

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

In re:)	
)	Chapter 11
AKORN, INC., ¹)	
)	Case No. 20-11177 (KBO)
)	
Debtors.)	(Jointly Administered)
)	Re: Docket No. 103

**ORDER (I) APPROVING THE ADEQUACY OF
THE DISCLOSURE STATEMENT, (II) APPROVING
THE SOLICITATION AND NOTICE PROCEDURES WITH
RESPECT TO CONFIRMATION OF THE JOINT CHAPTER 11 PLAN
OF AKORN, INC. AND ITS DEBTOR AFFILIATES, (III) APPROVING THE
FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH,
AND (IV) SCHEDULING CERTAIN DATES WITH RESPECT THERETO**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”), pursuant to sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, and 3020, and Local Rules 2002-1 and 3017-1, approving (a) the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (the “Disclosure Statement”), (b) the Voting Record Date, Solicitation Deadline, and Voting Deadline, (c) the manner and form of the Solicitation Packages and the materials contained therein, (d) the Plan Supplement Notice, (e) the Nonvoting Status Notices, (f) the Rejection

¹ 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.

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

Notice, (g) the Solicitation and Voting Procedures, (h) the Confirmation Objection Deadline, Confirmation Hearing Date, and Confirmation Hearing Notice, and (i) certain dates and deadlines related thereto, all as more fully set forth in the Motion; and upon the First Day Declaration; 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 that this Court may enter a final order consistent with Article III of the United States Constitution; 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 Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided, except as set forth herein; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing 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 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 provided herein.

I. Approval of the Disclosure Statement.

2. The Disclosure Statement, substantially in the form attached hereto as **Schedule 1**, is hereby approved as providing Holders of Claims and Interests entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

3. The Disclosure Statement (including all applicable exhibits thereto) provides Holders of Claim or Interests, and other parties in interest with sufficient notice of the injunction,

exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures.

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures, substantially in the form attached hereto as **Schedule 2**, which are hereby approved in their entirety.

III. Approval of the Materials and Timeline for Soliciting Votes and the Procedures for Confirming the Plan.

A. Approval of Certain Dates and Deadlines with Respect to the Plan and Disclosure Statement.

5. The following dates are hereby established (subject to modification as necessary) with respect to solicitation of votes on the Plan and confirmation of the Plan:³

Event	Date
Voting Record Date	July 1, 2020, except as otherwise provided in the Solicitation Procedures.
Solicitation Deadline	As soon as practicable after entry of the Disclosure Statement Order, but in no event more than five (5) business days thereafter.
Publication Deadline	Within five (5) business days after entry of the Disclosure Statement Order or as soon as reasonably practicable thereafter.
Voting Deadline	August 14, 2020, at 5:00 p.m., prevailing Eastern Time.⁴
Confirmation Objection Deadline	August 14, 2020, at 4:00 p.m., prevailing Eastern Time.
Deadline to File Voting Report	Two (2) business days prior to the Confirmation Hearing, at 12:00 p.m., prevailing Eastern Time.
Deadline to File Confirmation Brief and Confirmation Objection Reply/Statements in Support of Confirmation	Two (2) business days prior to the Confirmation Hearing, at 12:00 p.m., prevailing Eastern Time.

³ The dates established in this Order are in addition to the dates set forth in the Bidding Procedures Order, as applicable.

⁴ The Debtors and the Notice and Claims Agent intend to make reasonable efforts to commence solicitation of all Claims which appear on the Debtors' schedules and statements immediately upon the entry of this Order. To the extent the holders of General Unsecured Claims file proofs of such Claims after the Debtors have commenced solicitation, the Debtors shall provide ballots and solicitation materials on a rolling basis.

Event	Date
Confirmation Hearing	August 20, 2020, at 1:00 p.m., prevailing Eastern Time.

B. Approval of the Form of and Distribution of Solicitation Packages to Parties Entitled to Vote on the Plan.

6. In addition to the Disclosure Statement and exhibits thereto, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those Holders of Claims and Interests in the Voting Classes entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. an appropriate form of Ballot substantially in the forms attached hereto as **Schedules 3A, 3B, 3C, 3D, 3E, and 3F** respectively;⁵
- b. the Cover Letter substantially in the form attached hereto as **Schedule 6**; and
- c. the Confirmation Hearing Notice substantially in the form attached hereto as **Schedule 7**.

7. The Solicitation Packages provide the Holders of Claims and Interests entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with Bankruptcy Rules 2002(b) and 3017(d), the Bankruptcy Code, and the Local Rules.

8. The Debtors shall distribute Solicitation Packages to all Holders of Claims and Interests entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

9. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Order to Holders of Claims and Interests entitled to vote on the

⁵ The Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

Plan in electronic format (i.e., on a CD-ROM or flash drive). **Only** the Ballots, as well as the Cover Letter and the Confirmation Hearing Notice, will be provided in paper form. On or before the Solicitation Deadline, the Debtors shall provide (a) complete Solicitation Packages (other than Ballots) to the U.S. Trustee and (b) the Order (in electronic format) and the Confirmation Hearing Notice to all parties on the 2002 List as of the Voting Record Date.

