

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

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In re:	)	
	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**DEBTORS’ APPLICATION  
FOR ENTRY OF AN ORDER APPOINTING  
KURTZMAN CARSON CONSULTANTS LLC AS  
CLAIMS AND NOTICING AGENT EFFECTIVE AS OF MAY 20, 2020**

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

**Relief Requested**

1. The Debtors seek entry of an order (the “Order”), substantially in the form attached hereto as **Exhibit A**, authorizing the retention and appointment of Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent (the “Claims and Noticing Agent”) in the Debtors’ chapter 11 cases, effective as of the Petition Date, with full responsibility for the

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

<sup>2</sup> 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”). Capitalized terms used but not otherwise defined in this application shall have the meanings ascribed to them in the First Day Declaration.



distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' chapter 11 cases.

2. In support of this application, the Debtors submit the *Declaration of Robert Jordan in Support of the Debtors' Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of May 20, 2020* (the "Jordan Declaration"), attached hereto as **Exhibit B**. The terms of KCC's retention are set forth in KCC Agreement for Services, dated February 6, 2020 (the "Retention Agreement"), and attached hereto as **Exhibit C**.

### **Jurisdiction and Venue**

3. 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 application 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.

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

5. The statutory bases for the relief requested herein are section 156(c) of title 28 of the United States Code, sections 105(a) and 503(b) of the Bankruptcy Code, Bankruptcy Rules 2002(f), 2014(a), and 2016, Local Rules 2002-1(f) and 9013-1(m), and the Court's Protocol for

Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c), instituted by the Clerk on February 1, 2012 (the “Claims Agent Protocol”).

**Background**

6. 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.

7. 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.

**Basis for Relief**

8. The Debtors request entry of an order appointing KCC as the Claims and Noticing Agent for the Debtors in their chapter 11 cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in the Debtors' chapter 11 cases. The Debtors' selection of KCC to act as the Claims and Noticing Agent satisfies the Claims Agent Protocol, in that the Debtors obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise. The terms of KCC's retention are set forth in the Retention Agreement attached hereto as **Exhibit C**; *provided* that the Debtors are seeking approval solely of the terms and provisions of the Retention Agreement as set forth in this application and the proposed Order attached hereto.

9. Although the Debtors have not yet filed their schedules of assets and liabilities and statements of financial affairs (collectively, the "Schedules and Statements"), they anticipate that there will be thousands of entities to be noticed. Local Rule 2002-1(f) provides that "[i]n all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file [a] motion [to retain a claims and noticing agent] on the first day of the case or within seven (7) days thereafter." Del. Bankr. L.R. 2002-1(f). In view of the number of anticipated claimants and the complexity of the Debtors' business, the Debtors submit that the appointment of a claims and noticing agent is required by Local Rule 2002-1(f) and is otherwise in the best interests of both the Debtors' estates and their creditors.

10. Bankruptcy Rule 2002 generally regulates what notices must be given to creditors and other parties in interest in bankruptcy cases. Fed. R. Bankr. P. 2002(f). Under Bankruptcy Rule 2002(f), the Court may direct that some person other than the Office of the Clerk of the Bankruptcy Court (the “Clerk”) give notice of the various matters described below. Moreover, section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use “facilities” or “services” other than the Clerk for administration of bankruptcy cases. 28 U.S.C. § 156(c). Specifically, the statute states, in relevant part:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

11. In addition, Local Rule 2002-1(f) provides:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (which can be found on the Court’s website) and shall perform the [claims and noticing services].

Del. Bankr. L.R. 2002-1(f). Accordingly, Bankruptcy Rule 2002, Local Rule 2002-1(f), and section 156(c) of title 28 of the United States Code empower the Court to utilize outside agents

and facilities for notice and claims purposes, provided that the Debtors' estates bear the cost of such services.

