

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	
In re:	)	Chapter 11
)	
AKORN, INC.,	)	Case No. 20-11177 (KBO)
)	
Debtor. ¹)	
)	
	)	Objection Deadline: March 8, 2024 at 4:00 p.m. (ET)
	)	Hearing Date: April 3, 2024 at 10:30 a.m. (ET)

**DEBTOR’S EIGHTH OMNIBUS (SUBSTANTIVE)
OBJECTION TO CERTAIN CONTINGENT CLAIMS**

THIS OBJECTION SEEKS TO DISALLOW AND EXPUNGE AND/OR MODIFY CERTAIN CLAIMS. CLAIMANTS RECEIVING THIS OBJECTION SHOULD CAREFULLY REVIEW THIS OBJECTION AND LOCATE THEIR NAMES AND CLAIMS ON SCHEDULE 1 AND/OR SCHEDULE 2 ATTACHED TO THIS OBJECTION AND, IF APPLICABLE, FILE A RESPONSE BY THE RESPONSE DEADLINE FOLLOWING THE INSTRUCTIONS SET FORTH HEREIN.

The above-captioned debtor (the “Debtor”) hereby files this omnibus objection (this “Objection”) and respectfully represents as follows:

Relief Requested

1. By this Objection, the Debtor seeks entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 502 of title 11 of the United States Code (the “Bankruptcy Code”), rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 3007-1 of the Local Rules of Bankruptcy Practice

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.



and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), disallowing and expunging (i) the proof of claim identified on Schedule 1 thereto (the “Full Contingent Claim”), and (ii) the contingent portions (and together with the Full Contingent Claim, the “Contingent Claims”) of the claims identified on Schedule 2 thereto (the “Partial Contingent Claims,” and together with the Full Contingent Claims, the “Disputed Claims”). In support of this Objection, the Debtor submits the *Declaration of Thomas FitzGerald in Support of the Debtor’s Eighth Omnibus (Substantive) Objection to Certain Contingent Claims* (the “FitzGerald Declaration”), annexed hereto as Exhibit B.

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, Article XI of the Plan (as defined below), 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 Bankruptcy Rule 7008 and Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Objection 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.

General Background

3. On May 20, 2020 (the “Petition Date”), the Debtor and certain of its affiliates (collectively, the “Debtors”) each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code (the Debtor’s case, the “Chapter 11 Case” and together with its affiliates’ cases, the “Chapter 11 Cases”). The Chapter 11 Cases were consolidated for procedural purposes only and were jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 57].

4. Further information regarding the Debtors' business operations and capital structure is set forth in the *Declaration of Duane Portwood in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 15].

5. On September 4, 2020, the Court entered an order [Docket No. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (the "Plan").²

6. On October 1, 2020, the Plan became effective in accordance with its terms (the "Effective Date") and the Debtors consummated the Sale Transaction with the Purchaser (each as defined in the Plan). See *Notice of (I) Entry of Order Confirming 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].

7. 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 (as defined in the Plan) and is now the sole representative of the Debtors.

8. On February 18, 2021, the Court entered an order [Docket No. 924] (the "Case Closing Order") closing the Chapter 11 Cases of each of the Debtors except the Debtor. Pursuant to the Case Closing Order, entry of such order was "without prejudice to the rights of any party with requisite standing to . . . object to claims filed against any Debtor . . ." Case Closing Order ¶ 6.

² Capitalized terms used but not otherwise defined in this Objection shall have the same meanings ascribed to them in the Plan.

Claims Process

9. On July 1, 2020, the Debtors filed their schedules of assets and liabilities (the “Schedules”) and statements of financial affairs (the “Statements” and together, with the Schedules, the “Schedules and Statements”) [Docket Nos. 272-288, 290, 292-298, 300-307, 309]. On July 28, 2020 and August 22, 2020, the Debtors filed amended Schedules and Statements [Docket Nos. 387-407, 522-539]. Additionally, in the ordinary course of business, the Debtors maintained books and records that reflected, among other things, the Debtors’ aggregate liabilities and the specific amounts owed to each of their creditors.

