

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

	)	
In re:	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Obj. Deadline: Feb. 16, 2021 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: March 9, 2021 at 10:00 a.m. (ET)</b>

**MOTION OF DEBTORS FOR ENTRY OF  
AN ORDER CLOSING SUBSIDIARY CHAPTER 11 CASES**

The above-captioned debtors (collectively, the “Debtors”) respectfully represent in support of this motion (this “Motion”) as follows:

**Jurisdiction and Venue**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, and paragraph 164 of the Confirmation Order (as defined below). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later

<sup>1</sup> The Post-Effective Debtors in these chapter 11 cases, along with the last four digits of each Post-Effective Date Debtor’s federal tax identification number, include: 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 Post-Effective Date Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.



determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are section 350(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 3022, and Local Rule 3022-1.

### **Background**

4. On May 20, 2020 (the “Petition Date”), each of the Debtors commenced with the Bankruptcy Court a voluntary case under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Chapter 11 Cases were consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 57].

### **The Sale and Plan Confirmation**

5. On May 21, 2020, the Debtors filed a motion [Docket No. 18] (the “Sale Motion”) seeking, among other things, entry of an order approving the Debtors’ entry into that certain *Asset Purchase Agreement*, dated May 20, 2020 (the “Stalking Horse APA”) and authorizing the sale of substantially all of the Debtors’ assets (the “Sale”).

6. On May 26, 2020, the Debtors filed a motion [Docket No. 103] seeking, among other things, entry of an order approving the adequacy of the Debtors’ disclosure statement [Docket No. 102] (as amended, modified, or supplemented, the “Disclosure Statement”) and establishing solicitation and notice procedures with respect to the confirmation of the *Joint*

*Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 101] (as amended, modified, or supplemented, the “Plan”).<sup>2</sup>

7. On July 2, 2020, the Court entered an order [Docket No. 318] which, among other things, approved the adequacy of the Disclosure Statement and solicitation and notice procedures with respect to the confirmation of the Plan.

8. On September 1, 2020, the Court held a contested hearing on the Sale Motion and approved the Sale and, on September 2, 2020, entered an order [Docket No. 656] approving the Sale.

9. On September 2-3, 2020, this Court held a contested hearing with respect to confirmation of the Debtors’ Plan. On September 4, 2020, the Court issued its bench ruling with respect confirmation of the Plan, overruled objections thereto, and entered an order [Docket No. 673] (the “Confirmation Order”) confirming the Plan.

**The Effective Date and Closing of the Sale**

10. On October 1, 2020, the Plan became effective in accordance with its terms (the “Effective Date”) and the Debtors consummated the Sale Transaction. *See Notice of (I) Entry of Order Confirmation the Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates, (II) Closing of Sale, and (III) Occurrence of Effective Date* [Docket No. 750]. On the Effective Date, each condition precedent to the consummation of the Sale Transaction enumerated in the Stalking Horse APA was satisfied or waived in accordance with the Stalking Horse APA and the Sale Order, and each condition precedent to consummation of the Plan enumerated in Article IX

---

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan.

of the Plan was satisfied or waived in accordance with the Plan and the Confirmation Order. *See id.*

11. Pursuant to Article IV.D. of the Plan, on the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Debtors were deemed to have resigned, and Drivetrain, LLC was appointed as the Plan Administrator and is now the sole representative of the Debtors.

12. The Plan Administrator is charged with the duty and authority to implement the Plan and to make distributions thereunder and wind down the businesses and affairs of the Debtors, including: (i) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Debtors remaining after consummation of the Sale Transaction; (ii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iii) making distributions as contemplated under the Plan; (iv) establishing and maintaining bank accounts in the name of the Debtors; (v) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (vi) paying all reasonable fees, expenses, debts, charges, and liabilities of the Debtors; (vii) administering and paying taxes of the Debtors, including filing tax returns; (viii) representing the interests of the Debtors before any taxing authority in all matters, including any action, suit, proceeding or audit; and (ix) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

13. Due to the occurrence of the Effective Date and consummation of the Sale Transaction, the Plan has been substantially consummated.

14. Furthermore, all expenses arising from the administration of the Debtors' estates and the Chapter 11 Cases, including court fees, fees arising under 28 U.S.C. § 1930(a)(6) ("Section 1930 Fees"), professional fees and expenses, have been paid or will be paid prior to the hearing date set for this Motion (the "Hearing Date"). As of the filing of this Motion, the only such expenses that have not been paid are Section 1930 Fees that have not yet come due.