12. For all of the foregoing reasons, the Debtors believe that the appointment of KCC as the Claims and Noticing Agent in these chapter 11 cases is necessary and in the best interests of the Debtors, their estates and creditors, and all parties in interest. Furthermore, the Debtors respectfully submit that the fees and expenses that would be incurred by KCC under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

13. By separate application, the Debtors intend to seek authorization to retain and employ KCC as the administrative agent in these chapter 11 cases, pursuant to section 327(a) of the Bankruptcy Code, because the administration of the chapter 11 cases will require KCC to perform duties outside the scope of 28 U.S.C. § 156(c).

#### **KCC's Qualifications**

14. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, solicitation, balloting, and other related services critical to the effective administration of chapter 11 cases. KCC has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing, claims processing, solicitation, and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders, and all other parties in interest. Further, KCC will work with the Clerk to ensure that such methodology conforms to all of the Court's procedures, the Local Rules, and the requirements of any Court orders.

15. As a specialist in claims management and legal administration services, KCC provides comprehensive services in chapter 11 cases. KCC has substantial experience in matters of all sizes and levels of complexity, including many bankruptcy cases filed in this district. *See, e.g., In re Melinta Therapeutics, Inc., et al.*, No. 19-12748 (LSS) (Bankr. D. Del. Dec. 27, 2019); *In re Celadon Grp., Inc., et al.*, No. 19-12606 (KBO) (Bankr. D. Del. Dec. 8, 2019); *In re HRI Holding Corp., et al.*, No. 19-12415 (MFW) (Bankr. D. Del. Nov. 14, 2019); *In re Highland Capital Management, L.P.*, No. 19-12239 (CSS) (Bankr. D. Del. Oct. 16, 2019); *In re Bayou Steel BD Holdings, L.L.C.*, No. 19-12153 (KBO) (Bankr. D. Del. Oct. 1, 2019); *In re Perkins & Marie Callender's, LLC, et al.*, No. 19-11743 (KG) (Bankr. D. Del. Aug. 5, 2019); *In re Emerge Energy Services LP, et al.*, No. 19-11563 (KBO) (Bankr. D. Del. Jul. 15, 2019); *In re Fuse, LLC, et al.*, No. 19-10872 (KG) (Bankr. D. Del. Apr. 22, 2019); *In re Achaogen, Inc.*, No. 19-10844 (BLS) (Bankr. D. Del. Apr. 15, 2019); *In re Southcross Energy Partners, L.P., et al.*, No. 19-10702 (MFW) (Bankr. D. Del. Apr. 1, 2019); *In re Novum Pharma, LLC*, No. 19-10209 (KJC) (Bankr. D. Del. Feb. 3, 2019); *In re Egalet Corp.*, No. 18-12439 (BLS) (Bankr. D. Del. Nov. 1, 2018); *In re Welded Construction, L.P., et al.*, No. 18-12378 (KG) (Bankr. D. Del. Oct. 22, 2018); *In re ATD Corp., et al.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 4, 2018); *In re RM Holdco LLC, et al.*, No. 18-11795 (MFW) (Bankr. D. Del. Aug. 5, 2018); *In re Heritage Home Grp. LLC, et al.*, No. 18-11736 (KG) (Bankr. D. Del. Jul. 29, 2018); *In re Tintri, Inc.*, No. 18-11625 (KJC) (Bankr. D. Del. Jul. 10, 2018); *In re The Walking Company Holdings, Inc.*, No. 18-10474 (LSS) (Bankr. D. Del. Mar. 8, 2018); *In re VER Techs. Holdco LLC*, No. 18-10834 (KG) (Bankr. D. Del. Apr. 6, 2018); *In re Rand Logistics, Inc.*, No. 18-10175 (BLS) (Bankr. D. Del. Jan. 29, 2018); *In re ExGen Tex. Power, LLC*, No. 17-12377 (BLS) (Bankr. D. Del. Nov. 7, 2017); *In re TerraVia Holdings, Inc.*,

No. 17-11655 (CSS) (Bankr. D. Del. Aug. 2, 2017); *In re Prospector Offshore Drilling S.à r.l.*, No. 17-11572 (CSS) (Bankr. D. Del. July 20, 2017); *In re Keystone Tube Co., LLC (A.M. Castle & Co.)*, No. 17-11330 (LSS) (Bankr. D. Del. June 18, 2017); *In re Sungevity, Inc.*, No. 17-10561 (KG) (Bankr. D. Del. Mar. 15, 2017); *In re Aquion Energy, Inc.*, No. 17-10500 (KJC) (Bankr. D. Del. Mar. 8, 2017).