10. On June 23, 2020, the Court entered an order [Docket No. 214] (the “Bar Date Order”) establishing certain dates by which parties holding prepetition claims against the Debtors were to file proofs of claim (“Proofs of Claim”). Pursuant to the Bar Date Order and the *Notice of Deadlines for the Filing of Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code* [Docket No. 326] (the “Bar Date Notice”), the deadline for all entities holding claims against the Debtors that arose or were deemed to have arisen prior to the commencement of the Debtors’ chapter 11 cases to file a Proof of Claim was 5:00 p.m., prevailing Eastern Time, on August 3, 2020 (the “Claims Bar Date”). The Claims Bar Date applied to all types of claims against the Debtors that arose prior to the Petition Date, including secured claims, unsecured priority claims, and unsecured nonpriority claims, other than those exceptions detailed in the Bar Date Notice such as claims of governmental units, claims of parties affected by amendments of the Debtors’ schedules of assets and liabilities, and claims of parties asserting claims against the Debtors’ estates arising from the Debtors’ rejection of an executory contract or unexpired lease. Pursuant to the Bar Date Order, the deadline for governmental units to file Proofs

of Claim was November 16, 2020, at 5:00 p.m., prevailing Eastern Time (the “Governmental Bar Date”).

11. Pursuant to Article VII.B. of the Plan, on and after the Effective Date the Debtors have the authority to administer Claims and Interests (each as defined in the Plan), including sole authority to file, withdraw or litigate to judgment objections to Claims and Interests. Pursuant to Article IV.R. of the Plan, “all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of Akorn[, Inc.], irrespective of whether such Claim(s) were filed against a Debtor whose Chapter 11 Case was closed.”

12. As of the date hereof, the Debtor, the Plan Administrator and Kurtzman Carson Consultants, LLC (“KCC”), the Debtors’ court-appointed claims and noticing agent, have identified approximately 831 Proofs of Claim filed against the Debtors in the Chapter 11 Cases by persons purporting to be holders of Claims. The Debtor and its advisors are in the process of comprehensively reviewing and reconciling the Proofs of Claim to determine the validity of the Claims. Indeed, the Debtors filed notices of satisfaction of claims [Docket Nos. 918, 1136, 1137 & 1194] identifying certain claims that were satisfied in full, satisfied in part or released in connection with the assumption of liabilities by the Purchaser pursuant to the Sale Transaction. Further, on June 28, 2021 the Debtors filed two omnibus objections to claims [*see* Docket Nos. 954 and 955], and on July 15, 2021, the Court entered orders sustaining the objections [*see* Docket Nos. 962 and 963]. Further, on June 28, 2021 the Debtors filed two omnibus objections to claims [*see* Docket Nos. 954 and 955], and on July 15, 2021, the Court entered orders sustaining the objections [*see* Docket Nos. 962 and 963]. On September 29, 2022, the Debtor filed a third omnibus objection to claims [Docket No. 1070], and on October 18, 2022, the Court entered an

order sustaining the objection [Docket No. 1079]. On October 11, 2023, the Debtor filed a fourth omnibus objection to claims [Docket No. 1138]. On November 9, 2023, the Court entered an order sustaining the objection [Docket No. 1155] and on November 16, 2023, the Court entered a second order sustaining the objection [Docket No. 1165]. On November 3, 2023, the Debtor filed a fifth omnibus objection to claims [Docket No. 1147]. On December 11, 2023, the Court entered an order sustaining the objection [Docket No. 1181]. On November 3, 2023, the Debtor filed a sixth omnibus objection to claims [Docket No. 1148]. On November 29, 2023, the Court entered an order sustaining the objection [Docket No. 1173]. On February 9, 2023, the Debtor filed a seventh omnibus objection to claims [Docket No. 1195].

Basis for Relief

13. Section 502(a) of the Bankruptcy Code provides that a filed proof of claim is “deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). When asserting a proof of claim against a bankrupt estate, a claimant must allege facts that, if true, would support a finding that the debtor is legally liable to the claimant. *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). Where the claimant alleges sufficient facts to support its claim, its claim is afforded *prima facie* validity. *Id.* A party wishing to dispute a claim’s validity must produce evidence sufficient to negate the claim’s *prima facie* validity. *Id.* at 173-74. Once an objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of his or her claim by a preponderance of the evidence. *Id.* at 174. Ultimately, the burden of persuasion is on the claimant. *Id.*

A. The Contingent Claims Should be Disallowed

(i) The Debtor Has No Liability With Respect to the Contingent Claims

14. The Full Contingent Claim listed on **Schedule 1** to the Proposed Order asserts a claim for potential indemnity for amounts that could be incurred by the claimant in his capacity as

a former director and officer of the Debtor. The contingent portions of the Partial Contingent Claims listed on **Schedule 2** to the Proposed Order assert claims for potential indemnity for amounts that could be incurred by the claimants “whether contractual, common law, or statutory; whether liquidated or contingent; whether known or unknown.” *See* Addendums to Partial Contingent Claims, ¶ 2.

