

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

In re:	:	Chapter 11
	:	
AKORN, INC., ¹	:	Case No.: 20-11177(KBO)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	RE: D.I. 824
	:	
	:	Hearing Date: December 9, 2020 at 11:00 am (ET)
	:	Objection Deadline: November 18, 2020 at 4:00 pm (ET)

**MOTION FOR AUTHORITY TO FILE LEADIANT BIOSCIENCES INC.'S
APPLICATION FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE
CLAIMS UNDER SEAL**

Leadiant Biosciences, Inc., f/k/a Sigma-Tau Pharmaceuticals, Inc. ("Leadiant") moves ("Motion") this Honorable Court for an Order, pursuant to section 107(b)(1) of title 11 of the United States Code ("Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), and Rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules"), authorizing it to file the Leadiant Biosciences Inc.'s Application for Allowance and Payment of Administrative Expense Claims, filed on November 2, 2020 at Docket No. 824 (the "Administrative Claim") under seal. In support of the Motion, Leadiant respectfully states as follows:

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.



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JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the motion under 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The bases for relief requested herein are section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d).

BACKGROUND

3. On May 20, 2020 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). (D.E. 1).

4. On September 4, 2020, the Court entered an order confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* (the “Confirmed Plan”). (D.E. 673).

5. On October 1, 2020, the Debtors and Akorn Holdings Topco, LLC, the purchaser of the Debtors business under the Stalking Horse Asset Purchase Agreement, consummated the sale of the Debtors’ business. (*See* D.E. 750).

6. Pursuant to the terms of the Confirmation Order and the Confirmed Plan, the deadline to request payment of administrative expense claims is November 2, 2020 (the “Administrative Claim Bar Date”). (D.E. 673-1, D.E. 750).

RELIEF REQUESTED

7. Through this Motion, Leadant respectfully requests the entry of an order authorizing it to file the Administrative Claim under seal pursuant to Bankruptcy Rule 9018 and Local Rule 9018-1(b).

BASIS FOR RELIEF REQUESTED

8. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides, in relevant part:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

(1) Protect an entity with respect to a trade secret or confidential research, development, or commercial information; or

(2) Protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b).

9. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b), providing that “[o]n motion or its own initiative, with or without notice, the court may make any order which justice requires...to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial, information...” Fed R. Bankr. P 9018. Local Rule 9018-1(d) additionally provides, in relevant part, that “[a]ny entity seeking to file a document . . . under seal must file a motion requesting such relief . . .” Del Bankr. L.R. 9018-1(d).

10. The Court has defined “commercial information” as “information which would result in ‘an unfair advantage to competitors by providing them with information as to the commercial operations of [an entity].’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27-28 (2d Cir. 1994)). Moreover, commercial information does not need to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. It need only be confidential and commercial in nature. *See Orion Pictures*, 21 F.3d at 28 (noting that an interested party has only to show that the information to be sealed is “confidential and commercial” in nature).

11. The Administrative Claim, and the exhibit thereto, contain pricing information. Leadiant submits that the pricing information contained in the Administrative Claim is commercial information within the purview of Bankruptcy Code section 107(b). Because the Administrative Claim contains confidential and sensitive pricing information, Leadiant seeks authority to file the Administrative Claim under seal.

NOTICE

12. Notice of the Motion will be given to (a) the Office of the United States Trustee, (b) counsel to the Debtors and (c) all parties who requested notice pursuant to Bankruptcy Rule 2002.

CERTIFICATION OF COUNSEL PURSUANT TO L.R. 9018-1

Counsel for Leadiant and counsel for the Debtors have conferred in good faith and reached agreement concerning what information contained in the Proposed Sealed Document must remain sealed from public view.

CONCLUSION

WHEREFORE, Leadiant respectfully requests that the Court enter an order substantially in the form as Exhibit A, (i) granting the Motion, (ii) authorizing Leadiant to file the Administrative Claim under seal, and (iii) granting such further relief to Leadiant as the Court finds appropriate.

