IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
AKORN, INC., *et al.*,[1]	)	Case No. 20-11177 (KBO)
	)	(Jointly Administered)
Debtors.	)	**Re: Docket No. 101, 102, 258 & 267**

NOTICE OF BLACKLINES OF (I) JOINT CHAPTER 11 PLAN OF AKORN, INC. AND ITS DEBTOR AFFILIATES AND (II) DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF AKORN, INC. AND ITS DEBTOR AFFILIATES

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On May 26, 2020, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 101] (the "Plan") and the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 102] (the "Disclosure Statement") with the United States Bankruptcy Court for the District of Delaware.

2. Contemporaneously with this filing, the Debtors filed revised versions of the Plan [Docket No. 258] (the "Revised Plan") and Disclosure Statement [Docket No. 267] (the "Revised Disclosure Statement").

[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.

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3. A blackline comparison of the Revised Plan marked against the Plan is attached hereto as **Exhibit 1**. A blackline comparison of the Revised Disclosure Statement marked against the Disclosure Statement is attached hereto as **Exhibit 2**.

4. The Debtors reserve the right to amend, modify, or supplement the Revised Plan or the Revised Disclosure Statement. To the extent that the Debtors make further revisions to the Revised Plan or the Revised Disclosure Statement, the Debtors will file further blacklined copies of the documents with the Court.

Wilmington, Delaware
June 30, 2020

/s/ Brett M. Haywood

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EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
AKORN, INC., et al.,[1]	)	Case No. 20-11177 (KBO)
Debtors.	)	(Jointly Administered)

JOINT CHAPTER 11 PLAN OF
AKORN, INC. AND ITS DEBTOR AFFILIATES

NOTHING CONTAINED HEREIN SHALL CONSTITUTE AN OFFER, ACCEPTANCE, COMMITMENT, OR LEGALLY BINDING OBLIGATION OF THE DEBTORS OR ANY OTHER PARTY IN INTEREST, AND THIS PLAN IS SUBJECT TO APPROVAL BY THE BANKRUPTCY COURT AND OTHER CUSTOMARY CONDITIONS. THIS PLAN IS NOT AN OFFER WITH RESPECT TO ANY SECURITIES.

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[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.

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INTRODUCTION

Capitalized terms used in this chapter 11 plan shall have the meanings set forth in Article I.A. Although proposed jointly for administrative purposes, the Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Interests pursuant to the Bankruptcy Code. Each Debtor is a proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code. The classifications of Claims and Interests set forth in Article III of the Plan shall be deemed to apply separately with respect to each Debtor, as applicable. The Plan does not contemplate substantive consolidation of any of the Debtors. Reference is made to the Disclosure Statement for a discussion of the Debtors' history, business, properties and operations, projections, risk factors, a summary and analysis of the Plan, the Restructuring Transactions, and certain related matters.

ARTICLE I
DEFINED TERMS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

A. Defined Terms.

As used in this Plan, capitalized terms have the meanings and effect as set forth below.

1. "*Acquired Entities*" means the Debtors acquired by the Purchaser pursuant to the Sale Transaction.

2. "*Ad Hoc Group Professionals*" means Gibson Dunn & Crutcher LLP, Greenhill & Co., LLC, and Young Conaway Stargatt & Taylor, LLP, in their capacities as advisors to certain Consenting Term Loan Lenders.

3. "*Administrative Claim*" means a Claim against any of the Debtors for costs and expenses of administration of the Chapter 11 Cases pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates; (b) Professional Fee Claims; (c) DIP Facility Claims; and (d) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

4. "*Administrative Claims Bar Date*" means the date that is thirty (30) days after the Effective Date, which is the deadline by which all requests for Administrative Claims (other than Professional Fee Claims) must be Filed and served on the Debtors.

5. "*Affiliate*" has the meaning set forth in section 101(2) of the Bankruptcy Code. With respect to any Person that is not a Debtor, the term "Affiliate" shall apply to such Person as if the Person were a Debtor.

6. "*Akorn Interests*" means any Interests in Akorn.

7. "*Akorn*" means Akorn, Inc.