16. If KCC is retained as the Claims and Noticing Agent in the Debtors' chapter 11 cases, the distribution of notices and the processing of claims will be streamlined and expedited, and the Clerk will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

#### **Scope of Services**

17. This application relates only to the work to be performed by KCC under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f). Any work to be performed by KCC outside this scope is not covered by this application or by any order granting approval hereof. KCC will follow the notice and claims procedures that conform to the Claims Agent Protocol and the Judicial Conference of the United States, and as may be ordered by the Court. Specifically, KCC will perform the following tasks, as necessary, in its role as Claims and Noticing Agent, as well as all quality control relating thereto (collectively, the "Claims Services"):

- a. prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors or the Court, including, without limitation: (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code; (ii) notice of any claims bar date; (iii) notices of transfers of claims; (iv) notices of objections to claims and objections to transfers of claims; (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' chapter 11 plan or plans, including under Bankruptcy Rule 3017(d); (vi) notice of the effective date of any plan; and (vii) all other notices, orders, pleadings, publications, and other documents



as the Debtors or Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;

- b. maintain an official copy of the Debtors' Schedules and Statements, listing the Debtors' known creditors and the amounts owed thereto;
- c. maintain a: (i) list of all potential creditors, equity holders, and other parties in interest; and (ii) "core" service list consisting of all parties described in Bankruptcy Rules 2002(i), (j), and (k), and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010 and update said lists and make said lists available upon request by a party-in-interest or the Clerk;
- d. furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify such potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules and Statements, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules and Statements indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. for all notices, motions, orders, or other pleadings or documents served, prepare and file, or cause to be filed, with the Clerk an affidavit or certificate of service within seven (7) business days of service which includes: (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served; (ii) a list of persons to whom it was served (in alphabetical order) with their mailing or email addresses as appropriate; (iii) the manner of service; and (iv) the date served;
- g. process all proofs of claim received, including those received by the Clerk, check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. maintain the official claims register for each Debtor (collectively, the "Claims Registers") on behalf of the Clerk; upon the Clerk's request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned; (ii) the date received; (iii) the name and address of the claimant and agent, if applicable, who filed the claim; (iv) the amount asserted; (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.); (vi) the applicable Debtor; and (vii) any disposition of the claim;

- i. provide public access to the Claims Registers, including complete proofs of claim with attachments, if any, without charge;
- j. implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- k. record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- l. relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of KCC, not less than weekly;
- m. upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Registers for the Clerk's review (upon the Clerk's request);
- n. monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- o. identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- p. assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website or call center;
- q. if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three (3) days of KCC receiving notice to KCC of entry of the order converting the cases;
- r. thirty days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing KCC as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases;
- s. within seven (7) days of notice to KCC of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the chapter 11 cases; and
- t. at the close of these chapter 11 cases, (i) box and transport all original documents, in proper format, as provided by the Clerk's office, to (A) the

Philadelphia Federal Records Center, 14700 Townsend Road, Philadelphia, PA 19154-1096 or (B) any other location requested by the Clerk's office, and (ii) docket a completed SF-135 Form indicating the accession and location numbers of the archived claims.

18. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by KCC.

**Professional Compensation**

19. The Debtors will compensate KCC for the Claims Services described above in accordance with the Retention Agreement. The Debtors respectfully request that the undisputed fees and expenses incurred by KCC in the performance of the above Claims Services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to, or order of, the Court.

