

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

AKORN, INC., *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11

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

Hearing Date: September 1, 2020 at 10:00 a.m. (ET)  
Extended Objection Deadline: August 25, 2020 at 12:00 p.m.  
(ET)

RE: Docket Nos. 18 and 547

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’  
STATEMENT IN SUPPORT OF AKORN’S PLAN AND SALE MOTION**

The Official Committee of Unsecured Creditors of Akorn, Inc., *et al.* (the “Committee”) hereby submits this statement in support of the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [Dkt. 547] (the “Plan”) and the *Debtors’ Motion Seeking Entry of an Order (A) Approving Bidding Procedures, (B) Scheduling an Auction and Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Establishing Procedures for the Assumption and Assignment of Certain Executory Contracts and Leases, and (E) Granting Related Relief* [Dkt. 18] (the “Sale”).

1. After a post-petition sale process, which followed a pre-petition marketing and sale process, the Stalking Horse Purchaser is the only entity remaining with an outstanding offer to purchase substantially all of the Debtors’ assets. The Committee closely monitored the Debtors’ sale process and believes the Sale is in the best interest of the Debtors, their estates, and unsecured creditors, as a whole. As originally structured, the Stalking Horse Purchaser agreed to pay a

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<sup>1</sup> 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.



substantial percentage of the Debtors' unsecured debt. After negotiations with the Committee, the Stalking Horse Purchaser has agreed to assume essentially all undisputed non-litigation unsecured debt that is not subject to subordination, as part of the Sale with these additional assumed claims subject to a cap of \$5 million. The Committee believes that the Sale (as currently restructured) is in the best interests of the Debtors' estate and therefore supports the Sale.

2. In addition to the Sale, the Committee also supports the Plan. Since its inception, the Committee has investigated potential causes of actions the Debtors' estates may possess, conducting substantial amounts of discovery into the facts surrounding the Term Loan Agreement and the events giving rise to the Debtors' chapter 11 cases. Recognizing that these potential claims are subject to defenses, that litigation would be costly and recovery uncertain, and that litigation might upset the sale and place the continuation of the Debtors' business in jeopardy, harming those creditors the Term Loan Lenders proposed to pay, the Committee worked with the Debtors and the Term Loan Lenders to achieve the settlement proposed in the Plan. In sum, and as mentioned above, the Term Loan Lenders have directed the Stalking Horse Purchaser to assume the remaining unsecured non-subordinated non-litigation claims not previously included as Assumed Liabilities under the Sale Transaction Documentation. To accomplish this, the Stalking Horse Purchaser will designate these additional creditor claims as "Qualified Unsecured Claims" and assume such liabilities in an amount not to exceed \$5,000,000, which the Committee anticipates will satisfy the Qualified Unsecured Claims in full.

3. The alternative for the Committee was to seek standing to engage in large scale, highly contested, and protracted litigation with an uncertain outcome and significant expense. The Committee was faced with weighing these costs against the fact that under the proposed Sale and Plan most creditors will be paid in full. Those creditors that will not be paid are creditors that hold

disputed claims that are the subject of on-going litigation or subject to subordination. Pursuing a litigation path also would run the risk of derailing the Sale, which could be particularly harmful to all stakeholders given that there is no current bid for the Debtors' assets other than the credit bid of the Stalking Horse Purchaser. If the sale were derailed, the vast majority of unsecured creditors, which under the sale and settlement will be paid in full by the Stalking Horse Purchaser, would get nothing unless inherently expensive and uncertain litigation was successful.

4. In sum, the Committee supports the settlement embodied in the revised Plan because it reasonably maximizes value to the Debtors' estates and the recovery of creditors as a whole while allowing these bankruptcy cases to conclude in an efficient and timely manner. Given the value of the estates' potential claims and the merits of potential defenses, the risks of litigation, and the attendant expense and delay, and the fact that the only alternative to the Plan and Sale being an outright liquidation of Akorn, the Committee respectfully submits that the settlement embodied in the Plan is fair and reasonable given the circumstances and that the Plan and Sale be approved.

Dated: August 25, 2020  
Wilmington, Delaware

Respectfully submitted,

**SAUL EWING ARNSTEIN & LEHR LLP**

By: /s/ Mark Minuti

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