8. "*Allowed*" means, with respect to any Claim against any of the Debtors, except as otherwise provided herein: (a) a Claim that is evidenced by a Proof of Claim Filed by the Claims Bar Date (or such other date as agreed by the Debtors pursuant to the Bar Date Order) or a request for payment of an Administrative Claim Filed by the Administrative Claims Bar Date (or for which Claim a Proof of Claim or request for payment of Administrative Claim is not or shall not be required to be Filed under the Plan, the Bankruptcy Code, the Bar Date Order, or pursuant to a Final Order); (b) a Claim that is listed in the Schedules as not contingent, not unliquidated, and not Disputed, and for which no contrary or superseding Proof of Claim, as applicable, has been timely Filed; or (c) a Claim allowed pursuant to the Plan or a Final Order; *provided that* with respect to a Claim described in clauses (a) and (b) above, such Claim shall be considered Allowed only if and to the extent that, with respect to such Claim, no objection to the allowance thereof is interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court or such an objection is so interposed and the Claim has been Allowed by a Final Order. Notwithstanding anything to the contrary herein, no Claim of any Entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a

transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Allowed, unless and until such Entity or transferee has paid the amount, or turned over any such property, for which such Entity or transferee is liable under sections 522(i), 542, 543, 550, or 553 of the Bankruptcy Code. For the avoidance of doubt, a Proof of Claim Filed after the Claims Bar Date or a request for payment of an Administrative Claim Filed after the Administrative Claims Bar Date shall not be Allowed for any purposes whatsoever absent entry of a Final Order allowing such late-Filed Claim. "*Allow*" and "*Allowing*" shall have correlative meanings.

9. "*Assumed Contracts and Leases List*" means the list of those Executory Contracts and Unexpired Leases not assumed by the Purchaser to be assumed by the Debtors or assumed and assigned by the Debtors to the Plan Administrator or any other Entity pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time by the Debtors.

10. "*Assumed Liabilities*" has the meaning set forth in the Sale Transaction Documentation, and shall include the Purchaser Assumed Claims.

11. "*Auction*" has the meaning set forth in the Bidding Procedures Order.

12. "*Avoidance Actions*" means any and all causes of action to avoid a transfer of property or an obligation incurred by any of the Debtors arising under sections 542, 544, 545, and 547 through and including 553 of the Bankruptcy Code or other similar or related Law.

13. "*Ballot*" means the form of ballot approved by the Bankruptcy Court and distributed to Holders of Impaired Claims entitled to vote on the Plan on which is to be indicated the acceptance or rejection of the Plan.

14. "*Bankruptcy Code*" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532.

15. "*Bankruptcy Court*" means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Chapter 11 Cases, including to the extent of the withdrawal of reference under 28 U.S.C. § 157, the United States District Court for the District of Delaware.

16. "*Bankruptcy Rules*" means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under section 2075 of title 28 of the United States Code, as applicable to the Chapter 11 Cases, and the general, local, and chambers rules of the Bankruptcy Court.

17. "*Bar Date Order*" means the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment under Section 503(B)(9), (II) Setting a Bar Date for the Filing of Proofs of Claim by Governmental Units, (III) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (IV) Approving the Form and Manner for Filing Proofs of Claim, and (V) Approving Notice of the Bar Dates* [Docket No. ~~[●]~~**134**] (as amended, modified or supplemented from time to time in accordance with the terms thereof).

18. "*Bidding Procedures Order*" means the *Order (~~I~~**A) Authorizing and** Approving Bidding Procedures, (~~II~~**B**) Scheduling ~~the Bid Deadlines and the~~**an** Auction **and a Sale Hearing**, (~~III~~**C**) Approving the Form and Manner of Notice Thereof, ~~and (IV~~**(D) Establishing Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Leases, and (E)** Granting Related Relief* [Docket No. ~~[●]~~**181**] (as amended, modified or supplemented from time to time in accordance with the terms thereof), which shall be in form and substance reasonably acceptable to the Debtors and the Required Consenting Term Loan Lenders, consistent with the consent rights under the Restructuring Support Agreement and the Stalking Horse APA.

