IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
AKORN, INC., *et al.*,	Case No. 20-11177 (KBO)
Debtor.[1]	**Objection Deadline: Aug. 30, 2021 at 4:00 p.m. (ET)** **Hearing Date: Sept. 28, 2021 at 11:00 a.m. (ET)**

DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) ENLARGING THE PERIOD WITHIN WHICH THE DEBTOR MAY REMOVE ACTIONS AND (II) GRANTING RELATED RELIEF

The above-captioned debtor (the "Debtor") respectfully states as follows in support of this motion (the "Motion"):[2]

Relief Requested

1. The Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"): (a) enlarging the period of time (the "Removal Period") within which the Debtor may seek removal of civil actions (collectively, the "Actions") pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy

[1] 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); HiTech 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.

[2] A detailed description of the Debtors (defined below) and their business, and the facts and circumstances supporting the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of Duane Portwood in Support of Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 15] (the "First Day Declaration"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), on May 20, 2020 (the "Petition Date").

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Rules") by an additional approximately 90 days, through and including November 15, 2021,[3] without prejudice to the Debtor's right to seek additional extensions of the Removal Period; and (b) granting related relief.

Jurisdiction and Venue

2. 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 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtor confirms its consent, pursuant to Rule 7008 of 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 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.

3. The bases for the relief requested herein are sections 1452 of title 28 of the United States Code, Bankruptcy Rules 9006 and 9027, and Local Rule 9006-2.

Background

4. On the Petition Date, the Debtor and certain of its affiliates (collectively, the "Debtors") commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases were consolidated for procedural purposes only and were jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 57].

5. On September 4, 2020, the Court entered an order [Docket No. 673] (the "Confirmation Order") confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and Its*

[3] The date that is exactly 90 days following August 16, 2021, is November 14, 2021, a Sunday; Monday, November 15, 2021 is the immediately following business day.

Debtor Affiliates (the "Plan").[4] Pursuant to the Confirmation Order, the Plan became effective in accordance with its terms on October 1, 2020 (the "Effective Date"). *See* Docket No. 750. 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.

6. On September 11, 2020, the Court entered an order [Docket No. 699] extending the Removal Period through and including November 16, 2020.

7. On December 2, 2020, the Court entered an order [Docket No. 869] further extending the Removal Period through and including February 16, 2021.

8. On February 18, 2021, the Court entered an order [Docket No. 924] closing the chapter 11 cases of each of the Debtors, other than the Debtor's chapter 11 case.

9. On March 4, 2021, the Court entered an order [Docket No. 929] further extending the Removal Period through and including May 17, 2021.

10. On June 9, 2021, the Court entered an order [Docket No. 951] further extending the Removal Period through and including August 16, 2021.

The Actions

11. The Debtor is currently involved in a number of Actions commenced prepetition in various fora. The Debtor and Plan Administrator continue to review their books and records and are in the process of determining whether to remove any Actions pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027. The Debtor and Plan Administrator have worked diligently on a number of critical matters and have not yet decided which, if any, of the Actions they will seek

[4] Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the Plan.

to remove. Specifically, the Debtor and Plan Administrator have been focused on, among other things, administering the Debtor's estate; addressing numerous questions, concerns, and issues raised by vendors, utility companies, and other parties in interest; and continuing the claims reconciliation process.

12. As a result of their focus on other matters, the Debtor and Plan Administrator are not yet in a position to make final determinations with respect to whether they should remove certain Actions.

13. It is also possible that the Debtor and Plan Administrator may become aware of Actions following their review of proofs of claim filed in this chapter 11 case and assertions of cure claims, at which time the Debtor and Plan Administrator will need to analyze such potential Actions to determine whether to remove any such Actions. Consequently, the Debtor is seeking an extension of the Removal Period to provide it with time to decide whether to remove any such Actions.

Basis for Relief

14. Section 1452 of title 28 of the United States Code and Bankruptcy Rule 9027 govern the removal of pending civil actions related to chapter 11 cases. *See In re Fed.-Mogul Glob., Inc.*, 282 B.R. 301, 305 (Bankr. D. Del. 2002) (noting 28 U.S.C. § 1452 as bankruptcy removal statute).