10. Any party that receives materials in electronic format, but would prefer to receive materials in paper format, may contact the Notice and Claims Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

11. The Notice and Claims Agent is authorized to assist the Debtors in (a) distributing the Solicitation Package, (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by Holders of Claims and Interests against the Debtors, (c) responding to inquiries from Holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Package, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan, (d) soliciting votes on the Plan, and (e) if necessary, contacting creditors regarding the Plan.

12. The Notice and Claims Agent is also authorized to accept Ballots via electronic online transmission solely through a customized online balloting portal on the Debtors' case website. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Ballots submitted via the customized online balloting portal shall be deemed to contain an original signature.

13. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail (using the reply envelope provided in the Solicitation Package or otherwise); (b) overnight courier; or (c) personal delivery, so that the Ballots are **actually received** by the Notice and Claims Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted via an electronic Ballot through the Notice and Claims Agent's online electronic Ballot submission portal at www.kccllc.net/Akorn by no later than the Voting Deadline. The Debtors are authorized to extend the Voting Deadline in their sole discretion and without further order of the Court. Beneficial Holders must properly execute, complete, and deliver Beneficial Holder Ballots to their respective Nominee in sufficient time so that the Nominees may verify, tabulate, and include such Beneficial Holder Ballots in a Master Ballot and return the Master Ballots, so that they are **actually received** by the Notice and Claims Agent no later than the Voting Deadline.

C. Approval of the Confirmation Hearing Notice.

14. The Confirmation Hearing Notice, substantially in the form attached hereto as **Schedule 7**, shall be filed by the Debtors and served upon parties in interest in the chapter 11 cases within five business days after the entry of this Order. The Confirmation Hearing Notice constitutes adequate and sufficient notice of the hearing to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The Debtors shall publish the Confirmation Hearing Notice (in a format modified for publication) one time within five (5) business days after entry of this Order in *The New York Times* (National Edition),

USA Today, and a pharmaceutical industry trade publication to be determined by the Debtors based on publication schedule.

D. Approval of Notice of Filing of the Plan Supplement.

15. The Debtors are authorized to send notice of the filing of the Plan Supplement, which will be filed and served at least seven (7) days prior to the Voting Deadline (or such later date as may be approved by the Bankruptcy Court), substantially in the form attached hereto as **Schedule 8**, on the date the Plan Supplement is filed pursuant to the terms of the Plan, or as soon as practicable thereafter.

E. Approval of the Form of Notices to Non-Voting Classes.

16. Except to the extent the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to Holders of Claims in Non-Voting Classes, as such Holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Notice and Claims Agent shall mail (first-class postage prepaid) a Nonvoting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties, outlined below, who are not entitled to vote on the Plan:

Class	Status	Treatment
Classes 1 and 2	Unimpaired—Conclusively Presumed to Accept	Will receive a Nonvoting Status Notice, substantially in the form attached to the Order as <u>Schedule 4</u> and <u>4A</u> in lieu of a Solicitation Package.
N/A	Disputed Claims	Holders of Claims and Interests that are subject to a pending objection by the Debtors are not entitled to vote the disputed portion of their Claim. As such, Holders of such Claims will receive a notice, substantially in the forms attached to the Order as <u>Schedules 5</u> and <u>5A</u> (which notice shall be served together with such objection).

17. The Debtors will not provide the Holders of Class 5 (Intercompany Claims) or Class 6 (Intercompany Interests) with a Solicitation Package or any other type of notice in connection with solicitation.

18. The Debtors are not required to mail Solicitation Packages or other solicitation materials to the following: (a) Holders of Claims or Interests that have already been paid in full during the chapter 11 cases; or (b) any party to whom the Disclosure Statement Hearing Notice was sent but was subsequently returned as undeliverable.

F. Approval of Rejection Notice.⁶

19. The Debtors are authorized to mail a Rejection Notice of any Executory Contracts or Unexpired Leases, substantially in the form attached hereto as **Schedule 9**, to the applicable counterparties to Executory Contracts and Unexpired Leases that will be rejected pursuant to the Plan, within the time periods specified in the Plan. If certain, but not all, of a contract counterparty's Executory Contracts and Unexpired Leases are assumed pursuant to the Plan, the Confirmation Order will be a determination that such counterparty's Executory Contracts and Unexpired Leases that are being rejected pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and Unexpired Leases that are being assumed pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection by the Confirmation Objection Deadline on the grounds that their agreements are integrated and not severable.

⁶ Counterparties to Executory Contracts and Unexpired Leases that are proposed to be assumed or assumed and assigned will receive notice pursuant to the relevant procedures set forth in the Bidding Procedures Order.

G. Approval of the Procedures for Filing Objections to the Plan.

20. Objections to the Plan will not be considered by the Court unless such objections are timely filed and properly served in accordance with this Order. Additionally, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, *must*: (a) be in writing, (b) conform to the Bankruptcy Rules and the Local Rules, (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection, and (d) be filed with the Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Confirmation Hearing Notice on or before **August 14, 2020, at 4:00 p.m.**, prevailing Eastern Time.