### **The Appeal**<sup>3</sup>

15. On September 18, 2020, 1199SEIU National Benefit Fund, 1199SEIU Greater New York Benefit Fund, 1199SEIU National Benefit Fund for Home Care Workers, and 1199SEIU Licensed Practical Nurses Welfare Fund (together, "1199SEIU Benefit Funds"), AFSCME District Council 47 Health and Welfare Fund ("DC47 Fund"), and Sergeants Benevolent Association Health and Welfare Fund ("SBA Fund," and together with 1199SEIU Benefit Funds and DC47 Fund, the "Funds") appealed the entry of the Confirmation Order [Docket No. 718] (the "Appeal"). That same day, the Appeal was docketed with the United States District Court for the District of Delaware (the "District Court") and assigned case number 20-1254 (MN).<sup>4</sup>

16. Contemporaneously with the Appeal, the Funds filed a motion for a stay pending appeal [Docket No. 720], which the Court denied on October 21, 2020 [Docket No. 799].

17. On November 12, 2020, the Appeal was withdrawn from mandatory mediation [Funds C.A. Docket No. 21]. On November 25, 2020, the District Court approved an agreed briefing schedule. Briefing in the Appeal is ongoing and scheduled to conclude by April 21, 2021. [Funds C.A. Docket No. 23].

---

<sup>3</sup> On October 1, 2020, Provepharm, Inc. appealed the entry of the Confirmation Order [Docket No. 746]. However, on December 28, 2020, Provepharm, Inc. voluntarily dismissed such appeal. [Provepharm C.A. Docket No. 13].

<sup>4</sup> As used herein, "Funds C.A. Docket No." refers to the corresponding Docket No. in Civil Action No. 20-cv-1254 (MN) (D. Del.).

18. Other than the Appeal, all motions, contested matters and other proceedings that pending before this Court have been resolved, dismissed, or withdrawn.

**Relief Requested**

19. By this Motion, the Debtors seek the entry of an order closing the Chapter 11 Cases of Akorn Sales, Inc. (Case No. 20-11174 (KBO)), 10 Edison Street LLC (Case No. 20-11178 (KBO)), 13 Edison Street LLC (Case No. 20-11180 (KBO)), Advanced Vision Research, Inc. (Case No. 20-11182 (KBO)), Akorn (New Jersey), Inc. (Case No. 20-11183 (KBO)), Akorn Animal Health, Inc. (Case No. 20-11185 (KBO)), Akorn Ophthalmics, Inc. (Case No. 20-11186 (KBO)), Clover Pharmaceuticals Corp. (Case No. 20-11187 (KBO)), Covenant Pharma, Inc. (Case No. 20-11188 (KBO)), Hi-Tech Pharmacal Co., Inc. (Case No. 20-11189 (KBO)), Inspire Pharmaceuticals, Inc. (Case No. 20-11190 (KBO)), Olta Pharmaceuticals Corp. (Case No. 20-11191 (KBO)), Oak Pharmaceuticals, Inc. (Case No. 20-11192 (KBO)), VPI Holdings Corp. (Case No. 20-11193 (KBO)), VersaPharm Incorporated (Case No. 20-11194 (KBO)), and VPI Holdings Sub, LLC (Case No. 20-11195 (KBO)) (collectively, the “Subsidiary Cases”). The Chapter 11 Case of Akorn, Inc. (Case No. 20-11177) (KBO) (“Akorn”) will remain open to continue the process of administering and hearing all contested matters relating to each of the Debtors, including objections to Claims.

20. A final report with respect to all of the above-captioned Chapter 11 Cases pursuant to Local Rule 3022-1(c) will be filed in connection with a further motion to close the Chapter 11 Case of Akorn. Accordingly, a final report with respect to the Subsidiary Cases will not be filed at this time.

21. A proposed form of order granting the relief requested in the Motion is attached hereto as **Exhibit A** (the “Proposed Order”).

**Basis for Relief**

22. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a). Bankruptcy Rule 3022 implements the Bankruptcy Code’s requirements, providing similarly that, “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.” Fed. R. Bankr. P. 3022. Local Rule 3022-1(a) provides that, “[u]pon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been fully administered provided that all required fees due under 28 U.S.C. § 1930 have been paid.” Del. Bankr. L.R. 3022-1(a).