20. KCC agrees to maintain records of all Claims Services, including showing dates, categories of Claims Services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest that specifically requests service of the monthly invoices. If any dispute arises relating to the Retention Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute. If resolution is not achieved, the parties may seek resolution of the matter from the Court.

21. Before the Petition Date, the Debtors provided KCC a retainer in the amount of \$50,000. KCC seeks to first apply the retainer to all prepetition invoices, and thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer

under the Retention Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Retention Agreement.

22. Additionally, under the terms of the Retention Agreement, the Debtors have agreed to indemnify and hold harmless KCC and its affiliates, members, directors, officers, employees, consultants, subcontractors, and agents under certain circumstances specified in the Retention Agreement, except in circumstances resulting solely from KCC's gross negligence or willful misconduct or as otherwise provided in the Retention Agreement or Order. The Debtors believe that such an indemnification obligation is customary, reasonable, and necessary to retain the services of a Claims and Noticing Agent in these chapter 11 cases.

**Disinterestedness**

23. Although the Debtors do not propose to employ KCC under section 327 of the Bankruptcy Code pursuant to this application (such retention will be sought by separate application), KCC has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors. KCC has represented to the Debtors that, to the best of its knowledge, and except as set forth in the Jordan Declaration, neither KCC nor any of its professional personnel have any relationship with the Debtors that would impair KCC's ability to serve as Claims and Noticing Agent. To the extent that KCC or its personnel have, or may have had, relationships with certain of the Debtors' creditors, as described in the Jordan Declaration, KCC has represented to the Debtors that those matters are completely unrelated to the Debtors' chapter 11 cases.

24. Moreover, in connection with its retention as Claims and Noticing Agent, KCC represents in the Jordan Declaration, among other things, that KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, in that KCC and its professional personnel:

- a. are not creditors, equity security holders, insiders of the Debtors;
- b. are not, and were not, within two years before the date of the filing of the Debtors’ bankruptcy cases, directors, officers, or employees of the Debtors; and
- c. do not have an interest materially adverse to the interests of the Debtors’ estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

25. KCC further represents, among other things, that:

- a. it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims and Noticing Agent;
- b. by accepting employment in the Debtors’ bankruptcy cases, KCC waives any right to receive compensation from the United States government;
- c. in its capacity as Claims and Noticing Agent, KCC will not be an agent of the United States and will not act on behalf of the United States;
- d. it will not employ any past or present employees of the Debtors in connection with its work as Claims and Noticing Agent;
- e. it will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- f. none of the services provided by KCC as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk’s office.

26. KCC will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

**Compliance with Claims and Noticing Agent Protocol**

27. This application complies with the Claims Agent Protocol and substantially conforms to the standard section 156(c) application in use in this Court. To the extent that there is any inconsistency between this application, the Order, and the Retention Agreement, the Order shall govern.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

28. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Notice**

29. 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).

**No Prior Request**

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

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 relief as is just and proper.

Wilmington, Delaware  
May 21, 2020

*/s/ Amanda R. Steele*

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*Proposed Co-Counsel for the  
Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**



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

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

**ORDER APPOINTING KCC AS  
CLAIMS AND NOTICING AGENT EFFECTIVE AS OF MAY 20, 2020**

Upon the application (“Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an Order (this “Order”), (a) appointing KCC as claims and noticing agent (“Claims and Noticing Agent”) in the Debtors’ chapter 11 cases, effective as of the Petition Date; all as more fully set forth in the Application; and upon the First Day Declaration and the Jordan 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Application is in the best interests of the Debtors’ estates, their creditors, and

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

<sup>2</sup> Capitalized terms used and not defined herein have the meanings ascribed to them in the Application.

other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application 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 Application 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 Application is granted.
2. Notwithstanding the terms of the Retention Agreement attached to the Application, the Application is granted solely as set forth in this Order.
3. The Debtors are authorized to retain KCC as Claims and Noticing Agent, effective as of the Petition Date, to perform the Claims Services set forth in the Application and under the terms of the Retention Agreement relating to such services, and KCC is authorized to perform such services.
4. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in this case and is authorized and directed to maintain the official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon request of the Clerk.
5. KCC is authorized and directed to provide an electronic interface for the filing of proofs of claim and to obtain a post office box or address for the receipt of proofs of claim. KCC shall provide access to the Claims Register without charge, including access to complete copies of proofs of claim with attachments, if any.