19. "*Bidding Procedures*" means the bidding procedures attached as Exhibit 1 to the Bidding Procedures Order, as such bidding procedures may be amended from time to time in accordance with their terms, which shall be in form and substance reasonably acceptable to the Debtors and the Required Consenting Term Loan Lenders, consistent with the consent rights under the Restructuring Support Agreement and the Stalking Horse APA.

20. "*Business Day*" means any day, other than a Saturday, Sunday, or a "legal holiday," as defined in Bankruptcy Rule 9006(a).

21. "*Cash*" means the legal tender of the United States of America or the equivalent thereof, including bank deposits and checks.

22. "*Causes of Action*" means any and all actions, claims, causes of action, controversies, demands, rights, actions, Liens, indemnities, interests, guaranties, suits, obligations, liabilities, damages, judgments, accounts, defenses, offsets, powers, privileges, licenses, and franchises of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, Disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law. For the avoidance of doubt, "*Causes of Action*" includes: (a) any rights of setoff, counterclaims, or recoupments and any claims for breach of contract or for breach of duties imposed by law or in equity; (b) any and all claims based on or relating to, or in any manner arising from, in whole or in part, tort, breach of contract, breach of fiduciary duty, violation of state or federal Law or breach of any duty imposed by law or in equity, including securities laws, negligence, and gross negligence; (c) any and all rights to dispute, object to, compromise, or seek to recharacterize, reclassify, subordinate or disallow Claims or Interests; (d) any and all Claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (e) any and all claims or defenses including fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (f) any and all state or foreign Law fraudulent transfer or similar claims.

23. "*Chapter 11 Cases*" means the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court pursuant to the *Order (I) Directing Joint Administration of the Debtors' Related Chapter 11 Cases and (II) Granting Related Relief* [Docket No. 57] (as amended, modified, or supplemented from time to time in accordance with the terms thereof).

24. "*Claim*" has the meaning set forth in section 101(5) of the Bankruptcy Code.

25. "*Claims Bar Date*" means the applicable bar date by which Proofs of Claim must be Filed, as established by: (a) the Bar Date Order; (b) a Final Order of the Bankruptcy Court; or (c) the Plan; *provided that* if there is a conflict relating to the bar date for a particular Claim, the Plan shall control.

26. "*Claims Register*" means the official register of Claims against the Debtors maintained by the clerk of the Bankruptcy Court or the Notice and Claims Agent.

27. "*Class*" means a category of holders of Claims or Interests under section 1122(a) of the Bankruptcy Code.

28. "*Collateral*" means any property or interest in property of the Estate of any Debtor subject to a Lien, charge, or other encumbrance to secure the payment or performance of a Claim, which Lien, charge, or other encumbrance is not subject to a Final Order ordering the remedy of avoidance of any such Lien, charge, or other encumbrance under the Bankruptcy Code.

29. "*Committee*" means a statutory committee of unsecured creditors, appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code by the U.S. Trustee.

30. "*Confirmation Date*" means the date on which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

31. "*Confirmation Hearing*" means the hearing(s) before the Bankruptcy Court under section 1128 of the Bankruptcy Code at which the Debtors shall seek entry of the Confirmation Order.

32. "*Confirmation Objection Deadline*" has the meaning set forth in the Disclosure Statement Order.

33. "*Confirmation Order*" means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code, with such order being consistent with the Restructuring Support Agreement and otherwise in form and substance acceptable to the Debtors and the Required Consenting Term Loan Lenders.

34. "*Confirmation*" means entry of the Confirmation Order on the docket of the Chapter 11 Cases.

35. "*Consenting Term Loan Lenders*" means the Holders of Term Loan Claims that are or become parties to the Restructuring Support Agreement, solely in their capacity as such.

36. "*Consummation*" means the occurrence of the Effective Date.

37. "*Cure Costs*" means the amount necessary to cure all monetary defaults under the Assumed Contracts and Leases pursuant to section 365(b) of the Bankruptcy Code.

38. "*Cure Notice*" has the meaning set forth in the Bidding Procedures Order.