23. The term “fully administered” is not defined in either the Bankruptcy Code or the Bankruptcy Rules. The Advisory Committee Note to Bankruptcy Rule 3022 (the “Advisory Committee Note”), however, sets forth the following non-exclusive factors to be considered in determining whether a case has been fully administered:

- a. whether the order confirming the plan has become final;
- b. whether deposits required by the plan have been distributed;
- c. whether the property proposed by the plan to be transferred has been transferred;
- d. whether the debtor or its successor has assumed the business or the management of the property dealt with by the plan;
- e. whether payments under the plan have commenced; and
- f. whether all motions, contested matters, and adversary proceedings have been finally resolved.

Advisory Committee Note.

24. The Advisory Committee Note also indicates that the entry of a final decree “should not be delayed solely because the payments required by the plan have not been completed,” and the Court “should not keep the case open only because of the possibility that the court’s jurisdiction may be invoked in the future.” *See* Fed. R. Bankr. P. 3022 Advisory Committee’s Note to 1991 Amendment. Additionally, “a final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the [Bankruptcy] Code.” *Id.*

25. Indeed, Bankruptcy Rule 3022 was amended in order to:

set forth a flexible Rule to permit the court to determine that an estate is fully administered and should be closed even though payments or other activities involving the debtor and its creditors might continue. . . . As is evident by the Committee note, the Advisory Committee interprets “fully administered” very loosely and encourages courts to use substantially more discretion in deciding whether to close a [c]hapter 11 case th[a]n Code § 350 and the Rule literally read.

*In re Gould*, 437 B.R. 34, 37–38 (Bankr. D. Conn. 2010) (emphasis added) (citation omitted).

26. Bankruptcy courts have adopted the view that “these factors are but a guide in determining whether a case has been fully administered, and not all factors need to be present before the case is closed.” *In re SLL, Inc.*, Case No. 02-12608 (WS), 2005 WL 1668396, at \*2 (Bankr. D. Del. June 24, 2005) (citing *In re Mold Makers, Inc.*, 124 B.R. 766, 768-69 (Bankr. N.D. Ill. 1990)); *see also In re Federated Department Stores, Inc.*, 43 Fed. Appx. 820, 822 (6th Cir. 2002) (“A court should review each request for entry of a final decree on a case-by-case basis and analyze the factors set forth in Rule 3022, along with any other relevant factors, in determining whether an estate has been fully administered.”); *In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999) (recognizing that bankruptcy courts weigh the factors contained in the Advisory Committee Note when deciding whether to close a case);

*Ericson v. IDC Servs., Inc. (In re IDC Servs., Inc.)*, Case No. 93 B 45922 (SMB), 1998 WL 547085, at \*3 (S.D.N.Y. Aug. 28, 1998) (“[T]he approach that looks to the Advisory Note provides a more complete and flexible standard for determining when to close a chapter 11 case, and is therefore preferable.”); *In re Jay Bee Enters., Inc.*, 207 B.R. 536, 539 (Bankr. E.D. Ky. 1997) (“Rule 3022 allows the court flexibility. It does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees . . . have been paid.”); *Walnut Assocs. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994) (“[A]ll of the factors in the Committee Note need not be present before the Court will enter a final decree.”) (quoting *Mold Makers*, 124 B.R. at 768-69). *See also* December 20, 2018 Hr’g Tr. at 25:13-28:11, *In re Gibson Brands, Inc.*, No. 18-11025 (CSS) (Bankr. D. Del. Dec. 20, 2018) (granting a motion to close certain chapter 11 cases over the objection of the United States Trustee).

27. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the plan has been substantially consummated. *See In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case); *Walnut Assocs.*, 164 B.R. at 493 (same).

28. Further, courts have also noted that entry of a final decree is appropriate to stop the accrual of Section 1930 Fees. *In re Junior Food Mart of Arkansas, Inc.*, 201 B.R. 522, 524 (Bankr. E.D. Ark. 1996) (closing case “in order that no further [Section 1930] [F]ees accrue”); *Jay Bee*, 207 B.R. at 539 (concluding that “it seems appropriate to close this case to stop the financial drain on the debtor” on account of the continuing accrual of Section 1930 Fees).