15. However, the Contingent Claims fail to allege (i) that any payment has actually been made by the claimants with respect to a liability of the Debtor, (ii) the amount of defense and indemnity paid with respect to such claims, (iii) to whom any such amounts were paid, (iv) when any such amounts were paid, (v) the factual basis for any such claims, and (vi) whether the claimants sought or received contribution from any other third parties on account of such amounts.³

16. Based upon a review of the proofs of claim asserting the Contingent Claims, the claims’ register maintained by KCC and the Schedules, the Debtor is not aware of any demand made by the claimants asserting the Contingent Claims, or any amounts paid with respect to a liability of the Debtor that could form the basis of a Contingent Claim. The Debtor is also not aware of any basis in contract or law that would entitle the claimants to assert the Contingent Claims against the Debtor at this juncture. Accordingly, the Contingent Claims should be disallowed because the Debtor has no record of liability with respect to such claims.

(ii) ***The Contingent Claims are Subject to Disallowance Under Section 502(e)(1)(B) of the Bankruptcy Code***

17. The Contingent Claims constitute claims for reimbursement or contribution that are contingent and should be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code.

³ For a claim to be entitled to *prima facie* evidentiary status, it must set forth the necessary facts to establish a claim. *See, e.g., In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) (allegations in the claim must “set forth all the necessary facts to establish a claim”). The Contingent Claims fail to allege basic factual allegations that could form the basis of an existing claim, and instead appear to assert protective claims that do not currently exist.

Section 502(e)(1)(B) requires the disallowance of a claim if: (1) the claim is contingent; (2) the claim is for reimbursement or contribution; and (3) the debtor and the claimant are co-liable on the claim. *See In re RNI Wind Down Corp.*, 369 B.R. 174, 181 (Bankr. D. Del. 2007).

18. The first prong of section 502(e)(1)(B) is satisfied because the Contingent Claims are explicitly asserted as contingent claims. *See Addendum to Full Contingent Claim*, ¶ 5 (“Claimant further asserts a contingent claim for any amounts that in the future will become due to Claimant for Indemnification”); *Addendums to Partial Contingent Claims*, ¶ 2 (“This claim is intended to encompass all known and potential indemnity claims against the Debtor whether contractual, common law, or statutory; whether liquidated or contingent; whether known or unknown; and whether asserted or as yet unasserted.”). Under section 502(e)(1)(B), a claim is “contingent” unless and until the claimant obtains (i) a determination of liability against the debtor and (ii) makes payment on that liability. *Id.* at 183 (a contingent claim under section 502(e)(1)(B) is one that “has not yet accrued . . . and is dependent upon some future event that may never happen”). The determination of whether a claim is “contingent” is made at the time of allowance of the claim, which is the date of ruling on the contested claim. *See In re Drexel Burnham Lambert Group Inc.* 148 B.R. 982, 986 (Bankr. S.D.N.Y. 1992). As stated, the claimants do not allege that they have obtained a determination of liability against the Debtor, or that they have paid a liability of the Debtor that could form the basis for a claim. The Contingent Claims are dependent on the indemnification obligations for which the Debtor *may* have liability; however, no such claims exist today. Thus, the Contingent Claims are contingent claims for purposes of section 502(e)(1)(B).

19. The second prong of the test is also satisfied, as courts have recognized that claims for indemnity, reimbursement, or contribution are claims that fall squarely within the scope of section 502(e)(1)(B). *See, e.g., Denke v. PNC Bank, N.A. (In re Denke)*, 524 B.R. 644, 655 (Bankr.

E.D. Va. 2015) (citing 4 Collier on Bankruptcy ¶ 502.06[2][d] (16th ed. 2014) for the proposition that section 502(e)(1)(B) “is applicable to a debt owed by the debtor to a creditor which has been guaranteed by a third party”); *see also In re Caribbean Petroleum Corp.*, No. 10-12553, 2012 WL 1899322, at *3 (Bankr. D. Del. May 24, 2012) (“[I]ndemnification claims are disallowable under section 502(e)(1)(B) because they are functionally the same as claims for reimbursement or contribution.”). The Contingent Claims, which are each explicitly claims for indemnity against the Debtor, clearly fall within the scope of section 502(e)(1)(B).