6. KCC is authorized to take such other actions to comply with all duties set forth in the Application and this Order.

7. KCC shall comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

8. Without further order of this Court, the Debtors are authorized to compensate KCC on a monthly basis in accordance with the terms and conditions of the Retention Agreement for the Claims Services, upon KCC's submission of monthly invoices summarizing in reasonable detail the services rendered and expenses incurred in connection therewith, without the need for KCC to file fee applications or otherwise seek court approval for the compensation of its services and reimbursement of its expenses.

9. KCC shall maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for any official committee monitoring the expenses of the Debtors, and any party in interest that specifically requests service of the monthly invoices.

10. The parties shall meet and confer in an attempt to resolve any dispute that may arise relating to the Retention Agreement or monthly invoices, and the parties may seek resolution of the matter from the Court if resolution is not achieved.

11. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, KCC's fees and expenses incurred in connection with the Claims Services shall be administrative expenses of the Debtors' chapter 11 estates.

12. KCC may first apply its retainer to all prepetition invoices and thereafter, have the retainer replenished to the original retainer amount and, thereafter, hold the retainer under the

Services Agreement during the cases as security for the payment of fees and expenses incurred under the Services Agreement.

13. Except to the extent set forth below, the Debtors are authorized to indemnify KCC under the terms of the Retention Agreement:

- (a) KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Retention Agreement for services other than the Claims Services provided under the Retention Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.
- (b) The Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, bad faith, self-dealing, breach of fiduciary duty (if any) or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of KCC's contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theater Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i), but determined by this Court, after notice and a hearing, to be a claim or expense for which Claims and Noticing Agent should not receive indemnity, contribution, or reimbursement under the terms of the Retention Agreement as modified by this Order.

14. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in the Debtors' chapter 11 cases (that order having become a final order no longer subject to appeal), or (b) the entry of an order closing the Debtors' chapter 11 cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Retention Agreement (as modified by this Order), including without limitation the advancement of defense costs, KCC must file an application therefor in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over

any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement. In the event that KCC seeks reimbursement from the Debtors for attorneys' fees and expenses in connection with the payment of an indemnity claim pursuant to the Retention Agreement, the invoices and supporting time records for the attorneys' fees and expenses shall be included in KCC's own applications, both interim and final, but determined by this Court after notice and a hearing.

15. In the event KCC is unable to provide the Claims Services, KCC will immediately notify the Clerk and the Debtors' counsel and cause all original proofs of claim and computer information to be turned over to another claims and noticing agent with the advice and consent of the Clerk and Debtors' counsel.

16. KCC shall not cease providing Claims Services during the Debtors' chapter 11 cases for any reason, including nonpayment, without an order of the Court.

17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Application.

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

**Exhibit B**

**Jordan Declaration**

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

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In re:	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (___)
	)	
Debtors.	)	(Joint Administration Requested)
	)	

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**DECLARATION OF ROBERT JORDAN  
IN SUPPORT OF DEBTORS' APPLICATION FOR ENTRY OF  
AN ORDER APPOINTING KURTZMAN CARSON CONSULTANTS LLC  
AS CLAIMS AND NOTICING AGENT EFFECTIVE AS OF MAY 20, 2020**

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Robert Jordan, being duly sworn, states the following under penalty of perjury:

1. I am a Managing Director, Corporate Restructuring Services of Kurtzman Carson Consultants LLC (“KCC”), who maintains an office at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California, 90245. I submit this declaration in support of the *Debtors’ Application for Entry of an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of May 20, 2020* (the “Application”)<sup>2</sup> pursuant to the terms of the Retention Agreement. The facts set forth herein are personally known to me and, if called as a witness, I could and would testify competently thereto.

