

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

AKORN, INC.,

Debtor.<sup>1</sup>

)  
) Chapter 11  
)  
) Case No. 20-11177 (KBO)  
)  
)  
)

**CERTIFICATION OF COUNSEL REGARDING ORDER APPROVING STIPULATION  
MODIFYING THE AUTOMATIC STAY FOR THE SOLE AND LIMITED PURPOSE  
OF ALLOWING LIMITED DISCOVERY FROM THE MDL DEBTORS**

The undersigned hereby certifies as follows:

1. On May 20, 2020, the above-captioned debtor and certain of its affiliates (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. Debtors Akorn, Inc., Akorn Sales, Inc., Hi-Tech Pharmacal Co., Inc., and VersaPharm, Incorporated (the “MDL Debtors”), are presently co-defendants in multi-district litigation captioned *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 16-MD-2724, MDL No. 2724 (E.D. Pa.) before the Honorable Cynthia M. Rufe in the Eastern District of Pennsylvania (the “MDL Proceedings”).

<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.



3. On August 19, 2020, certain plaintiffs involved in the MDL Proceedings (the “Stipulating MDL Plaintiffs” and together with the MDL Debtors, the “Parties”)<sup>2</sup> filed a Motion for Relief from the Automatic Stay [Docket No. 500] (the “Stay Relief Motion”) with this Court.

4. On September 11, 2020, the Debtors filed a Limited Objection to the Stay Relief Motion [Docket No. 695] (the “Objection”).

5. To resolve the Stay Relief Motion and the Objection, the Parties have entered into that certain *Stipulation Modifying the Automatic Stay for the Sole and Limited Purpose of Allowing Limited Discovery from the MDL Debtors* (the “Stipulation”).<sup>3</sup>

6. A copy of the Stipulation is attached as **Exhibit 1** to the proposed form of order approving the Stipulation (the “Proposed Order”) which is attached hereto as **Exhibit A**. The Stipulation has been circulated to the United States Trustee for the District of Delaware (the “US Trustee”), and the US Trustee does not object to the MDL Debtors’ entry into the Stipulation.

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<sup>2</sup> The Stipulating MDL Plaintiffs are: Humana Inc., Health Care Service Corp., Molina Healthcare, Inc., United HelthCare Services, Inc., The Kroger Co., Albertsons Companies, LLC, H.E. Butt Grocery Company L.P., The Proposed Class of Direct Purchaser Plaintiffs, The Proposed Class of Indirect Reseller Plaintiffs, The Proposed Class of End-Player Plaintiffs, and the State Attorneys General of: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Territory of Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

<sup>3</sup> Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Stipulation or the Debtors’ *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Document No. 547], as appropriate.

WHEREFORE, the Debtors respectfully request that the Proposed Order, substantially in the form attached hereto as **Exhibit A**, be entered at the earliest convenience of the Court.

Wilmington, Delaware  
April 8, 2021

/s/ Amanda R. Steele

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**EXHIBIT A**

**Proposed Order**

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

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In re:

AKORN, INC.,

Debtor.<sup>1</sup>

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)  
) Chapter 11  
)  
) Case No. 20-11177 (KBO)  
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**ORDER APPROVING STIPULATION MODIFYING THE  
AUTOMATIC STAY FOR THE SOLE AND LIMITED PURPOSE OF  
ALLOWING LIMITED DISCOVERY FROM THE MDL DEBTORS**

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Upon consideration of the *Certification of Counsel Regarding Order Approving Stipulation Modifying the Automatic Stay for the Sole and Limited Purpose of Allowing Limited Discovery from the MDL Debtors* and the *Stipulation Modifying the Automatic Stay for the Sole and Limited Purpose of Allowing Limited Discovery from the MDL Debtors* (the “Stipulation”)<sup>2</sup>, attached hereto as **Exhibit 1**; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Stipulation is approved and incorporated herein by reference.
2. The Parties are authorized to take all actions necessary to effectuate the terms of the Stipulation.

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<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.

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

3. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**EXHIBIT 1**

**Stipulation**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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

**STIPULATION MODIFYING THE AUTOMATIC STAY  
FOR THE SOLE AND LIMITED PURPOSE OF  
ALLOWING LIMITED DISCOVERY FROM THE MDL DEBTORS**

Debtor affiliates Akorn, Inc., Akorn Sales, Inc., Hi-Tech Pharmacal Co., Inc., and VersaPharm, Incorporated (“MDL Debtors”) and the Stipulating MDL Plaintiffs (as defined below) by and through their respective counsel, hereby enter into this stipulation (the “Stipulation”)<sup>2</sup> and stipulate and agree as follows:

**WHEREAS**, MDL Debtors are presently co-defendants in multi-district litigation captioned *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 16-MD-2724, MDL No. 2724 (E.D. Pa) (the “Generics MDL”) before the Honorable Cynthia M. Rufe in the Eastern District of Pennsylvania (the “MDL Court”).

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<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.