20. Finally, the third prong of the test is satisfied because to the extent the claimants have any claims against the Debtor for reimbursement or contribution, the Debtor would be co-liable with respect to the underlying liability. The concept of co-liability is “broad enough to encompass any type of liability shared with the debtor, whatever the basis.” *See In re Eagle-Picher Indus., Inc.*, 131 F.3d 1185, 1190 (6th Cir. 1997). Indeed, courts have found that co-liability under section 502(e)(1)(B) includes “all situations wherein indemnitors or contributors could be liable with the debtor.” *See In re Chemtura Corp.*, 436 B.R. 286, 295-96 (Bankr. S.D.N.Y. 2010) (citations omitted). The Contingent Claims would only arise if the claimants could establish that they satisfied a liability of the Debtor, which would necessarily require the existence of co-liability between the applicable claimant and the Debtor. Thus, the Contingent Claims satisfy the co-liability requirement of section 502(e)(1)(B).

21. Disallowance of such claims will enable the Debtor to move forward with distributions to holders of Claims and Interests without reserving for redundant and contingent claims that may never arise. *See In re Caribbean Petroleum Corp.*, 2012 WL 1899322 at *2 (observing that section 502(e)(1)(B) enables “distribution to unsecured creditors without a reserve for contingent claims when the contingency may not occur”) (citing *In re Wedtech Corp.*, 85 B.R.

285, 290 (Bankr. S.D.N.Y. 1988)); *see also Syntex Corp. v. Charter Co. (In re Charter Co.)*, 862 F.2d 1500, 1502-03 (11th Cir. 1989) (“[T]he bankrupt’s estate should not be burdened by estimated claims contingent in nature.”). Accordingly, the Contingent Claims should be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code.

Responses to this Objection

22. To contest this Objection, a claimant must file and serve a written response (the “Response”) with the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware (the “Clerk”), 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. In addition, such claimant must serve its Response upon the following entity, so that the Response is **received** no later than **March 8, 2024 at 4:00 p.m., prevailing Eastern Time** (the “Response Deadline”): Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Amanda R. Steele (steele@rlf.com) and Emily R. Mathews (mathews@rlf.com).

23. Every Response must contain, at a minimum, the following information:

- a. a caption setting forth the name of this Court, the name of the Debtor, the case number, and the title of this Objection;
- b. the name of the claimant, the number of his/her/its claim, and a description of the basis for the amount of the claim;
- c. the specific factual basis, supporting legal argument and any supporting documentation upon which the claimant will rely in opposing this Objection;
- d. all documentation and other evidence in support of the claim, not previously filed with the Court or the claims and noticing agent, upon which the claimant will rely in opposing this Objection; and
- e. the name, address, telephone number, fax number and/or email address of the person(s) (which may be the claimant or the claimant’s legal representative) with whom counsel for the Debtor should communicate with respect to the claim subject to the Objection or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to

the claim on behalf of the claimant.

24. If a Response is properly and timely filed and served in accordance with the above procedures, the Debtor will endeavor to reach a consensual resolution with the claimant. If no consensual resolution is reached, the Court will conduct a hearing (the "Hearing") with respect to the Objection and such Response on April 3, 2024 at 10:30 a.m., prevailing Eastern Time, or such other date and time as parties filing Responses may be notified. Only those Responses made in writing and timely filed and received will be considered by the Court at the Hearing.

25. The Debtor reserves the right to seek an adjournment of the Hearing on any Response to this Objection, which adjournment will be noted on the notice of agenda for the Hearing. The agenda will be served on the person designated by the claimant in its Response.

26. If a claimant fails to timely file a Response by the Response Deadline, the Debtor may present to the Court an appropriate order disallowing the Contingent Claims without further notice to the claimant or a hearing.

27. The objection by the Debtor to each claim shall constitute a separate contested matter as contemplated by Bankruptcy Rule 9014. Any order entered by the Court regarding an objection asserted in this Objection shall be deemed a separate order with respect to each claim subject thereto.

Reservation of Rights

28. The Debtor expressly reserves the right to amend, modify, or supplement this Objection, and to file additional objections to any other claims (filed or not) that may be asserted against the Debtors and their estates. Should one or more of the grounds of objection stated in the Objection be dismissed or overruled, the Debtor reserves the right to object to each of the Disputed Claims or any other proofs of claim on any other grounds that the Debtor discovers or elects to pursue.

