

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

In re:

AKORN, INC. *et al.*,

Debtors.¹

Chapter 11

Case No. 20-11177 (KBO)

(Jointly Administered)

Obj. Deadline: August 25, 2020 at 12:00 p.m. EST

**OBJECTION AND RESERVATION OF RIGHTS OF SYNEOS HEALTH, LLC AND
INVENTIV HEALTH CONSULTING, INC. TO NOTICE TO CONTRACT PARTIES TO
POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Syneos Health, LLC ("Syneos Health") and inVentiv Health Consulting, Inc. ("inVentiv," and together with Syneos Health, "Syneos"), by and through their undersigned counsel, hereby file their objection (the "Objection") to the several *Notices to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (collectively, the "Cure Notices") that were served upon Syneos. In support of this Objection, Syneos respectfully represents to the Court as follows:

BACKGROUND

1. On May 20, 2020 (the "Petition Date"), the above-captioned debtors (collectively, the "Debtors") filed voluntary petitions under chapter 11 of title 11 of the United States Code (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.



2011177200825000000000010

2. Since the Petition Date, the Debtors have continued to operate their business as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. As of the Petition Date, Debtor Akorn, Inc. (“Akorn”) and Syneos were parties to several executory contracts whereby Syneos provided various project management services to Akorn. In particular, Akorn, Syneos Health and Syneos Health UK Limited were parties to that certain Scope of Work for Professional Services (iPledge Pregnancy Registry) for the period between January 1, 2020 and December 31, 2021 (the “iPledge SOW”). The iPledge SOW is subject to and incorporates by reference the provisions of that certain Master Services Agreement dated January 1, 2019 (as amended from time to time, the “MSA,” and together with the iPledge SOW, the “iPledge Agreement”).² Pursuant to the iPledge Agreement, Syneos Health performs certain management functions with respect to the isotretinoin pregnancy risk management program (“iPledge”), which seeks to eliminate fetal exposure to isotretinoin. In particular, Syneos provides project management services for the iPledge Pregnancy Registry, which is a component of the iPledge risk management program that collects information on pregnancies of women that are exposed to isotretinoin during their pregnancies. Syneos Health has continued providing these services to Akorn post-petition.

4. Additionally, as of the Petition Date, Akorn and inVentiv were parties to that certain Isotretinoin Pregnancy Risk Evaluation and Mitigation Strategy REMS Project Management Agreement #2 dated as of January 1, 2018 by and between Claimant and Akorn (as amended from time to time, the “REMS Project Management Agreement”), and that certain Statement of Work No. 1 dated as of January 1, 2018 (as amended from time to time, the “REMS SOW,” and together with the REMS Project Management Agreement, the “REMS

² Copies of the iPledge Agreement can be made available upon request to undersigned counsel.

Agreement”).³ InVentiv has continued providing services pursuant to the REMS Agreement to Akorn post-petition.

5. Pursuant to the Cure Notices, the Debtors have identified the iPledge Agreement and the REMS Agreement as executory contracts subject to possible assumption, in addition to certain other agreements, as detailed below:

No.	Debtor Party	Contract Counterparty	Contract Name/Description	Cure Amount
1	Akorn, Inc. or Affiliate Debtor	inVentiv Health Consulting, Inc.	Change Order No. 2 to Statement of Work #1 Contract ID: 2075 1 1	\$0.00
2	Akorn, Inc.	Syneos Health, LLC	Scope of Work for Professional Services ⁴ Contract ID: 2044 1 2	\$0.00
3	Akorn, Inc.	Syneos Health UK Limited	Scope of Work for Professional Services ⁵ Contract ID: 2044 1 3	\$0.00
4	Akorn, Inc. or Affiliate Debtor	inVentiv Health Consulting, Inc.	Amendment No. 1 to Master Services Agreement Dated March 28, 2014 Contract ID: 1197 1 1	\$0.00
5	Akorn, Inc.; VersaPharm, Incorporated	inVentiv Health Consulting, Inc. (f/k/a Campbell	Letter Agreement re: Assignment of Agreement between	\$0.00

³ Copies of the REMS Agreement can be made available upon request to undersigned counsel.