15. Specifically, section 1452(a) provides:

> A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

16. Bankruptcy Rule 9027 sets forth the time periods for filing notices to remove claims or causes of action. Specifically, Bankruptcy Rule 9027(a)(2) provides, in pertinent part:

> If the claim or cause of action in a civil action is pending when a case under the [Bankruptcy] Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the [Bankruptcy] Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the [Bankruptcy] Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

17. Bankruptcy Rule 9006 permits the Court to extend the period to remove actions provided by Bankruptcy Rule 9027. Specifically, Bankruptcy Rule 9006(b)(1) provides, in pertinent part:

> [W]hen an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order . . . .

Fed. R. Bankr. P. 9006(b)(1).

18. It is well-settled that the Court is authorized to enlarge the Removal Period. *See Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984), *overruled on other grounds by Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 134–35, 116 S.Ct. 494, 133 L.Ed.2d 461 (1995) (holding the bankruptcy court's power to grant an extension of the removal period pursuant to Bankruptcy Rule 9006(b) is "clear"); *Caperton v. A.T. Massey Coal Co., Inc.*, 251 B.R. 322, 325 (S.D.W. Va. 2000); (holding that Bankruptcy Rule 9006 provides authority to enlarge time periods for removing actions under Bankruptcy Rule 9027); *In re Jandous Elec. Constr. Corp.*, 106 B.R. 48 (Bankr. S.D.N.Y. 1989) (noting that period in which to file motion to remove may be expanded pursuant to Bankruptcy Rule 9006); *In re World Fin. Servs. Ctr., Inc.*,

81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (finding that United States Supreme Court intended to give bankruptcy judges the power to enlarge the filing periods under Bankruptcy Rule 9027(a) pursuant to Bankruptcy Rule 9006(b)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (finding that expansion of time to file notices of removal is authorized under the Bankruptcy Rules).

19. The Debtor is seeking to enlarge the Bankruptcy Rule 9027(a)(2)(A) deadline, which, absent this relief, would expire on August 16, 2021, to ensure the Debtor's right to remove is preserved and that creditors are on notice of such extended removal deadline.[5] The Debtor believes it has additional time to remove the Actions under Bankruptcy Rule 9027(a)(2)(C) and, to the extent such Actions are subject to the automatic stay, Bankruptcy Rule 9027(a)(2)(B), but nevertheless seek entry of this Motion out of an abundance of caution.

20. The decision regarding whether to seek removal of any particular Action depends on a number of factors, including: (a) the importance of the Action to the expeditious resolution of this chapter 11 case; (b) the time required to complete the Action in its current venue; (c) the presence of federal subject matter jurisdiction in the proceeding that may allow for one or more aspects thereof to be heard by a federal court; (d) the relationship between the Action and matters to be considered in connection with the reorganization and claims allowance process; and (e) the progress made to date in the Action. To make the appropriate determination, the Debtor and Plan Administrator must analyze each Action (if any) in light of such factors.

21. For the reasons set forth above, however, the Debtor and Plan Administrator have not yet had the opportunity to properly consider, or make decisions concerning, the removal of

[5] Pursuant to Local Rule 9006-2, the filing of this Motion prior to the current deadline shall serve to automatically extend the current deadline without the necessity for the entry of a bridge order, until the Court rules on this Motion. *See* Del. Bankr. LR 9006-2.

the Actions. The Debtor and Plan Administrator believe that the extension requested herein will provide them with the ability to make fully-informed decisions concerning the removal of any Actions and will ensure that the Debtor's rights provided by 28 U.S.C. § 1452 can be exercised in an appropriate manner. Alternately, if such an extension is not granted, the Debtor may not become aware of Actions until after the Removal Period expires. Moreover, the rights of parties to the Actions will not be unduly prejudiced by the requested extension of the Removal Period. If the Debtor and Plan Administrator ultimately seek to remove Actions pursuant to Bankruptcy Rule 9027, parties will retain their rights to have such Actions remanded pursuant to 28 U.S.C. § 1452. Accordingly, the Debtor submits that cause exists for the relief requested herein.

22. Further, the rights of any party to the Actions will not be unduly prejudiced by the Debtor's requested extension. Inasmuch as section 362(a) of the Bankruptcy Code automatically stays actions against the Debtor, most of the Actions will not proceed in their respective courts during this chapter 11 case, even absent the relief requested herein.