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Debtors’ *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Bankruptcy Docket No. 547] (as may be amended, supplemented, or otherwise modified from time to time, the “Plan”).

**WHEREAS**, MDL Debtors have since been named as defendants in complaints filed by each of the three proposed classes and seven of the Direct-Action Plaintiffs. The complaints allege, among other things, that the MDL Debtors participated in conspiracies to fix prices and allocate markets in respect of certain generic pharmaceuticals.

**WHEREAS**, on October 24, 2019, the MDL Court issued a Case Management Order that established a schedule for the completion of discovery. Dkt. 1135, *as amended*, Dkt. 1179, Dkt. 1363 (the “CMO”).<sup>3</sup>

**WHEREAS**, prior to filing their Chapter 11 cases, MDL Debtors were providing discovery under the CMO, including the production of documents and responses and objections to Plaintiffs’ First and Second Sets of Interrogatories.

**WHEREAS**, MDL Debtors filed their petitions for Chapter 11 reorganization in this Court, which invoked the automatic bankruptcy stay under Bankruptcy Code Section 362 (the “Automatic Stay”), staying the MDL in certain respects with respect to MDL Debtors. MDL Debtors complied with the Automatic Stay by, among other things, suspending their document, data, and written discovery productions in the Generics MDL. In addition, MDL Plaintiffs have yet to take the depositions of key employees and former employees of MDL Debtors.

**WHEREAS**, Section 362(d)(1) of the Bankruptcy Code provides that a court shall grant relief from the Automatic Stay “for cause, including the lack of adequate protection of an interest in property of such party in interest.” 11 U.S.C. § 362(d)(1).

**WHEREAS**, on August 19, 2020, MDL Plaintiffs filed a Motion for Relief from the Automatic Stay [Bankruptcy Docket No. 500] (the “Stay Relief Motion”), under Section 362(d)(1).

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<sup>3</sup> Unless otherwise noted, references to the Docket (“Dkt.”) refer to the main MDL action, *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 16-MD-2724, MDL No. 2724 (E.D. Pa.).

**WHEREAS**, on September 2, 2020, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [Bankruptcy Docket No. 656] (the “Sale Order”) approving the sale of substantially all assets of the MDL Debtors to the Purchaser (as defined in the Sale Order) and certain related transactions (collectively, the “Sale Transaction”).

**WHEREAS**, on October 1, 2020, the Sale Transaction was consummated and, as a result, Akorn Operating Co. LLC (together with Akorn Holding Company LLC, Akorn Intermediate Company LLC, and each of their direct and indirect subsidiaries, “NewCo”), among other things, became the owner of the Acquired Assets (as defined in the Sale Order).

**WHEREAS**, on October 1, 2020, the effective date of the plan occurred [Bankruptcy Docket No. 750].

**WHEREAS**, in addition to this Stipulation, MDL Plaintiffs have entered an agreement with NewCo for the production of certain custodial documents and transactional data.

**Whereas**, The Stipulating Parties<sup>4</sup> have reached an agreement as to resolution of the Stay Relief Motion and after due deliberation.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED** by and between the Stipulating Parties to this Stipulation that:

**A. Scope of Stipulation**

1. Notwithstanding the relief granted in this Stipulation and any actions taken pursuant to this Stipulation, nothing in this Stipulation shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against any of the MDL Debtors; (b) a waiver of the rights of any of the MDL Debtors or any other party in interest to dispute any particular claim on

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<sup>4</sup> The MDL Debtors and the Stipulating MDL Plaintiffs (as defined below) shall be referred to herein collectively as the “**Stipulating Parties**.”

any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Stipulation or the Lift Stay Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) except as specifically provided herein, to affect any claims or constitute a waiver or limitation of any of the MDL Debtors' or any other party-in-interest's claims, rights, or defenses, if any, under the Bankruptcy Code or any other applicable law.

2. Parties Subject to Stipulation: The following parties in the Generics MDL (collectively, "Stipulating MDL Plaintiffs") agree to be bound by this Stipulation and not seek directly or indirectly any discovery other than as agreed to herein:

- Humana Inc.
- Health Care Service Corp.
- Molina Healthcare, Inc.
- United HealthCare Services, Inc.
- The Kroger Co.
- Albertsons Companies, LLC
- H.E. Butt Grocery Company L.P.
- The Proposed Class of Direct Purchaser Plaintiffs
- The Proposed Class of Indirect Reseller Plaintiffs
- The Proposed Class of End-Payer Plaintiffs
- State Attorneys General Plaintiffs<sup>5</sup>

3. The Stipulating MDL Plaintiffs shall be granted relief from the Automatic Stay solely limited to the matters set forth herein. Notwithstanding anything to the contrary herein, the

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<sup>5</sup> The State Attorneys General Plaintiffs are: Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Territory of Guam, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Northern Mariana Islands, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. *See* Dkt. 106 (State Attorneys General Plaintiffs' Amended Complaint).