⁴ Upon discussion, counsel for Syneos and the Debtors have determined that this cure notice refers to the iPledge Agreement.

⁵ Upon discussion, counsel for Syneos and the Debtors have determined that this cure notice refers to the iPledge Agreement.

		Alliance, Ltd.)	inVentiv and iPLEDGE Sponsors Contract ID: 1211 1 1	
6	Akorn, Inc.	inVentiv Health Consulting, Inc., a Syneos Health Group Co.	Amendment No. 2 to Statement of Work No. 1 ⁶ Contract ID: 1178 1 1	\$0.00
7	Akorn, Inc.	inVentiv (f/k/a Campbell Alliance, Ltd.)	Amendment No. 1 to Master Services Agreement as of September 25, 2015 Contract ID: 1173 1 1	\$24,131.75
8	Akorn, Inc.	inVentiv (f/k/a Campbell Alliance, Ltd.)	Amendment No. 1 to Statement of Work No. 1 Dated as of December 1, 2015 Contract ID: 1173 1 1	\$0.00

6. Upon discussion between counsel for Syneos and the Debtors, it was determined that Cure Notices 2 and 3 above refer to the iPledge Agreement, and Cure Notice 6 above refers to the REMS Agreement. The Cure Notices list cure amounts of \$0.00 with respect to both the iPledge Agreement and the REMS Agreement. Counsel for Syneos and the Debtors are in discussions to reconcile the appropriate cure amounts and to identify the agreements listed in the other Cure Notices.

7. Syneos objects to the Cure Notices to the extent that they list incorrect cure amounts. Syneos also preserves its right to require that the Debtors and/or any assignee fully comply with section 365 of the Bankruptcy Code, including, but not limited to, by requiring

⁶ Upon discussion, counsel for Syneos and the Debtors have determined that this cure notice refers to the REMS Agreement.

compliance with any additional payment obligations that come due through and including the effective date of any assumption. Syneos seeks confirmation of the other agreements subject to potential assumption.

LIMITED OBJECTION AND RESERVATION OF RIGHTS

8. Section 365(b) of the Bankruptcy Code requires that, in order to assume an executory contract, the debtor must cure any default and provide adequate assurance of future performance under such contract. 11 U.S.C. § 365(b)(1).

9. Syneos objects to the assumption of the iPledge Agreement and the REMS Agreement to the extent that the proposed cure amount is less than the amount owed. As indicated above, the Debtors' proposed cure amount for both Agreements is \$0.00. However, with respect to the REMS Agreement, the total cure amount was roughly \$87,386.90 (the "REMS Cure Amount") as of the Petition Date. With respect to the iPledge Agreement, the total cure amount was \$142,305.86 as of the Petition Date (the "iPledge Cure Amount"). The REMS Cure Amount and the iPledge Cure Amount, in addition to any post-petition invoices that become due and owing, must be satisfied in full in order for the iPledge Agreement and the REMS Agreement to be assumed. Unless and until the proposed cure amounts are revised accordingly, Syneos objects to assumption of the iPledge Agreement and the REMS Agreement. Syneos reserves its right to require payment in full of all outstanding amounts through and including the effective date of the assumption in order for the iPledge Agreement and the REMS Agreement to be assumed.

10. Further, as illustrated above, Syneos has received multiple Cure Notices that contain vague references to agreements which Syneos has not been able to identify. Syneos therefore seeks, by way of this Objection, to confirm which other contracts the Debtors seek to

assume. For any agreement which the Debtors seek to assume, Syneos requires payment in full of all outstanding amounts through and including the effective date of the assumption. Syneos expressly reserves its right to object on any basis whatsoever, including its right to object to the proposed cure amount, once such contracts are identified.

11. Counsel for Syneos and the Debtors have been communicating in good faith to resolve these issues, and Syneos files this Objection to preserve its rights in the event that the parties are unable to come to a resolution.