29. The Subsidiary Cases have been “fully administered” within the meaning of section 350 of the Bankruptcy Code, making it appropriate for the Court to enter an order closing such cases. Among other things:

- a. the Plan has been confirmed, and the Effective Date has occurred;
- b. the transactions contemplated by the Plan have been substantially consummated, including, without limitation, the occurrence of the Closing of the Sale Transaction, the effectuation of the Restructuring Transactions, the execution of the Definitive Documents (as defined in the Restructuring Support Agreement), the establishment of the Professional Fee Escrow Account, and the funding of the Wind-Down Amount;
- c. the Retained Causes of Action and Retained Assets have vested in the Plan Administrator;
- d. substantially all Claims have received, or will receive, the treatment to which they are entitled and provided for under the Plan with any remaining distributions or treatment to be made in accordance with the terms of the Plan; and
- e. no motions, contested matters, or other proceedings (other than the Appeal and a cure objection) remain unresolved with respect to the Chapter 11 Cases.

30. The foregoing factors support closing the Subsidiary Cases. The fact that certain contested matters may remain pending does not require the Subsidiary Cases to remain open until all such contested matters and claims are resolved and final distributions are made. *In re Jay Bee Enters., Inc.*, 207 B.R. at 539 (finding that Bankruptcy Rule 3022 “does not require that a chapter 11 case be kept open until all awarded fees and allowed claims have been paid in accordance with the confirmed plan or until the statutory fees . . . have been paid”).

31. Although the Appeal remains pending and, as a result the Confirmation Order is not a final order, the Debtors submit that this fact alone does not counsel against this Court closing the Subsidiary Cases because significant factors identified in the Advisory Committee Note support the closing of the Subsidiary Cases and, as noted above, such factors are illustrative

and are not required to be satisfied in order for a chapter 11 case to be closed. Moreover, the four (4) additional considerations listed below further support the closing of the Chapter 11 Cases.

32. First, the specific additional considerations cited above support the closing of the Chapter 11 Cases. Specifically, the Plan has been implemented and substantially consummated. In fact, as of the hearing date for this Motion, the Effective Date will have occurred approximately five months ago. Further, as long as the Subsidiary Cases remain open, the Debtors anticipate being required to pay Section 1930 Fees in connection therewith.

33. Second, if the Subsidiary Cases remain open until the Confirmation Order becomes a final order and/or the Appeal is concluded, the Debtors will suffer significant prejudice because the Appeal may not be fully and finally determined for several years. During that time, the Debtors will incur and be required to pay Section 1930 Fees. In contrast, if the Motion is granted and the Subsidiary Cases are closed, the Funds will not be prejudiced in the event that the Confirmation Order is overturned or reversed or if the District Court (or another appellant court with jurisdiction over the Appeal) remands the Appeal to this Court for further proceedings, because the Proposed Order expressly states that the entry of such order is without prejudice to the Funds' rights to move to reopen the Subsidiary Cases in such a circumstance. *See* Proposed Order ¶ 7. The Proposed Order further expressly provides that its entry shall not have any effect on the Appeal and shall not in any way prejudice the Funds' rights in the Appeal. *See id.* ¶ 8.

34. Further, to the extent necessary, the Court will retain jurisdiction over all matters arising out of, and related to, these Subsidiary Cases, including the matters set forth in Article XI of the Plan and section 1142 of the Bankruptcy Code. Therefore, no party in interest

will be prejudiced if the Subsidiary Cases are closed, and Akorn's Chapter 11 Case will provide an avenue for resolving any issues that relate to the Subsidiary Cases.<sup>5</sup>

35. Third, the relief that the Debtors are seeking pursuant to this Motion is not novel. In fact, bankruptcy courts have entered final decrees or otherwise permitted the closing of chapter 11 cases despite the fact that an appeal of the confirmation order was still pending.<sup>6</sup> *See In re Vantage Drilling Int'l*, Case No. 15-12422 (BLS) (Bankr. D. Del. Mar. 3, 2017) [Docket No. 342] (entering final decree notwithstanding the pendency of an appeal of the confirmation order); *In re Tribune Media Co.*, Case No. 08-13141 (KJC) (Bankr. D. Del. May 11, 2016) [Docket No. 14255] (same); *In re Transwest Resort Props.*, Case No. 4:10-bk-37134 (Bankr. D. Ariz. Sept. 25, 2012) [Docket No. 939] (same); *see also In re Fiorano Tile Imports, Inc.*, Case No. 8:10-77406 (Bankr. E.D.N.Y. Jan. 27, 2014) [Docket No. 275] (administratively closing case notwithstanding the pendency of an appeal of the confirmation order).