29. Notwithstanding anything contained in the Objection, or the exhibits and schedules attached hereto, nothing herein will be construed as a waiver of any rights that the Debtor, or any successor to the Debtor, may have to enforce rights of setoff against the claimants.

30. Nothing in this Objection shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim; (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 Objection; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (f) a waiver of any of the Debtor's claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

Compliance with Local Rule 3007-1

31. To the best of the Debtor's knowledge and belief, this Objection complies with Local Rule 3007-1, except as set forth herein. To the extent this Objection does not comply in all respects with the requirements of Local Rule 3007-1, the undersigned believes such deviations are not material and respectfully requests that any such requirement be waived, including, but not limited to, Local Rule 3007-1(e)(iii)(J)(2).

Notice

32. The Debtor will provide notice of this Objection to (a) the U.S. Trustee for the District of Delaware, (b) the claimants whose claims are subject to this Objection, 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. The Debtor and Plan Administrator submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

[Remainder of page intentionally left blank]

WHEREFORE, the Debtor respectfully requests that the Court enter the Proposed 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
February 23, 2024

/s/ Emily R. Mathews

RICHARDS, LAYTON & FINGER, P.A.

Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Zachary I. Shapiro (No. 5103)
Emily R. Mathews (No. 6866)
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
mathews@rlf.com

Co-Counsel for the Debtor

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP
Patrick J. Nash, Jr., P.C. (admitted *pro hac vice*)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: patrick.nash@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 Debtor

PLEASE CAREFULLY REVIEW THIS OBJECTION AND THE ATTACHMENTS HERETO TO DETERMINE WHETHER THIS OBJECTION AFFECTS YOUR CLAIM.

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

)	
In re:	)	Chapter 11
)	
AKORN, INC.,	)	Case No. 20-11177 (KBO)
)	
Debtor. ¹)	
)	
	)	Objection Deadline: March 8, 2024 at 4:00 p.m. (ET)
	)	Hearing Date: April 3, 2024 at 10:30 a.m. (ET)

NOTICE OF OMNIBUS OBJECTION AND HEARING

PLEASE TAKE NOTICE that, on February 23, 2024, the above-captioned debtor (the “Debtor”) filed the *Debtor’s Eighth Omnibus (Substantive) Objection to Certain Contingent Claims* (the “Objection”) with the United States Bankruptcy Court for the District of Delaware (the “Court”). **Your claim(s) may be disallowed and expunged and/or modified as a result of the Objection. Therefore, you should read the attached Objection carefully.**

PLEASE TAKE FURTHER NOTICE THAT YOUR RIGHTS MAY BE AFFECTED BY THE OBJECTION AND BY ANY FURTHER CLAIM OBJECTION THAT MAY BE FILED BY THE DEBTOR OR OTHERWISE. THE RELIEF SOUGHT HEREIN IS WITHOUT PREJUDICE TO THE DEBTOR’S RIGHT TO PURSUE

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.

FURTHER OBJECTIONS AGAINST YOUR CLAIM(S) SUBJECT TO THE OBJECTION IN ACCORDANCE WITH APPLICABLE LAW AND APPLICABLE ORDERS OF THE COURT.

PLEASE TAKE FURTHER NOTICE that objections or responses to the relief requested in the Objection (each, a “Response”), if any, must be made in writing and filed with the Clerk of the Court, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801, by **March 8, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “Response Deadline”). In addition, a responding party must serve its Response upon the following entity, so that the Response is received no later than the Response Deadline: Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Amanda R. Steele (steele@rlf.com) and Emily R. Mathews (mathews@rlf.com).

PLEASE TAKE FURTHER NOTICE that Responses to the Objection must contain, at minimum, the following: (a) a caption setting forth the name of this Court, the name of the Debtor, the case number, and the title of the Objection; (b) the name of the claimant, the number of his/her/its claim, and a description of the basis for the amount of the claim; (c) the specific factual basis, supporting legal argument and any supporting documentation upon which the claimant will rely in opposing the Objection; (d) all documentation and other evidence in support of the claim, not previously filed with the Court or the claims and noticing agent, upon which the claimant will rely in opposing this Objection; (e) the name, address, telephone number, fax number and/or email address of the person(s) (which may be the claimant or the claimant’s legal representative) with whom counsel for the Debtor should communicate with respect to the claim subject to the Objection or the Objection and who possesses authority to reconcile, settle, or otherwise resolve the objection to the claim on behalf of the claimant; and (f) the name, address,

telephone number, and fax number of the person(s) (who may be the claimant or a legal representative thereof) to whom the Debtor should serve any reply to the Response.