IV. Miscellaneous.

21. The Debtors may make non-substantive changes to the Disclosure Statement, Disclosure Statement Hearing Notice, Plan, Confirmation Hearing Notice, Solicitation Packages, Nonvoting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Rejection Notice, Voting and Tabulation Procedures, and related documents after the entry of this Order without further order of the Court, including changes to correct typographical and grammatical errors, if any, and to make conforming changes to the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

22. The Debtors reserve the right to modify the Plan without further order of the Court in accordance with Article X of the Plan, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Date.

23. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim at any time.

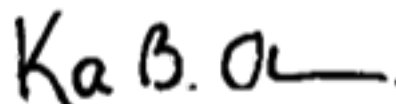
24. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

25. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

26. The Debtors and the Notice and Claims Agent are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Dated: July 2nd, 2020
Wilmington, Delaware



KAREN B. OWENS
UNITED STATES BANKRUPTCY JUDGE

Schedule 2

Solicitation and Voting Procedures

**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)

SOLICITATION AND VOTING PROCEDURES

PLEASE TAKE NOTICE THAT on July 2, 2020, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order (the “Disclosure Statement Order”): (a) authorizing the above-captioned debtors and debtors in possession (collectively, the “Debtors”),² to solicit votes on the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (as modified, amended, or supplemented from time to time, the “Plan”); (b) approving the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (the “Disclosure Statement”) as containing “adequate information” pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the “Solicitation Packages”); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to the Plan.

A. The Voting Record Date.

The Court has established **July 1, 2020** as the record date for purposes of determining which Holders of Claims or Interests, as applicable, in Class 3 (Term Loan Claims), Class 7 (Section 510(b) Claims), and Class 8 (Akorn Interests) are entitled to vote on the Plan (the “Non-GUC Voting Record Date”). Accordingly, only Holders of Term Loan Claims, Section 510(b) Claims, and Akorn Interests as of such date are entitled to vote on the Plan, except as otherwise set forth herein.

¹ 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.

² Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Plan, the Disclosure Statement, or the Disclosure Statement Order, as applicable.

B. The Voting Record Date for General Unsecured Claims.

To accommodate the Claims Bar Date, the record date to determine which Claims in Class 4 are entitled to vote on the Plan (the “GUC Voting Record Date” and together with the Non-GUC Voting Record Date, the “Voting Record Date”) shall be the same date as the Claims Bar Date, which is expected to be on or about August 3, 2020. For administrative purposes, because the Solicitation Deadline will precede the Claims Bar Date, the Court directs the Debtors to use July 1, 2020 as the administrative record date for purposes of determining which holders of filed or scheduled Claims in Class 4 are entitled to receive the solicitation materials.

To the extent a creditor validly files a Proof of Claim after July 1, 2020, but on or before the GUC Voting Record Date, the Notice and Claims Agent shall provide such creditor with the appropriate Solicitation Package as promptly as possible under the circumstances, including a Ballot if applicable. If the Notice and Claims Agent previously provided such creditor with a Ballot on account of a scheduled claim or previous Proof of Claim, the Notice and Claims Agent shall update the creditor’s voting amount, but shall not be obligated to send a new Ballot.

C. The Voting Deadline.

The Court has established **August 14, 2020, at 5:00 p.m., prevailing Eastern Time**, as the voting deadline (the “Voting Deadline”) for the Plan. The Debtors may extend the Voting Deadline without further order of the Court. To be counted as votes to accept or reject the Plan, all ballots (the “Ballots”) must be properly executed, completed, and delivered by: (1) first class mail (using the reply envelope provided in the Solicitation Package or otherwise); (2) overnight courier; or (3) personal delivery so that they are **actually received** by the Notice and Claims Agent, in any case, no later than the Voting Deadline. The Ballots will clearly indicate the appropriate return address. Alternatively, Ballots may be submitted via an electronic Ballot through the Notice and Claims Agent’s on-line electronic Ballot submission portal at www.kccllc.net/akorn by no later than the Voting Deadline.

D. Form, Content, and Manner of Notices.

1. The Solicitation Package.

The following materials shall constitute the solicitation package (the “Solicitation Package”):

- a. a copy of these Solicitation and Voting Procedures;
- b. the approved Disclosure Statement annexed as **Schedule 1** to the Disclosure Statement Order (and exhibits thereto, including the Plan);
- c. the applicable form of Ballot, in substantially the forms of the Ballots annexed as **Schedules 3A, 3B, 3C, 3D, 3E, and 3F** to the Disclosure Statement Order, as applicable;
- d. a cover letter, in substantially the form annexed as **Schedule 6** to the Disclosure Statement Order, describing the contents of the Solicitation

Package and urging the Holders of Claims and Interests in each of the Voting Classes to vote to accept the Plan;

- e. the *Notice of Hearing to Consider Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates and Related Voting and Objection Deadlines*, in substantially the form annexed as **Schedule 7** to the Disclosure Statement Order (the “Confirmation Hearing Notice”);
- f. a pre-addressed, postage pre-paid reply envelope; and
- g. any other materials the Court has approved as part of the Solicitation Package.

2. Distribution of the Solicitation Package.

The Solicitation Package shall provide the Plan, the Disclosure Statement, and the Disclosure Statement Order (without exhibits, except for the Solicitation and Voting Procedures) in electronic format (*i.e.*, CD-ROM or flash drive format), and all other contents of the Solicitation Package, including Ballots, shall be provided in paper format. Any party that receives the materials in electronic format, but would prefer paper format may contact Kurtzman Carson Consultants LLC (the “Notice and Claims Agent”) by: (a) calling the Notice and Claims Agent at (877) 725-7539, (U.S. and Canada) or (424) 236-7247, (International); (b) visiting the Debtors’ restructuring website at: <https://www.kccllc.net/akorn>; (c) writing to the Notice and Claims Agent at Akorn Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; and/or (d) emailing AkornInfo@kccllc.com and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors’ expense).

The Debtors shall serve or cause to be served all of the materials in the Solicitation Package (excluding the Ballots) on the U.S. Trustee and all parties who have requested service of papers in this case pursuant to Bankruptcy Rule 2002 as of the July 1, 2020. In addition, the Debtors shall mail or cause to be mailed the Solicitation Package to all Holders of Claims and Interests in the Voting Classes who are entitled to vote as described in Section D below as soon as practicable and beginning no later than five (5) business days after entry of the Disclosure Statement Order. The Debtors will subsequently serve or cause to be served Solicitation Packages (including Ballots) to any party who becomes entitled to vote by filing a proof of claim on or before the Claims Bar Date as soon as possible under the circumstances after such Holder of a Claim or Interest in the Voting Class files such proof of claim.

To avoid duplication, the Debtors will use commercially reasonable efforts to ensure that any Holder of a Claim who has filed or purchased duplicative Claims against a Debtor (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class as against that Debtor.

3. **Resolution of Disputed Claims and Interests for Voting Purposes; Resolution Event.**

- a. Absent further order of the Court, the Holder of a Claim or Interest that is in a Voting Class and is the subject of a pending objection that is filed with the Court on or prior to July 30, 2020 on a “reduce and allow” basis shall be entitled to vote such Claim or Interest in the reduced amount contained in such objection.
- b. If a Claim or Interest in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court on or prior to July 30, 2020:
 - i. within two (2) business days of the objection, the Debtors shall file with the Court and cause the applicable Holder and its counsel (if known) to be served with a Disputed Claim or Interest Notice, substantially in the form annexed as **Schedule 5** to the Disclosure Statement Order (which notice shall be served together with such objection); such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots), as well as how they may opt into the third-party releases set forth in **Article VIII.F** of the Plan (the “**Third Party Releases**”);
 - ii. the Debtors shall cause the applicable Holder and its counsel (if known) to be served with an *Opt-In Form for Holders of Disputed Claims and Interests*, substantially in the form annexed as **Schedule 5A** to the Disclosure Statement Order; and
 - iii. the applicable Holder shall not be entitled to vote to accept or reject the Plan on account of such Claim or Interest unless a Resolution Event (as defined herein) occurs as provided herein.
- c. If a Claim or Interest in a Voting Class is subject to an objection other than a “reduce and allow” objection that is filed with the Court after July 30, 2020, the applicable Claim or Interest shall be deemed temporarily allowed for voting purposes only in its filed amount, without further action by the Holder of such Claim or Interest and without further order of the Court, unless the Court orders otherwise.
- d. A “**Resolution Event**” means the occurrence of one or more of the following events no later than two (2) business days prior to the Voting Deadline:
 - i. an order of the Court is entered allowing such Claim or Interest pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;

- ii. an order of the Court is entered temporarily allowing such Claim or Interest for voting purposes only pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
 - iii. a stipulation or other agreement is executed between the Holder of such Claim or Interest and the Debtors resolving the objection and allowing such Claim or Interest in an agreed upon amount; or
 - iv. the pending objection is voluntarily withdrawn by the objecting party.
- e. No later than one (1) business day following the occurrence of a Resolution Event, the Debtors shall cause the Notice and Claims Agent to distribute via email, hand delivery, or overnight courier service a Solicitation Package and a pre-addressed, postage pre-paid envelope to the relevant Holder to the extent such Holder has not already received a Solicitation Package containing a Ballot.

4. Nonvoting Status Notices for Unimpaired Classes and Classes Deemed to Reject the Plan.

Certain Holders of Claims that are not classified in accordance with section 1123(a)(1) of the Bankruptcy Code or who are not entitled to vote because they are Unimpaired or otherwise presumed to accept the Plan pursuant to section 1126(f) of the Bankruptcy Code will receive the *Notice of Non-Voting Status to Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as **Schedule 4** to the Disclosure Statement Order. Such notice will instruct these Holders as to how they may obtain copies of the documents contained in the Solicitation Package (excluding Ballots). The Holders of such Claims will also receive an *Opt-In Form for Holders of Unimpaired Claims Conclusively Presumed to Accept the Plan*, substantially in the form annexed as **Schedule 4A** to the Disclosure Statement Order. In addition, Holders of Claims in the classes of Unimpaired Claims conclusively presumed to accept the Plan will also receive the Disclosure Statement (together with the Plan attached as **Exhibit A** thereto).

5. Notices in Respect of Executory Contracts and Unexpired Leases.

Counterparties to Executory Contracts and Unexpired Leases that receive a notice of rejection, substantially in the form attached as **Schedule 9** to the Disclosure Statement Order, may file an objection to the Debtors' proposed rejection.

E. Voting and Tabulation Procedures.

1. Holders of Claims and Interests Entitled to Vote.

Only the following Holders of Claims and Interests in the Voting Classes shall be entitled to vote with regard to such Claims and Interests, as applicable:

- a. Holders of Claims who, on or before the Voting Record Date, have timely filed a Proof of Claim that (i) has not been expunged, disallowed, disqualified, withdrawn, or superseded prior to the Voting Record Date, and (ii) is not the subject of a pending objection, other than a “reduce and allow” objection, filed with the Court by July 30, 2020, pending a Resolution Event as provided herein; *provided* that a Holder of a Claim or Interest that is the subject of a pending objection on a “reduce and allow” basis shall receive a Solicitation Package and be entitled to vote such Claim or Interest in the reduced amount contained in such objection absent a further order of the Court;
- b. Holders of Claims or Interests who, pursuant to the Bar Date Order, are exempt from any requirement to file a Proof(s) of Claim or Interest on or before the applicable Bar Date or have filed a single, master proof of claim by the relevant Bar Date with respect to all claims under an applicable facility, loan document, or indenture;
- c. Holders of Claims or Interests that are listed in the Schedules; *provided* that Claims that are scheduled as contingent, unliquidated, or disputed (excluding such scheduled disputed, contingent, or unliquidated Claims that have been paid or superseded by a timely Filed Proof of Claim) shall be allowed to vote only in the amounts set forth in Section D.2(d) of these Solicitation and Voting Procedures;
- d. Holders whose Claims arise (i) pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Court, (ii) in an order entered by the Court, or (iii) in a document executed by the Debtors pursuant to authority granted by the Court, in each case regardless of whether a Proof of Claim has been filed;
- e. Holders of any Disputed Claim or Interest that has been temporarily allowed to vote on the Plan pursuant to Bankruptcy Rule 3018;
- f. the assignee of any Claim or Interest that was transferred on or before the Voting Record Date by any Entity described in subparagraphs (a) through (d) above; *provided* that such transfer or assignment has been fully effectuated pursuant to the procedures set forth in Bankruptcy Rule 3001(e) and such transfer is reflected on the Claims Register on the Voting Record Date;

- g. any Holders of Claims or Interests who have filed or purchased duplicate Claims or Interests within the same Voting Class shall be provided with only one Solicitation Package and one ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such duplicate Claims or Interests; and
- h. Holders of Claims filed in an amount of \$0.00 are not entitled to vote.

2. Establishing Claim and Interest Amounts for Voting Purposes.

Class 3 Claims. The Claim amount of Class 3 Claims is based on Term Loan Claims of lenders under the Term Loan Credit Agreement, and for voting purposes only will be established through the administrative agent under the Term Loan Credit Agreement (the “Term Loan Agent”) in the amount of the applicable positions held as of the Voting Record Date, as evidenced by the books and records of the Term Loan Agent. The Term Loan Agent shall be directed to provide the Notice and Claims Agent with the applicable voting information for the participants to the Term Loan Facility within one (1) business day of the Voting Record Date. If a Sale Transaction is a Term Loan Credit Bid Transaction (each as defined in the Plan), then the Claim amount of Class 3 Claims shall be the Term Loan Claims of lenders under the Term Loan Credit Agreement *less* the Term Loan Credit Bid Amount (as defined in the Plan).

Class 4 Claims. Except as otherwise ordered by the Court, the Claim amount of Class 4 Claims is based on General Unsecured Claims, and for voting purposes only will be established based on the amount of the applicable positions held by such Class 4 Claim Holder, as of the Voting Record Date, as evidenced by (a) the Debtors’ applicable books and records and (b) the claims register maintained in these chapter 11 cases.

Class 7 Claims. The Claim amount of Class 7 Claims is based on Section 510(b) Claims, and for voting purposes only will be established based on the amount of the applicable positions held by such Class 7 Claim Holder, as of the Voting Record Date, as evidenced by (a) the Debtors’ applicable books and records and (b) the claims register maintained in these chapter 11 cases.

Class 8 Interests. The Claim amount of Class 8 Interests of directly registered Holders and Beneficial Holders³ for voting purposes only will be established through the transfer agent or applicable Nominees, as the case may be, in the amount of the applicable positions held as of the Voting Record Date, (a) by such holder as evidenced by the records of the transfer agent or (b) by the applicable Nominees in Class 8 as evidenced by the securities position report(s) from The Depository Trust Company.

³ A “Beneficial Holder” means a beneficial owner of publicly-traded securities whose claims have not been satisfied prior to the Voting Record Date (as defined herein) pursuant to Court order or otherwise, as reflected in the records maintained by the Nominees holding through an transfer agent or as evidenced by the securities position report from The Depository Trust Company.

If a Proof of Claim is amended, the last filed Claim shall be subject to these rules and will supersede any earlier filed claim, and any earlier filed Claim will be disallowed for voting purposes.

Filed and Scheduled Claims and Interests. The Claim or Interest amount established herein shall control for voting purposes only and shall not constitute the Allowed amount of any Claim or Interest. Moreover, any amounts filled in on Ballots by the Debtors through the Notice and Claims Agent, as applicable, are not binding for purposes of allowance and distribution. In tabulating votes, the following hierarchy shall be used to determine the amount of the Claim or Interest associated with each claimant's vote:

- a. the Claim or Interest amount (i) settled and/or agreed upon by the Debtors, as reflected in a document filed with the Court, including the Plan, (ii) set forth in an order of the Court, or (iii) set forth in a document executed by the Debtors pursuant to authority granted by the Court;
- b. the Claim amount Allowed (temporarily or otherwise) pursuant to a Resolution Event under Section C.3(d) or these Solicitation and Voting Procedures;
- c. the Claim amount contained in a Proof of Claim that has been timely filed by the applicable Claims Bar Date (or deemed timely filed by the Court under applicable law), except for any amounts asserted on account of any interest accrued after the Petition Date; *provided, however*, that any Ballot cast by a Holder of a Claim who timely files a Proof of Claim in respect of (i) a contingent Claim or a Claim in a wholly-unliquidated or unknown amount (based on a reasonable review by the Debtors and/or the Notice and Claims Agent) that is not the subject of an objection will count toward satisfying the numerosity requirement of section 1126(c) of the Bankruptcy Code and will count as a Ballot for a Claim in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code, and (ii) a partially liquidated and partially unliquidated Claim, which Claim will be Allowed for voting purposes only in the liquidated amount; *provided further, however*, that to the extent the Claim amount contained in the Proof of Claim is different from the Claim amount set forth in a document filed with the Court as referenced in subparagraph (a) above, the Claim amount in the document filed with the Court shall supersede the Claim amount set forth on the respective Proof of Claim for voting purposes;
- d. the Claim or Interest amount listed in the Schedules (to the extent such Claim is not superseded by a timely filed Proof of Claim); *provided* that such Claim is not scheduled as contingent, disputed, or unliquidated and/or has not been paid; *provided, however*, that if the applicable Claims Bar Date has not expired prior to the Voting Record Date, a Claim listed in the Schedules as contingent, disputed, or unliquidated shall vote at \$1.00; and

- e. in the absence of any of the foregoing, such Claim or Interest shall be disallowed for voting purposes.

3. Voting and Ballot Tabulation Procedures.

The following voting procedures and standard assumptions shall be used in tabulating Ballots, subject to the Debtors' right to waive any of the below specified requirements for completion and submission of Ballots, so long as such requirement is not otherwise required by the Bankruptcy Code, Bankruptcy Rules, or Local Rules:

- a. except as otherwise provided in the Solicitation and Voting Procedures, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline (as the same may be extended by the Debtors), the Debtors shall reject such Ballot as invalid and, therefore, shall not count it in connection with confirmation of the Plan;
- b. the Notice and Claims Agent will date-stamp all Ballots when received. The Notice and Claims Agent shall retain the original Ballots and an electronic copy of the same for a period of one year after the Effective Date of the Plan, unless otherwise ordered by the Court;
- c. the Notice and Claims Agent shall tabulate Ballots on a Debtor-by-Debtor basis;
- d. the Debtors will file with the Court by **two (2) business days prior to the Confirmation Hearing, at 12:00 p.m.**, prevailing Eastern Time, a voting report (the "Voting Report"). The Voting Report shall, among other things, delineate every Ballot that does not conform to the Solicitation and Voting Procedures or that contains any form of irregularity including, but not limited to, those Ballots that are late or (in whole or in material part) illegible; unidentifiable; lacking signatures or other necessary information; received via email, facsimile, or other unauthorized electronic means; or damaged (collectively, in each case, the "Irregular Ballots"). The Voting Report shall indicate the Debtors' decision, after consulting the Committee, with regard to each Irregular Ballot;
- e. the method of delivery of Ballots to be sent to the Notice and Claims Agent is at the election and risk of each Holder, and except as otherwise provided, a Ballot will be deemed delivered only when the Notice and Claims Agent actually receives the executed Ballot;
- f. an executed Ballot is required to be submitted by the Entity submitting such Ballot (except with respect to Master Ballots (as defined in the Disclosure Statement Motion) submitted by the Nominees). Delivery of a Ballot to the Notice and Claims Agent by facsimile, or any electronic means other than expressly provided in these Solicitation and Voting Procedures will not be valid;

- g. no Ballot should be sent to the Debtors, the Debtors' agents (other than the Notice and Claims Agent), or the Debtors' financial or legal advisors, and, if so sent, will not be counted;
- h. if multiple Ballots are received from the same Holder with respect to the same Claim or Interest prior to the Voting Deadline, the last properly executed Ballot timely received will be deemed to reflect that voter's intent and will supersede and revoke any prior received Ballot;
- i. Holders must vote all of their Claims or Interests within a particular Class either to accept or reject the Plan and may not split any votes. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, to the extent there are multiple Claims or Interests within the same Class, the applicable Debtor may, in its discretion, aggregate the Claims or Interests of any particular Holder within a Class for the purpose of counting votes;
- j. a person signing a Ballot in its capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity of a Holder of Claims or Interests must indicate such capacity when signing;
- k. the Debtors, subject to a contrary order of the Court and after consulting the Committee, may waive any defects or irregularities as to any particular Irregular Ballot at any time, either before or after the close of voting, and any such waivers will be documented in the Voting Report;
- l. neither the Debtors nor any other Entity will be under any duty to provide notification of defects or irregularities with respect to delivered Ballots other than as provided in the Voting Report nor will any of them incur any liability for failure to provide such notification;
- m. unless waived or as ordered by the Court, any defects or irregularities in connection with deliveries of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- n. in the event a designation of lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim or Interest will be counted for purposes of determining whether the Plan has been accepted and/or rejected;
- o. subject to any order of the Court, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules; *provided* that any such rejections will be documented in the Voting Report;

- p. if a Claim has been estimated or otherwise Allowed only for voting purposes by order of the Court, such Claim shall be temporarily Allowed in the amount so estimated or Allowed by the Court for voting purposes only, and not for purposes of allowance or distribution;
- q. if an objection to a Claim or Interest is filed, such Claim or Interest shall be treated in accordance with the procedures set forth herein;
- r. the following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (i) any Ballot that is illegible or contains insufficient information to permit the identification of the Holder of such Claim or Interest; (ii) any Ballot cast by any Entity that does not hold a Claim or Interest in a Voting Class; (iii) any Ballot cast for a General Unsecured Claim or Section 510(b) Claim scheduled as unliquidated, contingent, or disputed for which no Proof of Claim was timely filed by the Voting Record Date (unless the applicable bar date has not yet passed, in which case such Claim shall be entitled to vote in the amount of \$1.00); (iv) any unsigned Ballot or Ballot lacking an original signature; (v) any Ballot not marked to accept or reject the Plan or marked both to accept and reject the Plan; and (vi) any Ballot submitted by any Entity not entitled to vote pursuant to the procedures described herein;
- s. after the Voting Deadline, no Ballot may be withdrawn or modified without the prior written consent of the Debtors;
- t. the Debtors are authorized to enter into stipulations with the Holder of any Claim or Interest agreeing to the amount of a Claim or Interest for voting purposes; and
- u. where any portion of a single Claim or Interest has been transferred to a transferee, all holders of any portion of such single Claim or Interest will be (a) treated as a single creditor for purposes of the numerosity requirements in section 1126(c) of the Bankruptcy Code (and for the other solicitation and voting procedures set forth herein), and (b) required to vote every portion of such Claim or Interest collectively to accept or reject the Plan. In the event that (a) a Ballot, (b) a group of Ballots within a Voting Class received from a single creditor, or (c) a group of Ballots received from the various Holders of multiple portions of a single Claim or Interest partially reject and partially accept the Plan, such Ballots shall not be counted.

4. Master Ballot Voting and Tabulation Procedures.

In addition to the foregoing generally applicable voting and tabulation procedures, the following procedures shall apply to Holders of Class 8 Akorn Interests who hold their position through a broker, bank, or other nominee or an agent of a broker, bank, or other nominee (each of the foregoing, a “Nominee”):

- a. the Notice and Claims Agent shall distribute or cause to be distributed the appropriate number of copies of beneficial holder ballots (a “Beneficial Holder Ballot”) to each Beneficial Holder of a Class 8 Akorn Interest as of the Voting Record Date;
- b. Nominees identified by the Notice and Claims Agent as Entities through which Beneficial Holders hold their Claims will be provided with (i) Solicitation Packages for each Beneficial Holder represented by the Nominee as of the Voting Record Date, which will contain a Beneficial Holder Ballot for each Beneficial Holder, and (ii) a master ballot (the “Master Ballot”);
- c. any Nominee that is a holder of record with respect to Class 8 Akorn Interests shall vote on behalf of Beneficial Holders of such Claims by: (i) immediately, and in any event within five (5) Business Days after its receipt of the Solicitation Packages, distributing the Solicitation Packages, including Beneficial Holder Ballots, it receives from the Notice and Claims Agent to all such Beneficial Holders;⁵ (ii) providing such Beneficial Holders with a return address to send the completed Beneficial Holder Ballots; (iii) compiling and validating the votes and other relevant information of all such Beneficial Holders on the Master Ballot; and (iv) transmitting the Master Ballot to the Notice and Claims Agent on or before the Voting Deadline;
- d. Nominees are authorized to send the Solicitation Packages to Beneficial Holders of Class 8 Akorn Interests in paper format or via electronic transmission in accordance with the customary requirements of each Nominee. For the avoidance of doubt, if a Beneficial Holder of Class 8 Akorn Interests has previously provided consent to receive such materials through its Nominee by email, the Debtors propose to honor that request and transmit (or cause to be transmitted) the Solicitation Package to that Beneficial Holder by email;
- e. any Beneficial Holder holding Class 8 Akorn Interests as a record holder in its own name shall vote on the Plan by completing and signing a Ballot and returning to directly to the Notice and Claims Agent on or before the Voting Deadline;
- f. any Beneficial Holder Ballot returned to a Nominee by a Beneficial Holder shall not be counted for purposes of accepting or rejecting the Plan until such Nominee properly completes and delivers to the Notice and Claims Agent a Master Ballot that reflects the vote of such Beneficial Holders on or before the Voting Deadline or otherwise validates the Beneficial Holder Ballot in a manner acceptable to the Notice and Claims Agent. Nominees shall retain all Beneficial Holder Ballots returned by Beneficial Holders for a period of one (1) year after the Effective Date of the Plan;

- g. if a Beneficial Holder holds Class 8 Akorn Interests through more than one Nominee or through multiple accounts, such Beneficial Holder may receive more than one Beneficial Holder Ballot and each such Beneficial Holder should execute a separate Beneficial Holder Ballot for each block of Class 8 Akorn Interests that it holds through any Nominee and must return each such Beneficial Holder Ballot to the appropriate Nominee;
- h. if a Beneficial Holder holds a portion of its Class 8 Akorn Interests through a Nominee or Nominees and another portion in its own name as the record holder, such Beneficial Holder should follow the procedures described in section 4(d) herein to vote the portion held in its own name and the procedures described in section 4(c). herein to vote the portion held by the Nominee(s);
- i. votes cast by Beneficial Holders through Nominees will be applied to the applicable positions held by such Nominees in Class 8 as of the Voting Record Date, as evidenced by the applicable securities position report(s) obtained from The Depository Trust Company. Votes submitted by a Nominee pursuant to a Master Ballot will not be counted in excess of the amount of such Claims held by such Nominee as of the Voting Record Date;
- j. if conflicting votes or “over-votes” are submitted by a Nominee pursuant to a Master Ballot, the Debtors will use reasonable efforts to reconcile discrepancies with the Nominees. If over-votes on a Master Ballot are not reconciled prior to the preparation of the Voting Report, the Debtors shall apply the votes to accept and to reject the Plan in the same proportion, by voting Class, as the votes to accept and to reject the Plan submitted on the Master Ballot that contained the over-vote, but only to the extent of the Nominee’s position in Class 8;
- k. for purposes of tabulating votes, each Nominee or Beneficial Holder will be deemed to have voted the principal amount of its Claims in Class 8, although any principal amounts may be adjusted by the Notice and Claims Agent to reflect the amount of the Claim actually voted, including prepetition interest;
- l. a single Nominee may complete and deliver to the Notice and Claims Agent multiple Master Ballots. Votes reflected on multiple Master Ballots will be counted, except to the extent that they are duplicative of other Master Ballots. If two or more Master Ballots are inconsistent, the latest received valid Master Ballot received prior to the Voting Deadline will, to the extent of such inconsistency, supersede and revoke any prior received Master Ballot. Likewise, if a Beneficial Holder submits more than one Beneficial Holder Ballot to its Nominee, (i) the latest received Beneficial Holder Ballot received before the submission deadline imposed by the Nominee shall be deemed to supersede any prior Beneficial Holder Ballot

submitted by the Beneficial Holder, and (ii) the Nominee shall complete the Master Ballot accordingly; and

- m. the Debtors will, upon written request, reimburse Nominees for customary mailing and handling expenses incurred by them in forwarding the Beneficial Holder Ballot and other enclosed materials to the Beneficial Holders for which they are the Nominee. No fees or commissions or other remuneration will be payable to any broker, dealer, or other person for soliciting Beneficial Holder Ballots with respect to the Plan.

F. Amendments to the Plan and Solicitation and Voting Procedures.

The Debtors reserve the right to, after consulting the Committee, make non-substantive or immaterial changes to the Disclosure Statement, Plan, Ballots, Confirmation Hearing Notice, Solicitation Packages, Nonvoting Status Notices, Ballots, Publication Notice, Cover Letter, Solicitation and Voting Procedures, Plan Supplement Notice, Rejection Notice, Voting and Tabulation Procedures, and related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors, if any, and to make conforming changes among the Disclosure Statement, the Plan, and any other materials in the Solicitation Packages before distribution.

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