36. Fourth, closing the Subsidiary Cases will relieve the Court, the Office of the United States Trustee, the Debtors, and Plan Administrator from each of their administrative

---

<sup>5</sup> For the avoidance of doubt, the automatic stay shall remain in full force and effect with respect to each of the Debtors until the closure of *all* of the Debtors' Chapter 11 Cases occurs, including the Chapter 11 Case of Akorn. *See* Plan Art. VIII.H. The closure of the Subsidiary Cases will not operate to lift the automatic stay at this time with respect to any Debtor.

<sup>6</sup> The Debtors are aware of an unreported bankruptcy court decision which denied a motion for a final decree closing the debtors' cases, based on circumstances related to a pending appeal of a confirmation order. *See In re SLI, Inc.*, 2005 WL 1668396, at \*3 (Bankr. D. Del. June 24, 2005) (Shapero, J.). However, that case does not present binding precedent on the Motion. *See In re Threadgill v. Armstrong World Indus., Inc.*, 928 F.2d 1366, 1371 (3d Cir. 1991) (“[T]here is no such thing as ‘the law of the district.’ . . . The doctrine of *stare decisis* does not compel one district court judge to follow the decision of another.” (citation omitted)). Further, the *SLI* case is distinguishable. In *SLI, Inc.*, the bankruptcy court found that the relatively low dollar amount of Section 1930 Fees per quarter (there \$5,000) was “relatively insignificant” in the context of the reorganized debtors' business, *see* 2005 WL 1668396, at \*1, and was concerned with any possible affect the closing of the cases might have on the pending appeal, including on any argument that the appeal is equitably moot. *See id.* at \*3 (“[R]eopening requires a motion by an interested party with an opportunity to respond and object (possibly bringing into play the equitable mootness issue raised and decided in the District Court), an issue that the appellate court may or may not deal with.”). However, this concern, to the extent it exists in these Chapter 11 Cases, is addressed by language included in the Proposed Order expressly providing that the Funds' rights in the Appeal are not in any way affected by the entry of such order, including with respect to whether the Appeal is equitably moot.

burdens with respect to the Subsidiary Cases. *See In re A.H. Robins Co., Inc.*, 219 B.R. 145, 149 (Bankr. E.D. Va. 1998) (finding that “the obligation to pay UST fees terminates upon closure, dismissal, or conversion of a Chapter 11 case, and will not be paid ad infinitum”). Further, all Section 1930 Fees that are due and owing in these Chapter 11 Cases with respect to the Subsidiary Cases have or will have been paid. Any further Section 1930 Fees that may arise in the Chapter 11 Cases will be paid as and when such fees come due. As such, closing the Subsidiary Cases complies with Local Rule 3022-1.

37. For the foregoing reasons, the Debtors respectfully submit that it is appropriate for this Court to grant this Motion and enter the Proposed Order closing the Subsidiary Cases.

**Notice**

38. Notice of this Motion will be provided to: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Funds in the Appeal; and (c) any parties in interest who have requested additional notice pursuant to Bankruptcy Rule 2002 in accordance with paragraph 146 of the Confirmation Order.

39. The Debtors submit that, under the circumstances, no other or further notice is required.

**No Prior Request**

40. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and such other and further relief as may be just and proper.

Wilmington, Delaware  
February 2, 2021

*/s/ Brett M. Haywood*

**RICHARDS, LAYTON & FINGER, P.A.**

Paul N. Heath (No. 3704)  
Amanda R. Steele (No. 5530)  
Zachary I. Shapiro (No. 5103)  
Brett M. Haywood (No. 6166)  
J. Zachary Noble (No. 6689)  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
Email: heath@rlf.com  
steele@rlf.com  
shapiro@rlf.com  
haywood@rlf.com  
noble@rlf.com

*Co-Counsel for the Debtors*

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Patrick J. Nash, Jr., P.C. (admitted *pro hac vice*)  
Gregory F. Pesce (admitted *pro hac vice*)  
Christopher M. Hayes (admitted *pro hac vice*)  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: patrick.nash@kirkland.com  
gregory.pesce@kirkland.com  
christopher.hayes@kirkland.com

-and-

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: nicole.greenblatt@kirkland.com

*Co-Counsel for the Debtors*

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

---

In re:	)	
	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Obj. Deadline: Feb. 16, 2021 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: March 9, 2021 at 10:00 a.m. (ET)</b>

---

**NOTICE OF MOTION AND HEARING**

**PLEASE TAKE NOTICE** that, on February 2, 2021, the above-captioned debtors (collectively, the “Debtors”) filed the *Motion of Debtors for Entry of an Order Closing Subsidiary Chapter 11 Cases* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the relief requested in the Motion, if any, must be in writing and filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware, 19801, on or before **February 16, 2021 at 4:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy

---

<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.