PLEASE TAKE FURTHER NOTICE that if no Response to the Objection is timely filed and received in accordance with the above procedures, an order may be entered sustaining the Objection without further notice or a hearing. If a Response is properly filed, served and received in accordance with the above procedures and such Response is not resolved, a hearing to consider such Response and the Objection will be held before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 on **April 3, 2024 at 10:30 a.m. (prevailing Eastern Time)** (the "Hearing"). Only a Response made in writing and timely filed and received will be considered by the Court at the Hearing.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY SUSTAIN THE OBJECTION WITHOUT FURTHER NOTICE OR HEARING.

Wilmington, Delaware
February 23, 2024

/s/ Emily R. Mathews

RICHARDS, LAYTON & FINGER, P.A.

Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Zachary I. Shapiro (No. 5103)
Emily R. Mathews (No. 6866)
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
mathews@rlf.com

Co-Counsel for the Debtor

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Patrick J. Nash, Jr., P.C. (admitted *pro hac vice*)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: patrick.nash@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 Debtor

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. ¹)	
)	
	)	Re: Docket No. _____
)	

**ORDER SUSTAINING DEBTOR’S EIGHTH OMNIBUS
(SUBSTANTIVE) OBJECTION TO CERTAIN CONTINGENT CLAIMS**

Upon the Objection (the “Objection”)² of the above-captioned debtor (the “Debtor”) for entry of an order (this “Order”) disallowing and expunging (i) the proof of claim identified on **Schedule 1** thereto (the “Full Contingent Claim”), and (ii) the contingent portions of the claims identified on **Schedule 2** thereto (the “Partial Contingent Claims,” and together with the Full Contingent Claims, the “Disputed Claims”); 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 Objection 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 Objection is in the

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 defined herein have the meanings given to such terms in the Objection.

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 Objection and opportunity for a hearing on the Objection were appropriate and no other notice need be provided; and this Court having reviewed the Objection and the FitzGerald Declaration 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 Objection 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 Objection is sustained as set forth herein.
2. Any Response to the Objection not otherwise withdrawn, resolved, or adjourned is overruled on the merits.
3. The Full Contingent Claim identified on **Schedule 1** hereto is disallowed and expunged in its entirety.
4. The contingent portions of the Partial Contingent Claims identified on **Schedule 2** hereto are disallowed and expunged in their entirety. The remaining amounts listed in the column titled "Allowed Claim Amount" identified on **Schedule 2** hereto shall be allowed in the amounts stated as general unsecured claims.
5. The objection by the Debtor to the Disputed Claims, as addressed in the Objection and the schedules hereto, constitutes a separate contested matter with respect to each such claim, as contemplated by Bankruptcy Rule 9014 and Local Rule 3007-1. This Order shall be deemed a separate Order with respect to each Disputed Claim.

6. Should one or more of the grounds of objection stated in the Objection be dismissed, the Debtor's right to object on any other grounds that the Debtor and Plan Administrator discover are preserved.

7. Any stay of this Order pending appeal by any holder of a Disputed Claim or any other party with an interest in such claims that are subject to this Order shall only apply to the contested matter which involves such party and shall not act to stay the applicability and/or finality of this Order with respect to the other contested matters arising from the Objection or this Order.

8. The Debtor, the Plan Administrator, KCC, and the Clerk of this Court are authorized to modify the official claims register for these Chapter 11 Cases in compliance with the terms of this Order and to take all steps necessary or appropriate to carry out the relief granted in this Order.

9. Nothing in this Order or the Objection is intended or shall be construed as a waiver of any of the rights the Debtor may have to enforce rights of setoff against the claimants.

10. Nothing in the Objection or this Order, nor any actions or payments made by the Debtor pursuant to this Order, shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtor's or any other party in interest's right to dispute any claim; (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 Order; (e) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtor's estate; or (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

11. This Order is immediately effective and enforceable.

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

Schedule 1

Full Contingent Claim

Contingent Claims Exhibit**Akorn, Inc., et al.,****Case No.: 20-11177**

Creditor Name and Address	Claim No. to Disallow	Debtor	Claim Date	Type	Claim Amount	Basis for Claim Objection
¹ Ronald M. Johnson c/o Morgan, Lewis & Bockius LLP Attn: Jennifer Feldsher & Shannon Wolf 101 Park Avenue New York, NY 10178	537	Akorn, Inc.	8/3/2020	General Unsecured	Unliquidated	No amount is listed in filed Proof of Claim and the additional documents provided by the Creditor do not give an accurate claim value. Therefore this claim should be disallowed.