2. KCC is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services including noticing, claims processing, solicitation, balloting,

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

<sup>2</sup> Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Application.

and other related services critical to the effective administration of chapter 11 cases. KCC has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing, claims processing, solicitation, and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders, and all other parties in interest. KCC has provided identical or substantially similar services in other chapter 11 cases nationwide, including before this Court.

3. As the Claims and Noticing Agent, KCC will perform, at the request of the Debtors and the Clerk, the services specified in the Application and the Retention Agreement.

4. KCC represents that it and its professional personnel:

- a. are not creditors, equity security holders, or insiders of the Debtors;
- b. are not, and were not, within two years before the date of the filing of the Debtors' bankruptcy cases, directors, officers, or employees of the Debtors; and
- c. do not have an interest materially adverse to the interests of the Debtors' estates or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

5. KCC further represents that:

- a. it is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- b. it will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Claims and Noticing Agent;
- c. by accepting employment in the Debtors' bankruptcy cases, KCC waives any right to receive compensation from the United States government;
- d. in its capacity as Claims and Noticing Agent, KCC will not be an agent of the United States and will not act on behalf of the United States;
- e. it will not employ any past or present employees of the Debtors in connection with its work as Claims and Noticing Agent;



- f. it will comply with all requests of the Clerk's office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c);
- g. none of the services provided by KCC as Claims and Noticing Agent in the Debtors' chapter 11 cases shall be at the expense of the Clerk's office;
- h. in its capacity as Claims and Noticing Agent in the Debtors' chapter 11 cases, KCC will not intentionally misrepresent any fact to any person; and
- i. it will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

6. In connection with the preparation of this declaration, I caused to be submitted for review by our conflicts system the names of interested parties and significant creditors (the "Potential Parties in Interest") in the Debtors' chapter 11 cases. The list of Potential Parties in Interest was provided by the Debtors and included the Debtors, the Debtors' current and former directors and officers, significant stockholders, secured creditors, top unsecured creditors, and other parties. The results of the conflicts check were compiled and reviewed by employees of KCC, under my supervision. At this time, KCC is not aware of any relationship that would present a disqualifying conflict of interest. KCC may have relationships with certain Potential Parties in Interest as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as noticing, claims, balloting, or administrative advisor for another chapter 11 debtor. However, given KCC's neutral position as Claims and Noticing Agent or administrative advisor in any other cases, KCC does not view such relationships as real or potential conflicts. Further, to the best of my knowledge, any such relationship is completely unrelated to these Debtors' chapter 11 cases. Accordingly, to the best of my knowledge, KCC and each of its employees are "disinterested persons," as that term is defined in section 101(14) of the Bankruptcy Code, and neither KCC nor any of its employees hold or represent an interest adverse to the Debtors' estates related to any matter for which KCC will be employed.

7. KCC has and will continue to represent clients in matters unrelated to the Debtors' chapter 11 cases. In addition, KCC has had and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties in interest that may be involved in the Debtors' chapter 11 cases in matters unrelated to the Debtors' chapter 11 cases. KCC may also provide professional services to entities or persons that may be creditors or parties in interest in the Debtors' chapter 11 cases, which services do not directly relate to, or have any direct connection with, the Debtors' chapter 11 cases or the Debtors.

8. KCC may have relationships with other professionals to be retained by the Debtors. Certain former employees of Kirkland & Ellis LLP ("K&E"), proposed counsel to the Debtors, currently are employed by KCC. Albert Kass, KCC's Senior Executive Vice President of Corporate Restructuring Services, is a former K&E associate. Adam Gorman, a Senior Managing Consultant with KCC's Corporate Restructuring Services, is a former K&E project assistant. Beth Friedman, a Senior Director of Corporate Restructuring was formerly the Restructuring Department Coordinator at K&E. None of these employees' work at K&E was related to the Debtors or these chapter 11 cases.