39. "*D&O Policies*" means all insurance policies (including any "tail policy" or run-off endorsement) that have been issued at any time to any of the Debtors as a first named insured providing directors', members', trustees', officers', or managers' liability coverage.

40. "*Debtors*" means, collectively: (a) Akorn, Inc.; (b) 10 Edison Street LLC; (c) 13 Edison Street LLC; (d) Advanced Vision Research, Inc.; (e) Akorn (New Jersey), Inc.; (f) Akorn Animal Health, Inc.; (g) Akorn Ophthalmics, Inc.; (h) Akorn Sales, Inc.; (i) Clover Pharmaceuticals Corp.; (j) Covenant Pharma, Inc.; (k) Hi-Tech Pharmacal Co., Inc.; (l) Inspire Pharmaceuticals, Inc.; (m) Oak Pharmaceuticals, Inc.; (n) Olta Pharmaceuticals Corp.; (o) VersaPharm Incorporated; (p) VPI Holdings Corp.; and (q) VPI Holdings Sub, LLC.

41. "*Description of Transaction Steps*" means, if applicable, the description of the steps to be carried out to effectuate the Restructuring Transactions in accordance with the Plan and as set forth in the Plan Supplement, as determined by the Debtors and the Required Consenting Term Loan Lenders.

42. "*DIP Agent*" means Wilmington Savings Fund Society, FSB, or any successor thereto, in its capacities as administrative and collateral agent under the DIP Facility.

43. "*DIP Credit Agreement*" means that certain Superpriority Secured Debtor in Possession Credit Agreement, dated as of May 22, 2020, by and among the Debtors, the DIP Lenders, and the DIP Agent, as may be amended, restated, supplemented, or otherwise modified from time to time, which shall be in form and substance reasonably acceptable to the Debtors and the Required Consenting Term Loan Lenders, and in form and substance acceptable to the DIP Lenders, in each case consistent with the consent rights under the Restructuring Support Agreement, the Stalking Horse APA, and the DIP Credit Agreement, as applicable.

44. "*DIP Facility Claims*" means any Claim against any of the Debtors arising under the DIP Facility or the Final DIP Order, including Claims for all principal amounts outstanding, interest, fees, expenses, costs, and other charges and obligations.

45. "*DIP Facility*" has the meaning set forth in the Final DIP Order.

46. "*DIP Lenders*" means collectively, the lenders from time to time party to the DIP Credit Agreement.

47. "DIP Loan Documents" means the DIP Credit Agreement and any other documentation necessary to effectuate the incurrence of the DIP Facility, which shall be in form and substance acceptable to the Debtors, the DIP Lenders, and the Required Consenting Term Loan Lenders

48. "*Disbursing Agent*" means the Debtors or the Plan Administrator (as applicable), or the Entity or Entities selected by the Debtors or the Plan Administrator to make or facilitate distributions contemplated under the Plan.

49. "*Disclosure Statement Order*" means the order of the Bankruptcy Court approving the adequacy of the Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and solicitation procedures with respect to the Plan entered by the Bankruptcy Court on [●], 2020 [Docket No. [●]] (as amended, modified or supplemented from time to time in accordance with the terms thereof and the Restructuring Support Agreement), with such order being consistent with the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Debtors and the Required Consenting Term Loan Lenders, consistent with the consent rights under the Restructuring Support Agreement and the Stalking Horse APA.

50. "*Disclosure Statement*" means the *Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. ~~[●]~~**102**], (as amended, modified or supplemented from time to time in accordance with the Restructuring Support Agreement, including all exhibits and schedules thereto and references therein, and all related solicitation materials, that relate to the Plan, that is prepared and distributed in accordance with the Bankruptcy Code, the Bankruptcy Rules, and any other applicable Law), which shall be consistent with the Restructuring Support Agreement and otherwise in form and substance reasonably acceptable to the Debtors and the Required Consenting Term Loan Lenders, consistent with the consent rights under the Restructuring Support Agreement and the Stalking Horse APA.