Court, 824 Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware, 19801 on **March 9, 2021 at 10:00 a.m. (prevailing Eastern Time).**

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Wilmington, Delaware  
February 2, 2021

*/s/ Brett M. Haywood*

**RICHARDS, LAYTON & FINGER, P.A.**

Paul N. Heath (No. 3704)  
Amanda R. Steele (No. 5530)  
Zachary I. Shapiro (No. 5103)  
Brett M. Haywood (No. 6166)  
J. Zachary Noble (No. 6689)  
One Rodney Square  
920 N. King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701  
Email: heath@rlf.com  
steele@rlf.com  
shapiro@rlf.com  
haywood@rlf.com  
noble@rlf.com

*Co-Counsel for the Debtors*

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Patrick J. Nash, Jr., P.C. (admitted *pro hac vice*)  
Gregory F. Pesce (admitted *pro hac vice*)  
Christopher M. Hayes (admitted *pro hac vice*)  
300 North LaSalle Street  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: patrick.nash@kirkland.com  
gregory.pesce@kirkland.com  
christopher.hayes@kirkland.com

-and-

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: nicole.greenblatt@kirkland.com

*Co-Counsel for the Debtors*

**Exhibit A**

**Proposed Order**

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

---

In re: ) Chapter 11  
)  
AKORN, INC., ) Case No. 20-11177 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 72-0717400 )  

---

In re: ) Chapter 11  
)  
AKORN SALES, INC., ) Case No. 20-11174 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 46-4527866 )  

---

In re: ) Chapter 11  
)  
10 EDISON STREET LLC, ) Case No. 20-11178 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 77-0657890 )  

---

In re: ) Chapter 11  
)  
13 EDISON STREET LLC, ) Case No. 20-11180 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. N/A )  

---

---

In re: ) Chapter 11  
)  
)  
ADVANCED VISION RESEARCH, INC., ) Case No. 20-11182 (KBO)  
)  
) Debtor. )  
)  
)  
Tax I.D. No. 04-2989046 )  

---

In re: ) Chapter 11  
)  
)  
AKORN (NEW JERSEY), INC., ) Case No. 20-11183 (KBO)  
)  
) Debtor. )  
)  
)  
Tax I.D. No. 36-4301474 )  

---

In re: ) Chapter 11  
)  
)  
AKORN ANIMAL HEALTH, INC., ) Case No. 20-11185 (KBO)  
)  
) Debtor. )  
)  
)  
Tax I.D. No. 46-2986645 )  

---

In re: ) Chapter 11  
)  
)  
AKORN OPHTHALMICS, INC., ) Case No. 20-11186 (KBO)  
)  
) Debtor. )  
)  
)  
Tax I.D. No. 45-3466266 )  

---

---

In re: )  
 ) Chapter 11  
 )  
CLOVER PHARMACEUTICALS CORP., )  
 ) Case No. 20-11187 (KBO)  
 )  
Debtor. )  
 )  
Tax I.D. No. 26-3813735 )  

---

In re: )  
 ) Chapter 11  
 )  
COVENANT PHARMA, INC., )  
 ) Case No. 20-11188 (KBO)  
 )  
Debtor. )  
 )  
Tax I.D. No. 20-1140115 )  

---

In re: )  
 ) Chapter 11  
 )  
HI-TECH PHARMACAL CO., INC., )  
 ) Case No. 20-11189 (KBO)  
 )  
Debtor. )  
 )  
Tax I.D. No. 11-2638720 )  

---

In re: )  
 ) Chapter 11  
 )  
INSPIRE PHARMACEUTICALS, INC., )  
 ) Case No. 20-11190 (KBO)  
 )  
Debtor. )  
 )  
Tax I.D. No. 04-3209022 )  