9. KCC is an indirect subsidiary of Computershare Limited. Computershare Limited is a financial services and technologies provider for the global securities industry, including providing administrative transfer agent services such as maintaining records of shareholdings and share transfers. Within the Computershare corporate structure, KCC operates as a separate, segregated business unit. As such, any relationships that Computershare Limited and its affiliates maintain do not create an interest of KCC that would be materially adverse to the

Debtors' estates or any class of creditors or equity security holders. Computershare Limited is the transfer agent for Debtor Akorn, Inc.

10. In performing the Claims Services as described in the Application, KCC will charge the rates in accordance with their Retention Agreement. These rates are at least as favorable as the prices KCC charges in other cases in which the firm has been retained to perform similar services.

11. In addition, the indemnification provisions set forth in the Retention Agreement reflect standard and customary terms of engagement contained in KCC's engagement letters both in and outside of bankruptcy. Based on my experience, these indemnification provisions are similar to provisions in the engagement letters of other similarly situated companies in engagements both in and outside of bankruptcy.

12. Prior to the Petition Date, the Debtors paid KCC a retainer in the amount of \$50,000 (the "Retainer"). Through the Application, KCC seeks to first apply the Retainer to all prepetition invoices, which Retainer shall be replenished to the original retainer amount, and thereafter, to hold such retainer under the Retention Agreement during the Debtors' chapter 11 cases as security for the payment of fees and expenses incurred under the Retention Agreement.

13. If appointed as Claims and Noticing Agent, KCC will not, without prior order from the Court authorizing KCC to do so, (a) cease providing Claims Services during the Debtors' chapter 11 cases for any reason, including nonpayment, or (b) undertake any legal representation of the Debtors, nor provide any advices of a legal nature, outside the scope of the duties outlined in the Application.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 21, 2020

*/s/ Robert Jordan* \_\_\_\_\_

Robert Jordan

Managing Director, Corporate Restructuring  
Kurtzman Carson Consultants LLC

*Proposed Claims and Noticing Agent of the  
Debtors and Debtors in Possession*

**Exhibit C**

**Retention Agreement**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the **6<sup>th</sup> day of February, 2020**, between **AKORN, INC.** (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention



## KCC AGREEMENT FOR SERVICES

Order”). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$50,000 (the “Retainer”) that may be held by KCC as security for the Company’s payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term “program” shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC’s performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company’s use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days’ written notice to the other party, release the required information.





## KCC AGREEMENT FOR SERVICES

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or



## KCC AGREEMENT FOR SERVICES

express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is materially prevented or impacted by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: dfoster@kccllc.com

Akorn, Inc.  
1925 West Field Court, #300  
Lake Forest, IL 60045  
Attn: Legal Dept.  
Tel: 847-279-6103

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other



## **KCC AGREEMENT FOR SERVICES**

agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### **XV. COUNTERPARTS; EFFECTIVENESS**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### **XVI. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### **XVII. ATTORNEYS' FEES**

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

*[Handwritten signature of Evan Gershbein]*

BY: Evan Gershbein DATE: 2/6/20  
TITLE: EVP, Corporate Restructuring Services

Akorn, Inc.

*[Handwritten signature of J Bonaccorsi]*

BY: J Bonaccorsi DATE: 02/06/2020  
TITLE: General Counsel



## FEE STRUCTURE

### Consulting Services & Rates<sup>1</sup>

#### Position

#### Hourly Rate

#### *Analyst*

\$30 - \$50

The Analyst processes incoming mail, including proofs of claim, ballots, creditor correspondence and returned mail. Also assists with the generation of mailing services.

#### *Technology/Programming Consultant*

\$35 - \$95

The Technology/Programming Consultant assists with complex system requests, including unique claim/ballot reporting and custom website updates.

