

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

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

**CERTIFICATION OF COUNSEL REGARDING THE
ORDER APPROVING STIPULATION BETWEEN THE DEBTORS
AND CALIFORNIA FRANCHISE TAX BOARD OFFSETTING TAX CLAIMS**

The undersigned hereby certifies as follows:

1. On May 20, 2020 (the “Petition Date”), the above-captioned post-effective date debtor (the “Debtor”) and its affiliated debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, commencing their chapter 11 cases (the “Chapter 11 Cases”).

2. On September 4, 2020, the Bankruptcy Court entered an order [D.I. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [D.I. 673-1] (the “Plan”).

3. On October 1, 2020, the Plan became effective pursuant to its terms and DriveTrain LLC was appointed as Plan Administrator pursuant thereto.

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); 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.



4. On November 16, 2020, the California Franchise Tax Board (the “Tax Board” and, together with the Debtors, the “Parties”) filed proofs of claim numbers 746, 747, 749, 751, 752 and 753 (collectively, the “Proofs of Claim”) asserting tax claims against certain Debtors.

5. On September 14, 2022, the Debtors and the Tax Board, by and through their respective counsel, entered into that certain *Stipulation Between the Debtors and California Franchise Tax Board Offsetting Tax Claims* (the “Stipulation”),² whereby (i) the Tax Board will offset certain refunds owed to Debtors against certain of the tax claims contained in the Proofs of Claim, (ii) the Debtor will pay tax obligations owed by Debtors for certain tax years, and (iii) after the offsets and payments previously mentioned, the Tax Board will amend the Proofs of Claim consistent with the terms of the Stipulation.

6. A copy of the Stipulation is attached as **Exhibit 1** to the proposed form of order approving the Stipulation (the “Order”) which is attached hereto as **Exhibit A**.

² Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Stipulation.

WHEREFORE, the Debtor respectfully requests that the Order, substantially in the form attached hereto as **Exhibit A**, be entered at the earliest convenience of the Bankruptcy Court.

Wilmington, Delaware
September 14, 2022

/s/ Emily R. Mathews

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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., <i>et al.</i> , ¹)	
)	Case No. 20-11177 (KBO)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER APPROVING STIPULATION BETWEEN THE DEBTORS
AND CALIFORNIA FRANCHISE TAX BOARD OFFSETTING TAX CLAIMS**

Upon consideration of the *Certification of Counsel Regarding Order Approving Stipulation Between the Debtors and California Franchise Tax Board Offsetting Tax Claims* (the “Stipulation”)², attached hereto as Exhibit 1; it is HEREBY ORDERED THAT:

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); 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.

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

1. The Stipulation is approved.
2. The Parties are authorized to take all actions necessary to effectuate the terms of the Stipulation.

EXHIBIT 1

Stipulation

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

In re:

AKORN, INC., *et al.*,¹

Debtors.

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

**STIPULATION BETWEEN THE DEBTORS AND
CALIFORNIA FRANCHISE TAX BOARD OFFSETTING TAX CLAIMS**

The above-captioned post-effective date debtors (collectively, the “Debtors”) in these jointly-administered chapter 11 cases (the “Chapter 11 Cases”) and the California Franchise Tax Board (the “Tax Board” and, together with the Debtors, the “Parties”), by and through their respective counsel, hereby enter into this stipulation (the “Stipulation”)² and stipulate and agree as follows:

WHEREAS, on May 20, 2020, the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

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.

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

WHEREAS, on September 4, 2020, the Bankruptcy Court entered an order [D.I. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [D.I. 673-1] (the "Plan").

WHEREAS, on October 1, 2020, the Plan became effective pursuant to its terms and DriveTrain LLC was appointed as Plan Administrator pursuant thereto.