51. "*Disputed*" means, with respect to any Claim or Interest, any Claim or Interest, or any portion thereof, (a) to the extent neither Allowed nor disallowed under the Plan or a Final Order nor deemed Allowed under sections 502, 503, or 1111 of the Bankruptcy Code, or (b) for which a Proof of Claim or Proof of Interest or a motion for payment has been timely filed with the Bankruptcy Court, to the extent the Debtors or any other party in interest has interposed a timely objection or request for estimation in accordance with the Plan, the Bankruptcy Code, or the Bankruptcy Rules, which objection or request for estimation has not been withdrawn or determined by a Final Order; *provided*, *however*, that in no event shall a Claim that is deemed Allowed pursuant to this Plan be a Disputed Claim.

52. "*Distributable Proceeds*" means all Cash of the Debtors on or after the Effective Date, after giving effect to the funding of the Professional Fee Escrow Account.

53. "*Distribution Record Date*" means the record date for purposes of determining which Holders of Allowed Claims against or Allowed Interests in the Debtors are eligible to receive distributions under the Plan, which date shall be the Confirmation Date, or such other date as is agreed to by the Debtors and the Required Consenting Term Loan Lenders, or designated in a Final Order.

54. "*Effective Date*" means, with respect to the Plan and any applicable Debtors, the date that is the first Business Day after the Confirmation Date on which all conditions precedent to the occurrence of the Effective Date set forth in Article IX.B of the Plan have been satisfied or waived in accordance with Article IX.C of the Plan.

55. "*Entity*" has the meaning set forth in section 101(15) of the Bankruptcy Code.

56. "*Estate*" means, as to each Debtor, the estate created for such Debtor pursuant to sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor's Chapter 11 Case.

57. "*Exculpated Party*" means, collectively: (a) the Debtors; (b) ~~the Consenting Term Loan Lenders; (c) the Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f)~~ the Committee and each of its members; and (~~g~~**c**) with respect to each of the foregoing Entities in clauses (a) ~~through~~**and** (~~f~~**b**), each Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their respective capacities as such.

58. "*Executory Contract*" means a contract to which one or more of the Debtors is a party that is subject to assumption, assumption and assignment, or rejection under section 365 or 1123 of the Bankruptcy Code.

59. "*Federal Judgment Rate*" means the federal judgment interest rate in effect as of the Petition Date calculated as set forth in the 1961 Judicial Code.

60. "*File*," "*Filed*," or "*Filing*" means file, filed, or filing in the Chapter 11 Cases with the Bankruptcy Court or, with respect to the filing of a Proof of Claim, the Notice and Claims Agent or the Bankruptcy Court.

61. "*Final DIP Order*" means the ~~[~~*Final Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing~~,~~ and (B) to ~~Use~~**Utilize** Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief*, entered by the Bankruptcy Court on ~~[●]~~,**June 15,** 2020 [Docket No. ~~[●]~~**179**] (as amended, modified or supplemented from time to time in accordance with the terms thereof and the Restructuring Support Agreement), which shall be in form and substance reasonably acceptable to the Debtors and the Required Consenting Term Loan Lenders, and in form and substance acceptable to the DIP Lenders, in each case consistent with the consent rights under the Restructuring Support Agreement, the Stalking Horse APA, and the DIP Credit Agreement, as applicable.

62. "*Final Order*" means an order of the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, modified or amended, that is not stayed, and as to which the time to appeal or seek certiorari has expired and no appeal or petition for certiorari has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be Filed has been resolved by the highest court to which the order could be appealed or from which certiorari could be sought or the new trial, reargument or rehearing shall have been denied, resulted in no modification of such order or has otherwise been dismissed with prejudice.

63. "*Final Utility Order*" means the *Final Order (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief* [Docket No. ~~[●]~~**171**] (as amended, modified or supplemented from time to time in accordance with the terms thereof).

64. "*Fresenius Litigation Claims*" means any Claim arising from or relating to the Fresenius Litigation.

65. "*Fresenius Litigation*" means that certain litigation captioned *Akorn, Inc. v. Fresenius Kabi AG, Quercus Acquisition, Inc. and Fresenius SE & Co. KGaA*, No. 2018-0300-JTL (Del. Ch. Apr. 23, 2018).

