

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
)	
AKORN, INC., <i>et al.</i> ,)	Case No. 20-11177 (KBO)
)	
Debtors.)	Jointly Administered
)	
)	Re Dkt. No.: 181

**LIMITED OBJECTION OF ASCENT HEALTH SERVICES, LLC TO
DEBTORS' NOTICE OF PROPOSED ASSUMPTION OR ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS**

Ascent Health Services, LLC, ("Ascent"), by and through counsel, hereby files this Limited Objection (the "Objection") to Debtor's *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (the "Cure Notice")¹, and respectfully represents as follows:

1. On May 20, 2020 (the "Petition Date"), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").
2. Upon information and belief, Debtor is operating and managing its business as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.
3. Ascent and Debtor entered in that *Rebate Program Agreement and Inflation Agreement* (collectively, the "Agreement"). Under the Agreement, Debtor was to pay to Ascent certain rebates and fees associate therewith related to the sale of certain products.
4. The Agreement has not been rejected or assumed by Debtor as of the date of this objection.

¹ Terms not otherwise defined here shall have the meanings ascribed to them in the Cure Notice and accompanying documents.



5. On or about June 20, 2020, Debtors mailed Cure Notices.

CURE CLAIM OBJECTION

6. Section 365(b) provides in pertinent part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

7. As of the date of this Objection, Ascent objects to the cure amounts proposed for the Agreement included in Debtors' Cure Notice (the "Proposed Cure Amount(s)"). Ascent herein reserves the right to file supplementary cure objections.

8. The Proposed Cure Amount is understated, as of the date of this Objection as indicated in the below table:

TABLE 1:

Debtor's Contract Description	Debtor Proposed Cure Amounts	Ascent " <u>Cure Amounts</u> " ²
<i>Rebate Program Agreement and Inflation Agreement</i>	\$0.00	\$214,763.88

² The Cure Amounts specified in this chart do not reflect any amounts that will become due or be invoiced on or after August 10, 2020, and Ascent reserves all of its rights with respect thereto.

9. Ascent further objects to the assumption of the Agreement absent payment of all Cure Amounts owed thereunder from the date of this Objection through the effective date of assumption, including any amounts that will become due or be invoiced on or after August 10, 2020, (including, but not limited to, additional amounts, not yet known, that accrued following the date of this Objection).

JOINDER

10. In addition to the foregoing, Ascent further joins in the objections filed by the Debtors' other creditors to the extent that such objections are not inconsistent with the relief requested in this Objection.

RESERVATION OF RIGHTS

11. Ascent hereby reserves its rights to make such other and further objections as may be appropriate to the Agreement, including, but not limited to, objections regarding adequate assurance of future performance under Section 365.

CONCLUSION

12. For the reasons set forth above, Ascent respectfully requests that this Court (i) sustain this Objection; (ii) require that any order authorizing the assumption of the Agreement affirmatively requires the Debtors to pay all amounts accrued but not yet billed following August 10, 2020; and (iii) grant Ascent such further relief as it deems proper.

Date: August 14, 2020

Wilmington, DE

HOGAN♦McDANIEL

/s/Garvan F. McDaniel

Garvan F. McDaniel (DE Bar No. 4167)

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*ATTORNEYS FOR ASCENT HEALTH
SERVICES, LLC*

CERTIFICATE OF SERVICE

Garvan F. McDaniel hereby certifies that on this the 14th day of August, 2020, a true a correct copy of the *Limited Objection of Ascent Health Services, LLC to Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* was served upon the following parties by the following means:

First Class Mail:

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And all other parties receiving ECF e-notice.

/s/ Garvan F. McDaniel
Garvan F. McDaniel (DE Bar No. 4167)