WHEREAS, on November 16, 2020, the Tax Board filed the following timely proofs of claim:

- a. proof of claim number 746 ("Claim no. 746") asserting unsecured priority claims in the amount of \$1,654.06 against Debtor entity Versapharm Incorporated for tax years 2019 and 2020, as well as TBD claims for tax years 2007, 2008, 2012 and, 2013;
- b. proof of claim number 747 ("Claim no. 747") asserting a TBD claim against Debtor entity VPI Holdings Corporation for tax year 2012;
- c. proof of claim number 749 ("Claim no. 749") asserting unsecured priority claims in the amount of \$512,047.44 and general unsecured claims in the amount of \$93,101.92 against Debtor entity Hi-Tech Pharmacal Co., Inc. for tax year 2017, as well as TBD claims for tax year 2015 and 2018;
- d. proof of claim number 751 ("Claim no. 751") asserting unsecured priority claims in the amount of \$2,668,049.80 and general unsecured claims in the amount of \$445,399.80 against Debtor entity Akorn, Inc. for tax years 2013, 2015 and 2017, as well as a TBD claim for tax year 2018;
- e. proof of claim number 752 ("Claim no. 752") asserting unsecured priority claims in the amount of \$1,614,974.96 and general unsecured claims in the amount of \$283,148.22 against Debtor entity Akorn Sales, Inc. for tax years 2015 and 2017, as well as a TBD claim for tax year 2018; and
- f. proof of claim number 753 ("Claim no. 753") asserting unsecured priority claims in the amount of \$404,400.40 and general unsecured claims in the amount of \$69,149.66 against Debtor entity Advanced Vision Research, Inc. for tax years 2013 and 2017, as well as TBD claims for tax years 2015 and 2018.

(collectively, the "Proofs of Claim")

WHEREAS, the Tax Board has determined a refund in the amount of \$27,921 is due to Advance Vision Research, Inc. with respect to the tax year 2015, and a refund in the amount of \$19,977 is due to Hi-Tech Pharmacal Co., Inc. with respect to the tax year 2015, resulting in a total refund due to the Debtors in the amount of \$47,898 with respect to the tax year, 2015 (collectively, the “2015 Tax Refunds”).

WHEREAS, the Tax Board subsequently determined that Akorn Sales, Inc. owes taxes to the Tax Board in the amount of \$49,328 with respect to the tax year 2015 (the “2015 Audit Tax Claim”).

WHEREAS, the Tax Board determined a refund in the amount of \$67,536 is due to Advanced Vision Research, Inc. with respect to the tax year ending 2017, and a refund in the amount of \$90,933 is due to Hi-Tech Pharmacal Co., Inc. with respect to the tax year 2017, resulting in a total refund due to the Debtors in the amount of \$158,469 with respect to the tax year 2017 (collectively, the “2017 Tax Refunds”).

WHEREAS, the Tax Board determined that Akorn Sales, Inc. owes taxes to the Tax Board in the amount of \$158,469 with respect to the tax year 2017 (the “2017 Audit Tax Claim”).

WHEREAS, the Debtors wish to offset the 2015 Audit Tax Claims against the 2015 Tax Refunds, and the 2017 Audit Tax Claims against the 2017 Tax Refunds.

WHEREAS, after the offsets described above, and completion of the audit of all tax years relevant to the Proofs of Claim, the remaining amounts under the Proofs of Claim shall be entitled to treatment according to the terms of the confirmed Plan.

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

1. The above recitals are true and correct and are incorporated herein by reference.

2. Upon the entry of an order from the Bankruptcy Court approving this Stipulation the Tax Board shall offset the 2015 Tax Refunds and 2017 Tax Refunds against the 2015 Audit Tax Claims and 2017 Audit Tax Claims, respectively.

3. Akorn, Inc., as the key corporation, agrees to pay the tax obligations owed by the combined group for tax years 2013, 2015, 2017 and 2018.

4. After the offsets referenced in par. 2 and the agreement in par. 3 above, the Tax Board will amend the proof of claims consistent with the terms of this Stipulation.

5. Any plan provisions in the jointly administered bankruptcy cases prohibiting setoffs waived by the Debtors.

6. Nothing in this Stipulation shall impact proof of claim number 746. The Debtors, the Tax Board and the Plan Administrator reserve all rights with respect to proof of claim number 746, including any and all defenses.

7. This Stipulation is governed by the law of the State of Delaware, exclusive of its choice-of-law provisions. Each Party waives any right to commence any such action in any other forum.

8. The undersigned persons represent and warrant that they have full authority to execute this Stipulation.

9. This Stipulation constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the matters addressed herein.

10. This Stipulation has been drafted through a cooperative effort of the Parties, and no Party shall be considered the drafter of this Stipulation so as to give rise to any presumption or convention regarding construction of this Stipulation.

11. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

September 14, 2022

STIPULATED AND AGREED TO:

/s/ Amanda R. Steele

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/s/ Michele Thompson

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