Schedule 2

Partial Contingent Claims

Partial Contingent Claims Exhibit
Akorn, Inc., et al.,
Case No.: 20-11177

Creditor Name and Address	Claim No. to Disallow	Debtor	Claim Date	Type	Contingent Portion of Claim	Allowed Claim Amount	Basis for Claim Objection
¹ Walmart Inc. c/o George Yu-Fu King 900 Jackson Street, Suite 570 Dallas, TX 75202	562	Hi-Tech Pharmacal Co., Inc.	7/31/2020	General Unsecured	Unliquidated	\$60,631.48	Contingent Portion of the Claim should be disallowed based on the additional documents provided by the creditor that do not give an accurate claim value.
² Walmart Inc. c/o George Yu-Fu King 900 Jackson Street, Suite 570 Dallas, TX 75202	563	Akorn, Inc.	7/31/2020	General Unsecured	Unliquidated	\$785,321.43	Contingent Portion of the Claim should be disallowed based on the additional documents provided by the creditor that do not give an accurate claim value.

Exhibit B

Declaration of Thomas FitzGerald

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

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

**DECLARATION OF THOMAS FITZGERALD
IN SUPPORT OF THE DEBTOR’S EIGHTH OMNIBUS
(SUBSTANTIVE) OBJECTION TO CERTAIN CONTINGENT CLAIMS**

I, Thomas FitzGerald, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am a professional with Drivetrain, LLC (“Drivetrain”). On October 1, 2020, pursuant to the *Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (the “Plan”), Drivetrain was appointed Plan Administrator (as defined in the Plan) to the above-captioned debtor (the “Debtor”).

2. I submit this declaration (this “Declaration”) in support of the *Debtor’s Eighth Omnibus (Substantive) Objection to Certain Contingent Claims* (the “Objection”), filed by the Debtor contemporaneously herewith.

3. I am over the age of eighteen and am authorized by the Debtor to submit this Declaration. All statements in this Declaration are based upon my personal knowledge, and my

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, 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.

review (or the review of others under my supervision) of (a) the relevant proofs of claim and/or (b) the official register of claims filed in this Chapter 11 Case. If called as a witness, I could and would competently testify to the facts set forth in this Declaration.

4. The proofs of claim subject to the Objection were carefully reviewed and analyzed in good faith using due diligence by appropriate personnel of the Debtor, the Plan Administrator, Kurtzman Carson Consultants, LLC, and/or Richards, Layton & Finger, P.A.

5. Based upon the careful review and analysis of the Schedules and the claims register by the appropriate personnel of the Debtor and its professionals or the Plan Administrator and its professionals, I and my team have determined that the Contingent Claims are claims for indemnity based on amounts the claimant may pay in connection with liabilities for which the Debtor may be liable. However, the proofs of claim fail to allege (i) that any payment has actually been made by the claimant with respect to a liability of the Debtor, (ii) the amount of defense and indemnity paid with respect to such claim, (iii) to whom any such amounts were paid, (iv) when any such amounts were paid, (v) the factual basis for any such claims, and (vi) whether the claimants sought or received contribution from any other third parties on account of such amounts.

6. Based upon my review of the proofs of claim asserting the Contingent Claims and the Schedules, I am not aware of any demand made by the claimants asserting the Contingent Claims, or any amounts paid with respect to a liability of the Debtor that could form the basis of a Contingent Claim. In addition, the proofs of claim do not allege whether the claimants have obtained a determination of liability against the Debtor, or that they have paid a liability of the Debtor that could form the basis for a Contingent Claim. It is my understanding that the Contingent Claims are dependent on the future payment of claims for which the Debtor may have liability, provided the claimants could establish that they satisfied a liability of the Debtor.

7. Accordingly, the Contingent Claims should be disallowed because the Debtor has no record of liability with respect to such claims and the claimants have not established any actual liability of the Debtor at this juncture.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 23, 2024
New York, NY

/s/ Thomas Fitzgerald
Thomas Fitzgerald
Drivetrain, LLC as Plan Administrator appointed
pursuant to the Plan