Stipulating MDL Plaintiffs shall take no action to collect, liquidate, or foreclose against any MDL Debtors' property during these chapter 11 cases absent a further order of this Court.

4. MDL Debtors agree that neither the Automatic Stay nor the final injunction included in MDL Debtors' Plan shall be asserted against any discovery of NewCo under Federal Rule of Civil Procedure 45.

5. This Stipulation is entered in the manner of settlement under Bankruptcy Rule 4001(d)(4).

6. Each of the Stipulating Parties represents and warrants it is duly authorized to enter into and be bound by this Stipulation.

7. The fourteen-day stay imposed by Bankruptcy Rule 4001(a)(3) shall be, and is hereby, waived such that any stay otherwise applicable to this Stipulation provided by the Bankruptcy Rules or any other applicable law shall not apply to this Stipulation, and this Stipulation shall be effective and enforceable immediately upon entry.

8. The discovery from MDL Debtors permitted under the terms of this Stipulation shall not be altered or impaired in any way by the final injunction included in the MDL Debtors' Plan.

**B. Depositions**

**a. General Provisions**

9. The Stipulating Parties shall comply with the Pre-Trial Order that will be entered in the Generics MDL setting forth the deposition protocol ("Deposition PTO") except as set forth herein.

**b. Limitations on Depositions**

10. Aggregate Duration of Depositions: Absent further agreement of the Stipulating Parties, Stipulating MDL Plaintiffs shall comply with the Deposition PTO with respect to the number and duration of Rule 30(b)(1) fact witness depositions of the MDL Debtors. For purposes of the limitations set forth in the Deposition PTO, and only for such purposes and for no other basis, the MDL Debtors and NewCo will be treated as a single Corporate Family as that term is defined in the Deposition PTO.

11. Potential Deponents: Except as otherwise provided in Paragraph 12 below, Stipulating MDL Plaintiffs shall not seek the deposition of any former employee of any MDL Debtor (some of whom may be current and/or former employees of NewCo) other than the following individuals:

Badura, Lisa
Berrios, Ed
Corley, Michael
Davis, Chiwen (AKA Christine Davis)
Dudick, Mark
Grossenbach, Scott
Josway, Jim
Kafer, Jonathan
Kronovich, Tom
Kutinsky, Bruce
McCanna, Mick (AKA Michael Brian McCann)
Negron, Sebastian
Novak, Brett
Sabat, John
Tranter, Matthew Scott

12. Depositions of Current NewCo Employees: Stipulating MDL Plaintiffs shall conduct no more than two (2) depositions of individuals set forth in Paragraph No. 11 (above) who are current employees of NewCo at the time of the deposition, provided however that this shall not limit the right of the Stipulating MDL Plaintiffs to depose (i) employees of other defendants in the

Generics MDL who previously were employed by an MDL Debtor; or (ii) individuals who, at the time of their deposition are employees of NewCo but who were employed by another defendant in the Generics MDL during the relevant time period and who will be deposed based on their tenure at that defendant. For the avoidance of doubt, the deposition of any witness who, at the time of her/his deposition, is employed by NewCo, but who is deposed relating to her/his employment at another defendant in the Generics MDL, shall not be considered the deposition of a “current employee” under the limitations in this Stipulation.

**C. MDL Debtors’ Discovery Costs**

13. The Stipulating Parties shall bear their own costs for the discovery conducted under this Stipulation.

14. For any further discovery that Stipulating MDL Plaintiffs may seek from MDL Debtors as set forth in this Stipulation, the Stipulating Parties reserve all rights as to cost sharing.

**D. Stipulation to Authenticity**

15. All Custodial Documents, ESI, Hard Copy Documents, and Transactional Data produced to Stipulating MDL Plaintiffs by MDL Debtors pursuant to this Agreed Order or otherwise produced in response to any MDL party’s discovery requests or a subpoena from the State of Connecticut will be deemed an authentic and genuine copy of a document found in the producing party’s files in satisfaction of the requirements of authentication and identification of Rule 901 or 902 of the Federal Rules of Evidence.

**E. Reservation of Rights**

16. Stipulating MDL Plaintiffs reserve the right to proceed to judgment against MDL Debtors in any trial conducted in the Generics MDL involving a complaint to which any MDL

Debtor is a party. This includes the right to seek trial testimony from any current or former employee of any MDL Debtor.

**F. Jurisdiction**

17. The Stipulating Parties agree that the MDL Court shall have jurisdiction over disputes arising out of this Stipulation. The Stipulating Parties agree to follow the Special Masters' Protocol, PTO No. 163, Dkt. 1707, at Paragraph No. 4, which sets forth the procedures for the allocation of responsibility between Special Masters Marion and Special Discovery Master Merenstein.

**G. Right to Modify Terms**

18. The terms of this Stipulation may be modified by consent of the Stipulating Parties and approval of this Court or by further order of the Court.

**STIPULATED AND AGREED TO THIS 5TH DAY OF APRIL, 2021:**

/s/ W. Joseph Nielsen

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