#### *Consultant/Senior Consultant/Senior Managing Consultant*

\$65 - \$210

The Consultant is the day-to-day contact for mailings, including the preparation and filing of affidavits of service (a critical due process component). He/she also responds to creditor and counsel inquiries, maintains the public access website, identifies actionable pleadings (i.e., claims objections, notices of transfer, withdrawals, etc.) and updates the official claims register. KCC's Consultants average over six years of experience.

The Senior Consultant manages the various data collection processes required by the Chapter 11 process. This includes, among other things, compiling the creditor matrix and Schedules/SOFAs (and generating drafts of same for counsel and advisors), reviewing and processing claims, overseeing contract review, overseeing all mailings and generating custom claim and ballot reports. KCC's Senior Consultants average over seven years of experience.

The Senior Managing Consultant is the primary contact for the company, counsel and other professionals and oversees and supports the entirety of an engagement. KCC's SMCs average over twelve years of experience and are generally former practitioners.

#### *Securities/Solicitation Consultant<sup>2</sup>*

\$205

The Securities Director/Solicitation Consultant is the day-to-day contact and acts as advisor on transactions including balloting with treatment election, rights offers, exchange offers and complex plan distributions. This position handles service of related materials to banks, brokers and agents and manages tabulation and audit processes, preparing detailed reporting of results. In addition, the Solicitation Consultant provides support on all voting, tabulation, Schedule and SOFA services and other additional complex consulting tasks.

#### *Securities Director/Solicitation Lead*

\$215

The Solicitation Lead/Securities Director oversees all activities of the group and provides counsel with respect to solicitation and noticing events ensuring that processes employed are effective and practical for securities depositories, bank, brokers, nominees and their agents. In addition, the Solicitation Lead provides counsel on all voting, tabulation, Schedule and SOFA services and other additional complex consulting tasks.

#### *Weekend, holidays and overtime*

Waived

<sup>1</sup> Please note that additional professional services not covered by this proposal will be charged at hourly rates, including any outsourced services performed under our supervision and control.

<sup>2</sup> Certain events and technology development fees may be applicable.



## FEE STRUCTURE

### Printing Services & Noticing Services

Printing	\$0.10 per image (volume discounts apply)
Labels	Waived
Document folding and inserting	Waived
Envelopes	Varies by size
E-mail noticing	Waived <sup>3</sup>
Fax noticing	\$0.08 per page
Claim Acknowledgement Card	Waived
Insert creditor information into customized documents	Waived
Newspaper and legal notice publishing	Quote prior to publishing

### Claims Administration & Management Expenses

License fee and data storage	\$0.10 per record per month
Database and system access (unlimited users)	Waived
Custom client reports	Waived
Access to KCC CaseView (secure, password protected)	Waived
<ul style="list-style-type: none"> <li>• Proprietary, secured, password protected portal for unlimited users</li> <li>• Comprehensive case data, including extensive real time analytics on claim, solicitation and processing information</li> <li>• Functionality to run or request customized reports summarizing case analytics</li> </ul>	

### KCC eServices

Case website set up & hosting	Waived
Automated updates of case docket and claims register	Waived
Online claims filing (ePOC)	Waived

### Document Management/Imaging

Electronic imaging (scanning & bar coding)	\$0.10 per imaged page
Virtual Data Room	Quote prior to VDR set-up
CD-ROMS (mass document storage)	Varies upon requirements

<sup>3</sup> A set-up fee for email services larger than 100 parties may apply. This set-up fee varies depending on the total number of parties.



## FEE STRUCTURE

### Call Center Support Services

Case-specific voice-mail box for creditors	Waived
Interactive Voice Response ("IVR")	Set-up and per minute fee waived
Monthly maintenance charge	Waived
Management of Call Center	Standard hourly rates

### Disbursements

Check issuance	Quote prior to printing
W-9 mailing and maintenance of TIN database	See hourly rates and noticing charges