66. "*General Unsecured Claim*" means any unsecured Claim against any of the Debtors that is not: (a) paid in full prior to the Effective Date pursuant to an order of the Bankruptcy Court; (b) an Administrative Claim; (c) an Intercompany Claim; (d) an Other Priority Claim; (e) a Priority Tax Claim; (f) a Professional Fee Claim; (g) a Section 510(b) Claim; or (h) a Purchaser Assumed Claim.

67. "*Governmental Unit*" has the meaning set forth in section 101(27) of the Bankruptcy Code.

68. "*Holder*" means an Entity holding a Claim against or an Interest in a Debtor, as applicable.

69. "*Impaired*" means, with respect to a Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

70. "*Initial Distribution Date*" means the date on which the Debtors or the Disbursing Agent, as applicable, make initial distributions to Holders of Allowed Claims pursuant to the Plan.

71. "*Intercompany Claim*" means any Claim against a Debtor held by another Debtor or Non-Debtor Subsidiary.

72. "*Intercompany Interest*" means any Interest held by a Debtor in another Debtor or Non-Debtor Subsidiary.

73. "*Interest*" means the common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Debtor, and options, warrants, rights, or other securities or agreements to acquire the common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Debtor (whether or not arising under or in connection with any employment agreement).

74. "*Interim Compensation Order*" means the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. ~~[●]~~**218**] (as amended, modified or supplemented from time to time in accordance with the terms thereof).

75. "*Interim Utility Order*" means the *Interim Order (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief* [Docket No. 70] (as amended, modified or supplemented from time to time in accordance with the terms thereof).

76. "*Law*" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

77. "*Lien*" has the meaning set forth in section 101(37) of the Bankruptcy Code.

78. "*Local Rules*" means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

79. "*Non-Debtor Subsidiary*" means any direct or indirect subsidiary of Akorn that is not a Debtor in the Chapter 11 Cases.

80. "*Notice and Claims Agent*" means Kurtzman Carson Consultants LLC, solely in its capacity as notice, claims, and solicitation agent for the Debtors in the Chapter 11 Cases.

81. "*Ordinary Course Professional*" means an Entity (other than a Professional) retained and compensated by the Debtors in accordance with the Ordinary Course Professionals Order.

82. "*Ordinary Course Professionals Order*" means the *Order Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business* [Docket No. ~~[●]~~**222**] (as amended, modified or supplemented from time to time in accordance with the terms thereof).

83. "*Other Priority Claim*" means any Claim against any of the Debtors other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

84. "*Other Secured Claim*" means any Secured Claim (including Secured Tax Claims) against any of the Debtors, other than a DIP Facility Claim or a Term Loan Claim.

85. "*Person*" has the meaning set forth in section 101(41) of the Bankruptcy Code.

86. "*Petition Date*" means May 20, 2020, the date on which the Chapter 11 Cases were commenced.

87. "*Plan Administrator*" means the Person or Entity, or any successor thereto, designated by the Debtors, in consultation with the Required Consenting Term Loan Lenders, who will be disclosed at or prior to the Confirmation Hearing, to have all powers and authorities set forth in Article IV.E of this Plan.

88. "*Plan Supplement*" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan (as may be altered, amended, modified, or supplemented from time to time in accordance with the Restructuring Support Agreement and the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed at least five (5) days prior to the Voting Deadline or such later date as may be approved by the Bankruptcy Court, including the following, as applicable: (a) the Assumed Contracts and Leases List; (b) the identity of the Plan Administrator and the terms of compensation of the Plan Administrator; (c) Schedule of Retained Causes of Action; (d) any transition services agreement between the Purchaser and the Debtors; (e) the Description of Transactions Steps, if applicable; and (f) any other necessary documentation related to the Restructuring Transactions as contemplated by the Restructuring Support Agreement, each of which shall be consistent with the Restructuring Support Agreement and acceptable in form and substance to the Debtors and the Required Consenting Term Loan Lenders; *provided that*, through the Effective Date, the Plan Supplement, and the exhibits thereto may be amended or modified in accordance with this Plan and the Restructuring Support Agreement, provided that any such amendment or modification shall be acceptable in form and substance to the Debtors and the Required Consenting Term Loan Lenders.