12. Syneos reserves the right to make such other and further responses and/or objections as may be appropriate.

CONCLUSION

WHEREFORE, Syneos respectfully requests that any order authorizing the assumption and assignment of its contracts (i) require full satisfaction of the iPledge Cure Amount Agreement and the REMS Cure Amount, as set forth above, (ii) require payment of all outstanding amounts as of the effective date of the assumption, (iii) expressly identify the agreements subject to assumption, and (iv) grant such other and further relief as the Court deems just and proper.

[Remainder of page intentionally left blank]

Dated: August 25, 2020

K&L GATES LLP

/s/ Steven L. Caponi

Steven L. Caponi (No. 3484)

Matthew B. Goeller (No. 6283)

600 N. King St., Suite 901

Wilmington, Delaware 19801

Telephone: (302) 416-7080

Email: steven.caponi@klgates.com

matthew.goeller@klgates.com

-and-

John R. Gardner

Emily K. Mather

K&L Gates LLP

Post Office Box 17047 (27619-7047)

4350 Lassiter at North Hills Ave., Suite 300

Raleigh, North Carolina 27609

Telephone: (919) 743-7311

Email: john.gardner@klgates.com

emily.mather@klgates.com

*Counsel for Syneos Health, LLC and
inVentiv Health Consulting, Inc.*

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

In re:

AKORN, INC. *et al.*,

Debtors.

Chapter 11

Case No. 20-11177 (KBO)

(Jointly Administered)

CERTIFICATE OF SERVICE

I, Steven L. Caponi, Esq., hereby certify that on this 25th day of August, 2020, I caused a true and correct copy of the attached Objection and Reservation of Rights of Syneos Health, LLC and Inventiv Health Consulting, Inc. to Notice to Contract Parties to Potentially Assumed Executory Contracts And Unexpired Leases to be served upon the all counsel of record via the Court's CM/ECF System and by regular mail to the following:

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attn: Nicole L. Greenblatt
email: nicole.greenblatt@kirkland.com

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attn: Patrick J. Nash, Jr. P.C., Gregory F. Pesce, and
Christopher M. Hayes
email: patrick.nash@kirkland.com,
gregory.pesce@kirkland.com
christopher.hayes@kirkland.com

Richards, Layton & Finger
920 N. King Street
Wilmington, Delaware 19801
Attn: Paul M. Heath, Amanda R. Steele,
Zachary I. Shapiro, and Brett M. Haywood
email: heath@rlf.com
steele@rlf.com
shapiro@rlf.com
haywood@rlf.com

Gibson Dunn & Crutcher
200 Park Avenue
New York, New York, 10166
Attn: Scott J Greenberg and Michael J. Cohen
email: sgreenberg@gibsondunn.com
mcohen@gibsondunn.com

Young Conaway Stargatt & Taylor
1000 North King Street
Wilmington, Delaware 19801
Attn: Robert S. Brady
email: rbrady@ycst.com

Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Attn: Andrew Goldman
email: andrew.goldman@Wilmerhale.com

The Office of the U.S. Trustee for the District
of Delaware
844 King Street, Suite 2207, Lockbox 35
Wilmington, Delaware 19801
Attn: Jane M. Leamy
email: Jane.M.Leamy@usdoj.gov

Jenner & Block LLP
353 N. Clark Street
Chicago, Illinois 60654
Attn: Landon Raiford and William Williams
email: lraiford@jenner.com
wwilliams@jenner.com

Saul Ewing Arnstein & Lehr
1201 North Market Street, Suite 2300
Wilmington, Delaware 19801
Attn: Mark Minuti and Luke Murley
email: mark.minuti@saul.com
luke.murley@saul.com

Dated: August 25, 2020

K&L GATES LLP

/s/ Steven L. Caponi
Steven L. Caponi, Esq. (No. 3484)
Matthew B. Goeller, Esq. (No. 6283)
600 N. King Street, Suite 901
Wilmington, DE 19801
Tel: (302) 416-7000
Fax: (302) 416-7020
Email: steven.caponi@klgates.com
matthew.goeller@klgates.com

*Counsel for Syneos Health, LLC and inVentiv
Health Consulting, Inc.*