23. Courts in this district have regularly granted relief similar to the relief requested herein in other large chapter 11 cases. *See*, *e.g.*, *In re The Hertz Corporation*, No. 20-11218 (MFW) (Bankr. D. Del. July 12, 2021) (granting a further 180-day extension, for a total extension of 480 days, without prejudice to the debtors' ability to seek further extension); *In re BBGI US, Inc.,* No. 20-11785 (CSS) (Bankr. D. Del. June 16, 2021) (granting a further 120-day extension, for a total extension of 359 days, without prejudice to the debtors' ability to seek further extension); *In re Chaparral Energy, Inc*., No. 16-11144 (LSS) (Bankr. D. Del. March 24, 2021) (granting a further 91-day extension, for a total extension of 1,765 days, without prejudice to the reorganized debtor's ability to seek additional extensions); *In re GCX Ltd.*, No. 19-12031

(CSS) (Bankr. D. Del. Aug. 2, 2020) (granting a further 141-day extension, for a total extension of 381 days, without prejudice to the debtors' ability to seek further extensions); *In re Bluestem Brands, Inc.*, No. 20-10566 (MFW) (Bankr. D. Del. June 23, 2020) (granting a 120-day extension, without prejudice to the debtors' ability to seek further extensions); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Feb. 3, 2020) (granting a further 90-day extension, for a total extension of 180 days, without prejudice to the debtors' ability to seek further extensions); *In re TPOP, LLC*, No. 13-11831 (BLS) (Bankr. D. Del. Jan. 22, 2020) (granting the debtor's fourteenth removal extension request, including for postpetition actions, for a total extension of 2,444 days, without prejudice to the debtor's ability to seek additional extensions). The 91-day extension requested herein is consistent with the extensions granted by courts in this District under similar circumstances. Accordingly, the Debtor's requested extension is reasonable.

Notice

24. The Debtor will provide notice of this Motion to: (a) the U.S. Trustee for the District of Delaware; (b) the United States Attorney's Office for the District of Delaware; (c) the Internal Revenue Service; (d) the Food and Drug Administration; (e) the Drug Enforcement Administration; (f) the Securities and Exchange Commission; (g) the state attorneys general for all states in which the Debtor conducts business; and (h) any parties in interest who have requested additional notice pursuant to Bankruptcy Rule 2002 in accordance with paragraph 146 of the Confirmation Order. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

25. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Wilmington, Delaware
August 16, 2021

/s/ *J. Zachary Noble*

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
AKORN, INC., *et al.*,	Case No. 20-11177 (KBO)
Debtor.[1]	**Objection Deadline: Aug. 30, 2021 at 4:00 p.m. (ET)** **Hearing Date: Sept. 28, 2021 at 11:00 a.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on August 16, 2021, the above-captioned debtor (the "Debtor") filed the *Debtor's Motion for Entry of an Order (I) Enlarging the Period Within Which the Debtor May Remove Actions and (II) Granting Related Relief* (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 **August 30, 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

[1] 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); HiTech 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.

Court, 824 Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware, 19801 on **September 28, 2021 at 11:00 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
August 16, 2021

/s/ J. Zachary Noble

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Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
AKORN, INC., *et al.*,	)	Case No. 20-11177 (KBO)
	)	
Debtor.[1]	)	**Re: Docket No. _____**
	)	

ORDER (I) ENLARGING THE PERIOD WITHIN WHICH THE DEBTOR MAY REMOVE ACTIONS AND (II) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtor (the "Debtor") for entry of an order (this "Order"): (a) enlarging the Removal Period for filing notices of removal of the Actions by approximately 90 days, up to and including November 15, 2021, without prejudice to the Debtor's right to seek further extensions; and (b) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter 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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were

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[2] Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing (if any) before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing (if any) establish just cause for the relief granted herein; and upon all of the proceedings had before this 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 period within which the Debtor may seek removal of the Actions pursuant to 28 U.S.C. § 1452 and Bankruptcy Rule 9027 is enlarged by 91 days, with a deadline for filing notices of removal through and including November 15, 2021.

3. This Order is without prejudice to the Debtor's right to request a further extension of time to file notices of removal of any or all of the Actions.

4. This Order shall be without prejudice to any position the Debtor may take regarding whether section 362 of the Bankruptcy Code applies to stay any Action.

5. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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