89. "*Plan*" means this chapter 11 plan, including all exhibits, supplements (including the Plan Supplement), appendices, and schedules (as amended, modified or supplemented from time to time in accordance with the terms hereof).

90. "*Priority Claims*" means, collectively, Administrative Claims, Priority Tax Claims, and Other Priority Claims.

91. "*Priority Tax Claim*" means any Claim against the Debtors of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

92. "*Pro Rata*" means the proportion that an Allowed Claim or an Allowed Interest in a particular Class bears to the aggregate amount of Allowed Claims or Interests in that Class.

93. "*Professional Fee Claim*" means any Administrative Claim for the compensation of Professionals and the reimbursement of expenses incurred by such Professionals through and including the Confirmation Date to the extent such fees and expenses have not been paid pursuant to an order of the Bankruptcy Court. To the extent the Bankruptcy Court denies or reduces by a Final Order any amount of a Professional's requested fees and expenses, then the amount by which such fees or expenses are reduced or denied shall reduce the applicable Professional Fee Claim.

94. "*Professional Fee Escrow Account*" means an account funded by the Debtors with Cash as soon as practicable after Confirmation and not later than the Effective Date in an amount equal to the Professional Fee Escrow Amount.

95. "*Professional Fee Escrow Amount*" means the reasonable estimate of the aggregate amount of Professional Fee Claims and other unpaid fees and expenses the Professionals have incurred or will incur in rendering services to the Debtors prior to and as of the Confirmation Date, which estimates Professionals shall deliver to the Debtors (and the Debtors shall deliver to the Ad Hoc Group Professionals) as set forth in Article II.B of the Plan.

96. "*Professional*" means an Entity (other than an Ordinary Course Professional): (a) employed, or proposed to be employed prior to the Confirmation Date, in the Chapter 11 Cases pursuant to a Final Order in accordance with sections 327 and 1103 of the Bankruptcy Code and to be compensated for services rendered prior to or on the Confirmation Date pursuant to sections 327, 328, 329, 330, and 331 of the Bankruptcy Code; or (b) for which compensation and reimbursement has been Allowed by the Bankruptcy Court pursuant to section 503(b)(4) of the Bankruptcy Code. For the avoidance of doubt, "Professional" does not include the Ad Hoc Group Professionals.

97. "*Proof of Claim*" means a proof of Claim Filed against any of the Debtors in the Chapter 11 Cases.

98. "*Purchased Assets*" means all of the assets of the Debtors that are purchased by the Purchaser pursuant to the Sale Order; *provided that*, for the avoidance of doubt, the Distributable Proceeds and the Retained Assets shall not be Purchased Assets.

99. "*Purchaser Assumed Claims*" means those Claims against the Debtors that were Assumed Liabilities under the Sale Transaction Documentation; *provided that* Purchaser Assumed Claims shall not include any claims resulting from the rejection of an Executory Contract or Unexpired Lease.

100. "*Purchaser*" means the Entity whose bid for substantially all of the Purchased Assets is selected by the Debtors and approved by the Bankruptcy Court as the highest and otherwise best bid pursuant to the Bidding Procedures.

101. "*Reinstate*," "*Reinstated*," or "*Reinstatement*" means with respect to Claims and Interests, that the Claim or Interest shall be rendered unimpaired in accordance with section 1124 of the Bankruptcy Code.

102. "*Released Parties*" means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Consenting Term Loan Lenders; (c) the Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f) all Releasing Parties; (g) the Acquired Entities; and (h) with respect to each Entity in clause (a) through (g), each such Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such (unless any such Entity or related party has opted out of being a Releasing Party, in which case such Entity or related party, as applicable, shall not be a Released Party).

103. "*Releasing Parties*" means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Consenting Term Loan Lenders; (c) the Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f) the Acquired Entities; (g) all Holders of Claims or Interests that are presumed to accept the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan; (h) all Holders of Claims or Interests who vote to accept the Plan; (i) all Holders of Claims or Interests that (x) abstain from voting on the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan, (y) vote to reject the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan, or (z) are deemed to reject the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan; (j) with respect to each Entity in clause (a) through (i), each such Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such ~~(unless any such Entity or related party has opted out of being a Releasing Party, in which case such Entity or related party, as applicable, shall not be a Releasing Party)~~.

