

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

	)	
In re:	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	<b>Re: Docket No. 656</b>

**CERTIFICATION OF COUNSEL REGARDING SUPPLEMENTAL ORDER  
(A) APPROVING THE ASSET PURCHASE AGREEMENT, (B) AUTHORIZING  
THE SALE OF ASSETS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT  
OF CONTRACTS AND LEASES, AND (D) GRANTING RELATED RELIEF**

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The undersigned hereby certifies as follows:

1. On May 20, 2020, the above-captioned debtors and debtors in possession (collectively, 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 “Court”).

2. On September 2, 2020, the Court entered the *Order (A) Approving the Asset Purchase Agreement, (B) Authorizing the Sale of Assets, (C) Authorizing the Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief* [Docket No. 656] (the “Sale Order”).<sup>2</sup>

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors’ service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Sale Order, the Proposed Order, or the Chubb Assumption Agreement (as defined below), as applicable.



3. The Debtors, the Purchaser, and Chubb (together, the “Parties”) have agreed on terms (the “Chubb Assumption Agreement”) for the assumption and assignment of the Chubb Insurance Contracts (as defined in the Proposed Order). Pursuant to paragraph 27(ii) of the Sale Order, the Debtors seek entry of a supplemental order approving, among other things, assumption and assignment of the Chubb Insurance Contracts to the Purchaser and the Debtors’ entry into the Chubb Assumption Agreement (the “Proposed Order”), a copy of which is attached hereto as **Exhibit A**.

4. The Proposed Order has been circulated to the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), and the U.S. Trustee does not object to the entry of the Proposed Order.

*[Remainder of page intentionally left blank]*

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  
October 9, 2020

*/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:

AKORN, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11177 (KBO)

Jointly Administered

**SUPPLEMENTAL ORDER (A) APPROVING THE ASSET PURCHASE AGREEMENT,  
(B) AUTHORIZING THE SALE OF ASSETS, (C) AUTHORIZING THE ASSUMPTION  
AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (D) GRANTING RELATED  
RELIEF**

Upon the *Debtors' Motion Seeking Entry Of An Order (A) Authorizing And Approving Bidding Procedures, (B) Scheduling An Auction And A Sale Hearing, (C) Approving The Form And Manner Of Notice Thereof, (D) Establishing Notice And Procedures For The Assumption And Assignment Of Certain Executory Contracts And Leases, And (E) Granting Related Relief* [Docket No. 18] (the "Motion") of the above-captioned debtors (collectively, the "Debtors"), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for an order (the "Order") authorizing and approving the proposed sale of the Acquired Assets and the assumption and assignment of certain executory

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, if any, are: Akorn, Inc. (7400); 10 Edison Street LLC (7890); 13 Edison Street LLC; Advanced Vision Research, Inc. (9046); Akorn (New Jersey), Inc. (1474); Akorn Animal Health, Inc. (6645); Akorn Ophthalmics, Inc. (6266); Akorn Sales, Inc. (7866); Clover Pharmaceuticals Corp. (3735); Covenant Pharma, Inc. (0115); Hi-Tech Pharmacal Co., Inc. (8720); Inspire Pharmaceuticals, Inc. (9022); Oak Pharmaceuticals, Inc. (6647); Olta Pharmaceuticals Corp. (3621); VersaPharm Incorporated (6739); VPI Holdings Corp. (6716); and VPI Holdings Sub, LLC. The location of the Debtors' service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

contracts and unexpired leases of the Debtors in connection therewith on the terms set forth in the APA; and this Court having entered the *Order (A) Approving The Asset Purchase Agreement, (B) Authorizing The Sale Of Assets, (C) Authorizing The Assumption And Assignment Of Contracts And Leases, And (D) Granting Related Relief* [Docket No. 656] (the “Sale Order”),<sup>2</sup> which approved the Motion and the Debtors’ entry into the *Asset Purchase Agreement*, dated May 20, 2020 (as amended, and including all exhibits, schedules, and annexes thereto, the “APA”); and in aid of consummation of the Sale and upon the agreement of the Debtors, the Purchaser, and Chubb (as defined herein); and the findings of fact and conclusions of law set forth in the Sale Order are incorporated herein as if fully stated and ordered herein and all matters; and after due deliberation and consideration, and for good and sufficient cause appearing therefor,

**IT IS FOUND, CONCLUDED AND DETERMINED THAT:**

1. Notwithstanding anything to the contrary in the Motion, the Sale Order, the Bidding Procedures, the Bidding Procedures Order, the APA, any Cure Notice or any document related to the foregoing (other than the Chubb Assumption Agreement (as defined below)) or any other order of the Court, and subject to (x) the execution of the Chubb Assumption Agreement by the Debtors, the Purchaser, and Chubb (as defined below), (y) the satisfaction of the conditions precedent to effectiveness to the Chubb Assumption Agreement, and (z) the occurrence of the Closing:

- a. Effective as of the Closing, the Debtors are hereby authorized to and shall assume, pursuant to 11 U.S.C. §§ 105 and 365, (i) all insurance policies issued by ACE American Insurance Company, Westchester Fire Insurance Company, Illinois Union Insurance Company, Federal Insurance Company and Chubb Custom

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Order and/or the Motion, as applicable.

