party of any breach, act or omission of the other party is not to be deemed a waiver of any subsequent similar breach, act or omission.
13. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of each of us and our respective successors and assigns.
14. This Agreement shall be governed by the laws of the State of New York, without giving effect to the choice of law provisions thereof. For all disputes arising out of or in connection with this agreement each party hereby agrees to jurisdiction and venue in the State or Federal courts in New York County, New York. To facilitate judicial resolution and save time and expense, FTI and the Client irrevocably and unconditionally agree to waive a trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or the services provided hereunder. Client hereby waives personal service of process in any action or proceeding arising hereunder and Client agrees that such process shall be deemed properly and adequately served if sent to our address set forth in this Agreement, by certified or registered mail, return receipt requested.
15. Client agrees that FTI shall not be liable under this agreement to Client or its respective successors, assigns or affiliates for damages in excess of the amount that is equal to two times the total amount of the fees paid to FTI under this agreement. In no event shall either party be liable for punitive or consequential damages of any kind. Client shall indemnify FTI, and hold FTI harmless against any and all claims by third parties for losses, damages or liabilities, including reasonable attorney's fees and expenses ("Losses"), arising in any manner out of or in connection with this Engagement, unless such Losses resulted from the gross negligence or willful misconduct of FTI. The terms of this paragraph shall survive the termination of this agreement and shall apply to any controlling person, director, officer, or employee of FTI.
16. This Agreement may be executed in counterparts. Facsimile or emailed PDF copies of signatures are as effective as the original.



17. All notices, requests, demands, or other communications under this Agreement shall be in writing, notice shall be sufficiently given for all purposes as follows:

Personal delivery. When personally delivered to the recipient, notice is effective on delivery.

Certified mail. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by return receipt.

Overnight delivery. When delivered by overnight delivery Federal Express/Airborne/United Parcel Service/DHL Worldwide Express, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Addresses for purpose of giving notice are as follows:

To FTI: Attn: COO
FTI Consulting (SC), Inc.
Wall Street Plaza
88 Pine Street, 32nd Floor
New York, NY 10005

To Client: Mr. Douglas Boothe
President and Chief Executive Officer
Akorn Pharmaceuticals
1925 West Field Court, Suite 300
Lake Forest, IL 60045

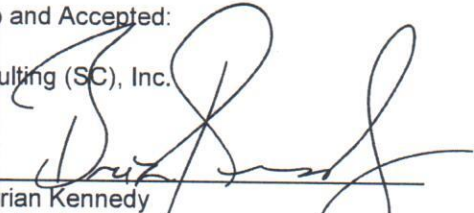
18. If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid, in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.

If the foregoing correctly sets forth the terms and conditions of our Agreement, please have the enclosed copy of this letter signed by a duly authorized officer beneath the words "Agreed to and Accepted" and return same to us.

Agreed to and Accepted:

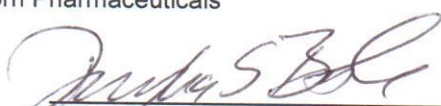
FTI Consulting (SC), Inc.

By:


Brian Kennedy
SMD, Americas Head of FTI Strategic Communications

Akorn Pharmaceuticals

By:


Douglas Boothe
President and CEO

Date: March 1, 2019

Date: March 1, 2019

Name and Address of Client contact designated to receive and approve invoices related to this Agreement:

Name: _____
Address: _____

LEGAL
KOP
2019



Phone:

E-Mail:
