

**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 ()
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION SEEKING ENTRY OF AN ORDER
(I) RESTATING AND ENFORCING THE WORLDWIDE AUTOMATIC
STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO*
PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE
FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* protections of the Bankruptcy Code (collectively,

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 A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Duane Portwood in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on May 20, 2020 (the “Petition Date”) as incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration.



the “Code Protections”); (b) approving the form and manner of notice related thereto, substantially in the form attached as **Exhibit 1** to the Order (the “Notice”); and (c) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a), 362, 365, and 525 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

Background

5. Akorn, Inc., together with its Debtor and non-Debtor subsidiaries (collectively, “Akorn”) is a specialty pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, branded as well as private-label over-the-counter consumer health products, and animal health pharmaceuticals. Akorn is an industry leader in the development, manufacturing and marketing of specialized generic pharmaceutical products in alternative dosage forms. Headquartered in Lake Forest, Illinois,

Akorn has approximately 2,180 employees worldwide and maintains a global manufacturing presence, with pharmaceutical manufacturing facilities located in Illinois, New Jersey, New York, Switzerland, and India. Akorn's operations generated approximately \$682 million in revenue and approximately \$124 million of Adjusted EBITDA in 2019. The Debtors commenced these chapter 11 cases to conduct an orderly sale process that will position the Debtors for sustained future success by right-sizing their balance sheet and addressing their litigation overhang.

6. On the Petition Date, each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors' Global Network

7. As described in the First Day Declaration, the Debtors have international operations and assets, including approximately 260 employees based in India and 240 employees based in Switzerland. Additionally, in the ordinary course of business, the Debtors occasionally rely upon, and incur obligations to, suppliers of goods and services and other parties that are based outside of the United States. Such creditors supply goods and perform services integral to the Debtors' global operations.

8. These goods and services are essential to the Debtors' operations. Without continued support from their non-U.S. suppliers, the Debtors would face severe interruptions to their daily operations. Concurrently herewith, the Debtors have filed the *Debtors' Motion Seeking*

Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Prepetition Claims of Certain Critical Vendors, Foreign Vendors, Import/Export Claimants, 503(b)(9) Claimants, and Lien Claimants, (II) Granting Administrative Expense Priority to all Undisputed Obligations on Account of Outstanding Orders, and (III) Granting Related Relief (the “Vendor Motion”), seeking authority to continue their business in the ordinary course and satisfy certain prepetition and postpetition claims of non-U.S. trade creditors (the “Foreign Vendors”) as and when they come due. The Debtors anticipate that such relief will help deter parties from attempting to exercise remedies or take adverse action against the Debtors on account of the commencement of these chapter 11 cases.

9. Foreign Vendors and contract counterparties operating in various jurisdictions may be unfamiliar with the chapter 11 process, including the scope of a debtor-in-possession’s authority to operate its business and the importance of the automatic stay. As discussed in detail in the Vendor Motion, the Debtors directly purchase pharmaceutical ingredients from certain Foreign Vendors, and certain of the Debtors’ Foreign Vendors could delay or cease shipments of pharmaceutical ingredients on a timely basis and/or completely sever their business relationships with the Debtors as a result of these chapter 11 cases. These creditors—and others—may attempt to seize assets located outside of the United States or take other actions violating the automatic stay to the detriment of the Debtors, their estates, and other creditors.

10. Furthermore, the Debtors and their non-Debtor affiliates provide goods and services to customers that are occasionally located outside of the United States. The Debtors may owe certain of these customers prepetition and ongoing obligations, which such parties may attempt to enforce in violation of the automatic stay. Additionally, upon the commencement of these chapter 11 cases, non-U.S. counterparties to certain leases and executory contracts could

attempt to terminate such leases or contracts, including pursuant to *ipso facto* provisions in contravention of sections 362 and 365 of the Bankruptcy Code. Similarly, governmental units³ outside of the United States may deny, suspend, terminate, or otherwise place conditions upon certain licenses, permits, charters, franchises, or other similar grants held by a chapter 11 debtor and required for the Debtors' ongoing business operations, in violation of section 525 of the Bankruptcy Code.

11. The Debtors seek the relief requested herein out of an abundance of caution and to assist them in better informing parties outside of the United States of the broad protections offered by the Bankruptcy Code. For the avoidance of doubt, the Debtors do not seek to expand or enlarge the rights afforded to them under the Bankruptcy Code with this motion. Instead, the Debtors seek only to affirm those rights and believe that an order from this Court will help protect the Debtors against improper actions taken by, and provide clarity for, non-U.S. parties in interest, giving the Debtors the best chance to effectuate a successful reorganization.

I. Confirming the Protections of the Automatic Stay in Section 362 of the Bankruptcy Code.

12. As a result of the commencement of these chapter 11 cases, the automatic stay imposed pursuant to section 362 of the Bankruptcy Code generally enjoins all persons and governmental units from, among other things: (a) commencing or continuing any judicial, administrative, or other proceeding against any of the Debtors that was or could have been commenced prior to the Petition Date; (b) taking any action to collect, assess, recover, or otherwise

³ The Bankruptcy Code defines "governmental unit" as the "United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; *or other foreign or domestic government.*" 11 U.S.C. § 101(27) (emphasis added). Thus, the protections of section 525(a) apply broadly to local, state, and foreign governmental units.

enforce a claim against any of the Debtors that arose prepetition; and (c) acting to obtain possession of, or exercise control over, property of the Debtors' estates. *See* 11 U.S.C. §§ 362(a)(1), (3), (6).

13. The injunction contained in section 362 of the Bankruptcy Code is a core protection for the Debtors, providing them with a breathing spell from their creditors, which, in combination with other provisions of the Bankruptcy Code, is essential to the Debtors' ability to reorganize successfully. *See, e.g., Borman v. Raymark Indus., Inc.*, 946 F.2d 1031, 1033 (3d Cir. 1991) ("The automatic stay was intended to give the debtor 'a breathing spell from his creditors.'") (internal citation omitted); *Mar. Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) (finding that the automatic stay gives debtors a breathing spell from creditors); *Assoc. of St. Croix Condominium Owners v. St. Croix Hotel Corp.*, 682 F.2d 446, 448 (3d Cir. 1982) (same). The automatic stay becomes effective immediately upon the filing of a bankruptcy case, and applies both in the United States and extraterritorially. *See In re Soundview Elite, Ltd.*, 503 B.R. 571, 584 (Bankr. S.D.N.Y. 2014) ("U.S. law is clear that immediately upon the filing of the Debtors' chapter 11 petition, the U.S. automatic stay became effective, both in the U.S. and extraterritorially.") (internal citations omitted). Given its fundamental importance to a debtor's reorganization, courts broadly construe the Bankruptcy Code's automatic stay provisions, which apply worldwide. *See, e.g., Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998) (noting that Congress intended extraterritorial application of the Bankruptcy Code); *In re NextWave Pers. Commc'ns. Inc.*, 244 B.R. 253, 271 (Bankr. S.D.N.Y. 2000) ("The automatic stay is broadly written and broadly construed."); *Secs. Investor Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC (In re Bernard L. Madoff Inv. Secs. LLC)*, 474 B.R. 76 (S.D.N.Y. 2012) (upholding extraterritorial enforcement of the automatic stay and injunction barring foreign creditor's lawsuit); *Nakash v. Zur (In re Nakash)*, 190 B.R.

763, 768 (Bankr. S.D.N.Y. 1996) (noting that Congress intended automatic stay to apply extraterritorially).

14. As such, the automatic stay established by section 362 of the Bankruptcy Code applies to both the Debtors' foreign and domestic creditors, regardless of location, and creditors that violate the stay may face sanctions by the Court. However, domestic and foreign creditors unfamiliar with the automatic stay or the scope thereof may attempt to proceed against the Debtors' worldwide property, business, operations, or assets despite the commencement of these chapter 11 cases and the potential sanctions. Any such unilateral self-help action would adversely affect the Debtors' operations and potentially jeopardize the Debtors' reorganization efforts, resulting in irreparable harm to the Debtors' estates and parties in interest. Accordingly, the Debtors believe that a Court order is necessary and helpful to ensure creditor compliance with the automatic stay.

II. Confirming the Injunction of Governmental Action Under Section 525 of the Bankruptcy Code.

15. Additionally, section 525 of the Bankruptcy Code prohibits governmental units from, among other things: (a) denying, revoking, suspending, or refusing to "renew a[ny] license, permit, charter, franchise, or other similar grant" to the Debtors; (b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have "been insolvent before the commencement" of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases. *See* 11 U.S.C. § 525(a); *see also FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 307 (2003) ("The government is not to revoke a bankruptcy debtor's license [under section 525(a) of the Bankruptcy Code] solely because of a failure to pay his debts."). The Bankruptcy Code includes in the definition of "governmental unit" a foreign state, a department,

agency, or instrumentality of a foreign state, and other foreign governments. See 11 U.S.C. § 101(27).

III. Confirming the Invalidation of *Ipsa Facto* Provisions Under Section 365 of the Bankruptcy Code and Other Contractual Rights.

16. Courts have held that the automatic stay under section 362 of the Bankruptcy Code precludes unilateral actions by non-debtor parties to terminate contracts without a court order. See, e.g., *Bonneville Power Admin. v. Mirant Corp. (In re Mirant Corp.)*, 440 F.3d 238 (5th Cir. 2006) (noting that non-debtor termination of agreement was prohibited by the automatic stay and required court approval under section 362(d)). Moreover, “[c]ourts have consistently held that contract rights are property of the estate.” *In re Enron Corp.*, 300 B.R. 201, 212 (Bankr. S.D.N.Y. 2003) (quoting *Elder-Beerman Stores Corp. v. Thomasville Furniture Indus., Inc. (In re Elder-Beerman Stores Corp.)*, 195 B.R. 1019, 1023 (Bankr. S.D. Ohio 1996)). As noted above, section 362 of the Bankruptcy Code prohibits third parties from exercising control over property of the estate. See 11 U.S.C. § 362(a). Accordingly, the Bankruptcy Code prohibits third parties from modifying or terminating contracts absent court approval, subject to certain express statutory exceptions. See *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984) (holding that while the debtor may enforce the terms of the contract against the creditor, the creditor is “precluded from . . . enforcing the contract terms” of an executory contract prior to assumption by the debtor).

17. Additionally, and more specifically, section 365(e)(1)(B) of the Bankruptcy Code prohibits counterparties to debtor contracts from terminating or modifying such contracts, including any right or obligation thereunder, solely because of a provision in such contract or lease that is conditioned on, among other things: (a) the insolvency or financial condition of a debtor at any time before the closing of the debtor’s chapter 11 cases; or (b) the

commencement of the debtor's chapter 11 case. *See* 11 U.S.C. § 365(e)(1)(B). Section 365 of the Bankruptcy Code also prohibits, absent court approval, third parties from enforcing the terms of a contract against the Debtors. *See Bildisco*, 465 U.S. at 531–32. Third parties must thus continue to perform under executory contracts until they are assumed or rejected. *See In re El Paso Refinery, L.P.*, 196 B.R. 58, 72 (Bankr. W.D. Tex. 1996) (“[T]he [Bankruptcy] Code places an independent duty on the non-debtor to continue the performance of an executory contract until it is assumed or rejected.”).

18. Thus, section 365(e) of the Bankruptcy Code invalidates so-called contractual *ipso facto* provisions that provide for the termination of a contract based solely upon a party's financial condition. Nevertheless, the Debtors believe that, upon learning of the commencement of these chapter 11 cases, executory contract and unexpired lease counterparties outside of the United States may try to terminate such executory contracts or unexpired leases pursuant to bankruptcy termination provisions contained therein that, if enforced, are in direct violation of sections 362(a) and 365 of the Bankruptcy Code. Any such action would harm the Debtors' operations and potentially jeopardize the Debtors' reorganization efforts. Accordingly, the Debtors believe that a court order is necessary and helpful to ensure the continuation of the Debtors' contracts.

IV. Reaffirmation that each of the Code Protections Is Essential to Orderly Administer the Bankruptcy Estates.

19. Each of the Code Protections described herein is self-executing and constitutes a fundamental debtor protection that, in combination with other provisions of the Bankruptcy Code, provide the Debtors with the “breathing spell” that is essential to the Debtors' ability to position themselves to maximize and preserve enterprise value for the benefit of stakeholders. The protections in these provisions extend to a debtor's property, contracts, and regulatory rights and

privileges wherever they are located and by whomever held. *See, e.g.*, 11 U.S.C. § 541(a) (“The commencement of a case under section 301 . . . of this title creates an estate. Such estate is comprised of all the following property, *wherever located and by whomever held*[.]”) (emphasis added).

20. Notwithstanding the self-executing and global nature of these Code Protections, experience has shown that it is often necessary to advise third parties of the existence, scope, and effect of sections 362, 365, and 525 of the Bankruptcy Code through a separate court order.

21. Such an order is appropriate in these chapter 11 cases because the Debtors’ operations are particularly dependent upon, among other things, the delivery of pharmaceutical ingredients and the uninterrupted performance by counterparties to contracts with the Debtors (including contractual relationships with foreign entities operating in foreign jurisdictions). The Debtors believe that many of the third parties subject to the Bankruptcy Code may be unaware of or misapprehend the scope of the Code Protections. Accordingly, the Debtors respectfully request that the Court issue the Order confirming the applicability of the Bankruptcy Code. The Debtors believe that the existence of such an order, which the Debtors will be able to transmit to affected parties, will help ensure that the Debtors receive the protections afforded by sections 362, 365, and 525 of the Bankruptcy Code.

V. The Relief Requested Should Be Granted Under Section 105(a) of the Bankruptcy Code.

22. Pursuant to section 105(a) of the Bankruptcy Code, the Court may issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 105(a) of the Bankruptcy Code therefore authorizes a bankruptcy court to issue injunctions or take other necessary steps in aid of its jurisdiction. *See, e.g., United States v. Sutton*, 786 F.2d 1305, 1307 (5th Cir. 1986); *MacArthur Co. v. Johns-Manville*

Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93 (2d Cir. 1988). Such orders are appropriate where, as here, they are essential to a debtor's reorganization efforts and do not burden creditors. *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994) (holding that, as courts of equity, bankruptcy courts are empowered to invoke equitable principles to achieve fairness and justice in the reorganization process). As such, the Court has the power to enter an order of the kind requested herein. Granting such relief is fully consistent with the Bankruptcy Code and will facilitate a smooth and orderly transition into chapter 11.

23. Granting the relief requested herein will better enable the Debtors to inform non-U.S. creditors, including Foreign Vendors, and interested parties of debtor protections that may be unfamiliar to them and will help ensure that: (a) parties to unexpired leases and executory contracts with the Debtors continue to perform their duties and obligations thereunder; (b) creditors are less likely to seize the Debtors' assets or take other actions violating the automatic stay; and (c) governmental units do not unfairly discriminate or take action against the Debtors, thereby violating the Bankruptcy Code. The relief requested herein will facilitate the Debtors' orderly transition into chapter 11 and minimize the disruption of their business.

24. Given the vulnerability of the Debtors' business and operations to immediate disruption if parties violate the Code Protections, the Debtors seek authority to immediately serve or file the Notice substantially in the form attached hereto as **Exhibit 1** to **Exhibit A**.

25. Bankruptcy courts in this jurisdiction and others have entered similar orders restating and enforcing the protections set forth in sections 362, 365, and 525 of the Bankruptcy Code under comparable circumstances. *See, e.g., In re GCX Ltd., et al.*, No. 19-12031 (CSS) (Bankr. D. Del. Sept. 16, 2019) (enforcing and restating the provisions of sections 362 and 365 of the Bankruptcy Code); *In re VER Techs. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del.

May 4, 2018) (same); *In re Maurice Sporting Goods, Inc.*, No. 17-12481 (CSS) (Bankr. D. Del. Nov. 21, 2017) (same); *In re Peekay Acquisition, LLC*, No. 17-11722 (BLS) (Bankr. D. Del. Aug. 25, 2017) (same); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bankr. D. Del. July 6, 2017) (same); *In re McDermott International, Inc.*, No. 20-30336 (DRJ) (Bankr. S.D. Tex. Jan. 23, 2020) (same); *In re Parker Drilling Company*, No. 18-36958 (MI) (Bankr. S.D. Tex. Dec. 13, 2018) (same).⁴ Given the critical importance of ensuring the Debtors' operations are not undermined by noncompliance with U.S. bankruptcy law, similar relief is appropriate here.

Notice

26. The Debtors will provide notice of this motion to: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) Wilmington Savings Fund Society, FSB, in its capacity as successor administrative agent under the Term Loan Credit Agreement, or any of its predecessors or successors (the "Term Loan Agent"); (d) counsel to the Term Loan Agent; (e) counsel to the ad hoc group of the Debtors' Prepetition Lenders (the "Ad Hoc Group"); (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the Food and Drug Administration; (i) the Drug Enforcement Administration; (j) the Securities Exchange Commission; (k) the state attorneys general for all states in which the Debtors conduct business; and (l) any party that requests service pursuant to Local Rule 9013-1(m)(iii).

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

No Prior Request

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

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other and further as is just and proper.

Wilmington, Delaware
May 21, 2020

/s/ Paul N. Heath

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EXHIBIT A

Proposed Order

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

In re:)	
)	Chapter 11
AKORN, INC., ¹)	Case No. 20-11177 (___)
)	
Debtors.)	(Joint Administration Requested)
)	Re: Docket No. _____

**ORDER (I) RESTATING AND ENFORCING THE WORLDWIDE
AUTOMATIC STAY, ANTI-DISCRIMINATION PROVISIONS, AND *IPSO FACTO*
PROTECTIONS OF THE BANKRUPTCY CODE, (II) APPROVING THE
FORM AND MANNER OF NOTICE, AND (III) GRANTING RELATED RELIEF**

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”), (a) restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* protections of the Bankruptcy Code, (b) approving the form and manner of notice, and (c) granting related relief, 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 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

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 shall have the meanings ascribed to them in the Motion.

the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration 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 the First Day Declaration 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 set forth herein.
2. Subject to section 362 of the Bankruptcy Code, all persons (including individuals, partnerships, corporations, and other entities and all those acting on their behalf) and governmental units, whether of the United States, any state or locality therein or any territory or possession thereof, or any non-U.S. jurisdiction (including any division, department, agency, instrumentality or service thereof, and all those acting on their behalf), are hereby stayed, restrained, and enjoined from:

- (a) commencing or continuing (including the issuance or employment of process) any judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' chapter 11 cases or recovering a claim against the Debtors that arose before the commencement of the Debtors' chapter 11 cases;
- (b) enforcing, against the Debtors or against property of their estates, a judgment or order obtained before the commencement of the Debtors' chapter 11 cases;
- (c) taking any action, whether inside or outside the United States, to obtain possession of property of the Debtors' estates, wherever located (including, but not limited to, leased vehicles, leased facilities, and fixtures or tenant improvements to such facilities), or to exercise control over property of the

estates or interfere in any way with the conduct by the Debtors of their businesses, including, without limitation, attempts to interfere with deliveries or events or attempts to arrest, seize, or reclaim any equipment, supplies, or all other assets in which the Debtors have legal or equitable interests;

- (d) taking any action to create, perfect, or enforce any lien against the property of the Debtors' estates;
- (e) taking any action to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose prior to the commencement of the Debtors' chapter 11 cases;
- (f) taking any action to collect, assess, or recover a claim against the Debtors that arose prior to the commencement of the Debtors' chapter 11 cases;
- (g) offsetting any debt owing to the Debtors that arose before the commencement of the Debtors' chapter 11 cases against any claim against the Debtors; and
- (h) commencing or continuing any proceeding before the United States Tax Court concerning the Debtors, subject to the provisions of 11 U.S.C. § 362(b).

3. Pursuant to sections 362 and 365 of the Bankruptcy Code, notwithstanding a provision in a contract or lease or any applicable law, all persons are hereby stayed, restrained, and enjoined from terminating or modifying any and all contracts and leases to which the Debtors are party or signatory, at any time after the commencement of these chapter 11 cases, because of a provision in such contract or lease that is conditioned on the (a) insolvency or financial condition of the Debtors at any time before the closing of these chapter 11 cases or (b) commencement of these chapter 11 cases under the Bankruptcy Code. Accordingly, all such persons are required to continue to perform their obligations under such leases and contracts during the postpetition period.

4. Pursuant to section 525 of the Bankruptcy Code, all governmental units and other regulatory authorities are prohibited and enjoined from: (a) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors;

(b) placing conditions upon such a grant to the Debtors; or (c) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases.

5. For the avoidance of doubt, this Order does not expand or enlarge the rights afforded to the Debtors under the Bankruptcy Code.

6. The form and manner of notice (the “Notice”), attached hereto as **Exhibit 1**, is approved. The Debtors are authorized, but not directed, to serve the Notice upon creditors, governmental units, or other regulatory authorities and/or interested parties wherever located.

7. The Debtors are authorized, but not directed, to procure and provide true and correct foreign-language translations of the Motion, this Order, the Notice, or any other materials filed in these chapter 11 cases to any foreign party in interest at the Debtors’ discretion.

8. Nothing in this Order or the Motion shall constitute a rejection or assumption by the Debtors, as debtors in possession, of any executory contract or unexpired lease.

9. This Order remains subject to section 362 of the Bankruptcy Code, including its exceptions.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Form of Notice

other action or proceeding against the Debtors (a) that was or could have been commenced before the commencement of the Debtors' cases or (b) to recover a claim against the Debtors that arose before the commencement of the Debtors' cases; (ii) the enforcement, against the Debtors or against any property of the Debtors' bankruptcy estates, of a judgment obtained before the commencement of the Debtors' cases; or (iii) any act to obtain possession of property of or from the Debtors' bankruptcy estates, or to exercise control over property of the Debtors' bankruptcy estates.²

PLEASE TAKE FURTHER NOTICE that pursuant to the *Order (I) Restating and Enforcing the Worldwide Automatic Stay, Anti-Discrimination Provisions, and Ipso Facto Protections of the Bankruptcy Code, (II) Approving the Form and Manner of Notice, and (III) Granting Related Relief* (the "Order") [Docket No. []], entered on [], 2020, and attached hereto as **Exhibit A**, the filing of these chapter 11 cases imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the Debtors or the Debtors' property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the Debtors. Creditors cannot demand repayment from the Debtors by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

PLEASE TAKE FURTHER NOTICE that any entity that seeks to assert claims, interests, causes of action, or other legal or equitable remedies against, or otherwise exercise any rights in law or equity against the Debtors or their estates, must do so in front of the Court pursuant to the Order, the Bankruptcy Code, and applicable law.

² Nothing herein shall constitute a waiver of the right to assert any claims, counterclaims, defenses, rights of setoff, or recoupment or any other claims of the Debtors against any party to the above-captioned cases. The Debtors expressly reserve the right to contest any claims which may be asserted against the Debtors.

PLEASE TAKE FURTHER NOTICE that pursuant to the Order, any governmental agency, department, division or subdivision, or any similar governing authority is prohibited from, among other things: (i) denying, revoking, suspending, or refusing to renew any license, permit, charter, franchise, or other similar grant to the Debtors; (ii) placing conditions upon such a grant to the Debtors; or (iii) discriminating against the Debtors with respect to such a grant, solely because the Debtors are debtors under the Bankruptcy Code, may have been insolvent before the commencement of these chapter 11 cases, or are insolvent during the pendency of these chapter 11 cases as set forth more particularly in the Order, except as permitted by the Court under applicable law.

PLEASE TAKE FURTHER NOTICE that pursuant to the Order, parties to contracts or agreements with the Debtors are prohibited from terminating such contracts or agreements because of a Debtor's bankruptcy filing, except as permitted by the Court under applicable law.

PLEASE TAKE FURTHER NOTICE that pursuant to sections 105(a) and 362(k) of the Bankruptcy Code and Rule 9020 of the Federal Rules of Bankruptcy Procedure, among other applicable substantive law and rules of procedure, any person or governmental unit seeking to assert its rights or obtain relief outside of the processes set forth in the Order, the Bankruptcy Code, and applicable law may be subject to proceedings in front of the Court for failure to comply with the Order and applicable law, including contempt proceedings resulting in fines, sanctions, and punitive damages against the entity and its assets inside the United States.

PLEASE TAKE FURTHER NOTICE that additional information regarding the Debtors' chapter 11 cases, including copies of pleadings filed therein, may be obtained by: (i) reviewing the publicly available docket of the Debtors' chapter 11 cases at <http://www.deb.uscourts.gov/bankruptcy> (PACER login and password required); (ii) accessing the

Debtors' publicly available website providing information regarding these chapter 11 cases, located online at <http://www.kccllc.net/akorn>; or (iii) contacting the following proposed co-counsel for the Debtors.

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Wilmington, Delaware
[•], 2020

/s/ Draft

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EXHIBIT A

Order