Dated: November 4, 2020

GELLERT SCALI BUSENKELL & BROWN, LLC

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Counsel for Leadiant Biosciences, Inc.

EXHIBIT A

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

In re:	:	Chapter 11
	:	
	:	Case No.: 20-11177(KBO)
AKORN, INC., ¹	:	
	:	
	:	(Jointly Administered)
Debtors.	:	
	:	RE: D.I. 824, _____

**ORDER PURSUANT TO 11 U.S.C. 107(b), 107(c), AND FED. R. BANKR. P. 9018
SEALING LEADIANT BIOSCIENCES INC.'S APPLICATION FOR ALLOWANCE
AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS**

Upon consideration of the *Motion for Authority to File Leadiant Biosciences Inc.'s Application for Allowance and Payment of Administrative Expense Claims Under Seal* (the "Motion")² filed by Leadiant Biosciences, Inc., f/k/a Sigma-Tau Pharmaceuticals, Inc. ("Leadiant"), the Court finds and concludes as follows:

A. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

B. Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

It is hereby ORDERED THAT:

1. The Motion is hereby GRANTED.

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 not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

2. Pursuant to Bankruptcy Code sections 107(b), 107(c) and Bankruptcy Rule 9018, the Court hereby authorizes and directs the Debtor to file under seal an unredacted version of the Administrative Claim.

3. The Clerk of the Court is directed to file and maintain the unredacted Administrative Claim under seal and shall not make it publicly available. The unredacted Administrative Claim shall not be unsealed unless and until permitted by further order of this Court.

4. Leadant is authorized to take all actions necessary to effectuate the relief granted herein.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

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

In re:	:	Chapter 11
	:	
	:	Case No.: 20-11177(KBO)
AKORN, INC., ¹	:	
	:	(Jointly Administered)
Debtors.	:	
	:	RE: D.I. 824
	:	
	:	Hearing Date: December 9, 2020 at 11:00 am (ET)
	:	Objection Deadline: November 18, 2020 at 4:00 pm (ET)

**NOTICE OF MOTION FOR AUTHORITY
TO FILE LEADIANT BIOSCIENCES INC.'S APPLICATION FOR ALLOWANCE AND
PAYMENT OF ADMINISTRATIVE EXPENSE CLAIMS UNDER SEAL**

PLEASE TAKE NOTICE that on November 4, 2020, Leadiant Biosciences, Inc., f/k/a Sigma-Tau Pharmaceuticals, Inc. ("Leadiant"), by and through its undersigned counsel, filed the *Motion for Authority to File Leadiant Biosciences Inc.'s Application for Allowance and Payment of Administrative Expense Claims Under Seal* (the "Motion") with the United States Bankruptcy Court for the District of Delaware, 824 N. Market St., 3rd Fl., Wilmington, DE 19801 (the "Court").

PLEASE TAKE FURTHER NOTICE that, responses, if any, to the Motion must be filed with the Court on or before **November 18, 2020 at 4:00 p.m. (ET)** (the "Objection Deadline") and served in the upon undersigned counsel.

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.

PLEASE TAKE FURTHER NOTICE that a hearing to consider the Motion will be held before The Honorable Karen B. Owens at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 on **December 9, 2020 at 11:00 a.m. (ET).**

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED IN THE MOTION ON A FINAL BASIS WITHOUT FURTHER NOTICE OR HEARING.

Dated: November 4, 2020

GELLERT SCALI BUSENKELL & BROWN, LLC

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Counsel for Leadiant Biosciences, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 4, 2020, I caused a true and correct copy of Motion for Authority to File Leadiant Biosciences Inc.'s Application for Allowance and Payment of Administrative Expense Claims Under Seal to be electronically filed and served via CM/ECF upon all parties requesting electronic notices in this case and additionally upon the following counsel and parties in the manner indicated:

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