Insurance Company and any of their U.S.-based affiliates and successors (collectively, “Chubb”) to (or providing coverage to) one or more of the Debtors and/or their predecessors at any time and (ii) all programs, collateral and security and other agreements related thereto (collectively, and exclusive of the Chubb D&O Policy (as defined herein) the “Chubb Insurance Contracts”);

- b. Effective as of the Closing, the Debtors are hereby authorized to and shall (i) assign the Chubb Insurance Contracts to the Purchaser and (ii) enter into an assumption agreement by and among the Debtors, the Purchaser and Chubb (in form and substance satisfactory to Chubb, the “Chubb Assumption Agreement,”) with respect to such assignment; and
- c. Effective upon the assignment of Chubb Insurance Contracts and as more fully set forth in the Chubb Assumption Agreement:
  - i. the Purchaser assumes and shall be liable for any and all now existing or hereafter arising obligations, liabilities, duties, terms, provisions, and covenants of any of the Debtors under the Chubb Insurance Contracts, including without limitation any and all liability and obligation to pay or reimburse losses and expenses within the deductibles, provide collateral and/or security as required by Chubb, pay premiums to Chubb and pay service fees to any applicable third party claims administrators;
  - ii. the rights and interests of the Debtors in the Chubb Insurance Contracts shall be transferred and assigned to the Purchaser, and all right, title and interest of the Debtors in the Chubb Insurance Contracts shall at the same time terminate;

- iii. the right, if any, to any return premiums, loss payments, expense adjustments, return of paid loss deposit funds, and other benefits previously available to the Debtors under the Chubb Insurance Contracts shall belong to the Purchaser and not to the Debtors;
- iv. the Debtors, jointly and severally, on behalf of themselves, their bankruptcy estates and all parties claiming by, through or under each of them and each of their respective agents, employees, representatives, officers, attorneys, shareholders, members, partners, directors, successors, assigns, trustees, estates and predecessors in interest of each of the foregoing (collectively, and including any chapter 7 trustee appointed pursuant to the Bankruptcy Code, the “Original Insured Entities”) and the Purchaser, jointly and severally, on behalf of itself and all parties claiming by, through or under it and its respective agents, employees, representatives, officers, attorneys, shareholders, members, partners, directors, successors, assigns, trustees, estates and predecessors in interest of each of the foregoing (collectively and together with the Original Insured Entities, the “Releasing Parties”) hereby waives, releases, acquits and forever discharges Chubb and each of its respective agents, employees, representatives, officers, attorneys, shareholders, directors, parents, subsidiary corporations, affiliates, successors, assigns, trustees and predecessors in interest (collectively, the “Chubb Releasees”) from any and all claims, counterclaims, rights, demands, obligations, causes of action, actions, costs, damages, losses, liabilities, and attorneys' fees, arising under any statute, federal, state, or

local regulation, ordinance or common law, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, liquidated or unliquidated, matured or unmatured, foreseen or unforeseen, which exist or may exist that the Releasing Parties may have against any or all of the Chubb Releasees from the beginning of time through the Effective Date (as defined in the Chubb Assumption Agreement), arising out of or in any way related to the Chubb Insurance Contracts (including, but not limited to, any and all of such pursuant to §§ 362, 363, 364, 365, 542, 544, 547, 548, 549, and 550 of the Bankruptcy Code); provided, however, that the release set forth in this paragraph shall not apply to (i) Chubb's obligations under, in connection with or relating to the Chubb Insurance Contracts; and (ii) the obligations expressly contained in this Agreement; and

- v. the Purchaser and the Debtors shall remain jointly obligated to cooperate with Chubb in providing information reasonably necessary for premium audits or claims handling under the Chubb Insurance Contracts.
- d. Effective as of the Closing, the Chubb Insurance Contracts shall be deemed to be "Acquired Assets" and "Assigned Contracts."
- e. Pursuant to the *Order Confirming The Modified Joint Chapter 11 Plan Of Akorn, Inc. And Its Debtor Affiliates* [Docket No. 673] (the "Confirmation Order"), on the Effective Date (as defined in the Confirmation Order), that certain Crime and Fiduciary Liability Policy No. 81531429 issued to the Debtors by Federal Insurance Company for all policy periods (the "Chubb D&O Policy") shall vest unaltered and

in the Debtors and the Debtors shall succeed to all of rights and obligations such that the Debtors shall remain liable in full for all of the Debtors' obligations thereunder, regardless of whether such obligations arise before or after the Effective Date and without the need for Chubb to file a Proof of Claim, Administrative Claim, or to object to any Cure Notice (each as defined in the Confirmation Order).

- f. Except to the extent specifically addressed in this paragraph or in the Chubb Assumption Agreement (once effective in accordance with its terms), nothing shall amend, modify or otherwise alter the terms and conditions of the Chubb Insurance Contracts.
2. This Order (the "Supplemental Sale Order") is entered pursuant to paragraph 27(ii) of the Sale Order.
3. Notwithstanding the applicability of Bankruptcy Rules 6004(h) and 6006(d), and in accordance with paragraph 27(ii) of the Sale Order, the terms and conditions of this Supplemental Sale Order shall be immediately effective and enforceable upon its entry.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Supplemental Sale Order.
5. This Court shall retain exclusive jurisdiction to hear and determine any and all disputes related to or arising from the implementation, interpretation and enforcement of this Supplemental Sale Order.