---

---

In re: ) Chapter 11  
)  
)  
OLTA PHARMACEUTICALS CORP., ) Case No. 20-11191 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 26-3813621 )  

---

In re: ) Chapter 11  
)  
)  
OAK PHARMACEUTICALS, INC., ) Case No. 20-11192 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 45-2776647 )  

---

In re: ) Chapter 11  
)  
)  
VPI HOLDINGS CORP., ) Case No. 20-11193 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 26-1356716 )  

---

In re: ) Chapter 11  
)  
)  
VERSAPHARM INCORPORATED, ) Case No. 20-11194 (KBO)  
)  
Debtor. )  
)  
Tax I.D. No. 58-2146739 )  

---

	)	
In re:	)	Chapter 11
	)	
VPI HOLDINGS SUB, LLC,	)	Case No. 20-11195 (KBO)
	)	
Debtor.	)	
	)	
Tax I.D. No. N/A	)	

**ORDER CLOSING SUBSIDIARY CHAPTER 11 CASES**

Upon the motion (the “Motion”)<sup>1</sup> of the Debtors for entry of an order, pursuant to section 350(a) of the Bankruptcy Code, Bankruptcy Rule 3022 and Local Rules 2002-1(f) and 3022-1, for entry of an order closing the Subsidiary Cases and granting related relief, all as more fully described in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012, and paragraph 164 of the Confirmation Order; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interests; and upon all of the proceedings had before the

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

Court and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Chapter 11 Cases of Akorn Sales, Inc. (Case No. 20-11174 (KBO)), 10 Edison Street LLC (Case No. 20-11178 (KBO)), 13 Edison Street LLC (Case No. 20-11180 (KBO)), Advanced Vision Research, Inc. (Case No. 20-11182 (KBO)), Akorn (New Jersey), Inc. (Case No. 20-11183 (KBO)), Akorn Animal Health, Inc. (Case No. 20-11185 (KBO)), Akorn Ophthalmics, Inc. (Case No. 20-11186 (KBO)), Clover Pharmaceuticals Corp. (Case No. 20-11187 (KBO)), Covenant Pharma, Inc. (Case No. 20-11188 (KBO)), Hi-Tech Pharmacal Co., Inc. (Case No. 20-11189 (KBO)), Inspire Pharmaceuticals, Inc. (Case No. 20-11190 (KBO)), Olta Pharmaceuticals Corp. (Case No. 20-11191 (KBO)), Oak Pharmaceuticals, Inc. (Case No. 20-11192 (KBO)), VPI Holdings Corp. (Case No. 20-11193 (KBO)), VersaPharm Incorporated (Case No. 20-11194 (KBO)), and VPI Holdings Sub, LLC (Case No. 20-11195 (KBO)) are hereby CLOSED.
3. The Chapter 11 Case of Akorn, Inc. (Case No. 20-11177) (KBO) ("Akorn") shall remain open pending further order of this Court.
4. The Clerk of this Court shall enter this Order individually on each of the dockets of the above-captioned Chapter 11 Cases and each of the dockets of the Subsidiary Cases shall be marked as "Closed."
5. The Debtors and Plan Administrator are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
6. Entry of this Order (a) is without prejudice to the rights of any party with requisite standing to (i) commence, prosecute and/or resolve any claim or Cause of Action, or

(ii) object to claims filed against any Debtor; (b) is without prejudice to the rights of any party in interest to reopen the Subsidiary Cases for cause; and (c) shall have no effect whatsoever (i) on the continued retention by the Debtors of the rights and assets vested in them under the Plan or (ii) on any contested or other matters pending before this Court.

7. The entry of this Order shall be without prejudice to the rights of the Funds to move to reopen the Subsidiary Cases in the event that the Confirmation Order is overturned or reversed in the Appeal and/or if the District Court (or another appellant court with jurisdiction over the Appeal) remands the Appeal to this Court for further proceedings.

8. This Order shall not have any effect on the Appeal (including, without limitation, any determination as to whether or not such appeal is equitably moot) nor in any way prejudice the Funds' rights in the Appeal.

9. Following entry of this Order, the caption for Case No. 20-11177 (KBO) shall read as follows:

_____	)	
In re:	)	Chapter 11
	)	
AKORN, INC.,	)	Case No. 20-11177 (KBO)
	)	
Debtor. <sup>1</sup>	)	
_____	)	

<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor's service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

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