104. "*Required Consenting Term Loan Lenders*" means Consenting Term Loan Lenders holding more than 60.00% of the aggregate outstanding principal amount of Term Loans that are held by Consenting Term Loan Lenders.

105. "*Restructuring Support Agreement*" means that certain Restructuring Support Agreement, dated as of May 20, 2020, including the restructuring term sheet attached as Exhibit E thereto, by and among the Debtors and the other parties thereto, as may be amended, modified, or supplemented from time to time, in accordance with its terms.

106. "*Restructuring Transactions*" means the transactions described in Article IV.C.

107. "*Retained Assets*" means: (a) any Distributable Proceeds not distributed on the Effective Date; (b) the Wind-Down Amount; (c) the D&O Policies; (d) the Retained Causes of Action; and (e) the Excluded Assets (as defined in the Sale Transaction Documentation). For the avoidance of doubt, the Retained Assets shall not include: (x) the Transferred Assets; (y) any Causes of Action waived, released or transferred pursuant to the Plan; or (z) the Professional Fee Escrow Account.

108. "*Retained Causes of Action*" means those Causes of Action that shall vest in the Debtors on the Effective Date and for the avoidance of doubt, Retained Causes of Action shall not include any of the Transferred Causes of Action, or any Causes of Action that are settled, released, or exculpated under the Plan.

109. "*Sale Order*" means the *Order (A) Approving the Asset Purchase Agreement, (B) Authorizing the Sale of Assets, (C) Authorizing the Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief*, entered by the Bankruptcy Court on [●], 2020 [Docket No. [●]].

110. "*Sale Transaction Documentation*" means definitive documentation for the Sale Transaction

111. "*Sale Transaction*" means the transfer of the Transferred Assets to the Purchaser and the assumption by the Purchaser of the Assumed Liabilities free and clear of all Liens, Claims, charges, and other encumbrances (other than the Assumed Liabilities) pursuant to section 363 of the Bankruptcy Code on the terms and conditions set forth in the Restructuring Support Agreement, the Sale Order, and Sale Transaction Documentation.

112. "*Schedules*" means, collectively, the schedules of assets and liabilities, schedules of Executory Contracts and Unexpired Leases, and statements of financial affairs to be Filed by the Debtors pursuant to section 521 of the Bankruptcy Code.

113. "*Section 510(b) Claim*" means any Claim against any of the Debtors that is subordinated under section 510(b) of the Bankruptcy Code, including, for the avoidance of doubt, the Fresenius Litigation Claims and any Shareholder Litigation Claims not settled pursuant to the Shareholder Settlement.

114. "*Secured Tax Claim*" means any Secured Claim against any of the Debtors that, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code (determined irrespective of time limitations), including any related Secured Claim for penalties.

115. "*Secured*" or "*Secured Claim*" means, when referring to a Claim, a Claim that is: (a) secured by a Lien on collateral to the extent of the value of such collateral, as determined in accordance with section 506(a) of the Bankruptcy Code; or (b) subject to a valid right of setoff pursuant to section 553 of the Bankruptcy Code to the extent of the value of such right of setoff.

116. "*Securities Act*" means the U.S. Securities Act of 1933.

117. "*Security*" has the meaning set forth in section 2(a)(1) of the Securities Act.

118. "*Shareholder Litigation Claims*" means any Claim relating to the Shareholder Litigation.

119. "*Shareholder Litigation*" means that certain litigation captioned *In re Akorn, Inc. Data Integrity Securities Litigation*, Civ. A. No. 1:18-cv-01713 (N.D. Ill. Mar. 8, 2018).

120. "*Shareholder Settlement*" means the full and final settlement and resolution of any and all Shareholder Litigation Claims that did not "opt out" of such settlement pursuant to that certain *Order and Final Judgment Approving Class Action Settlement* [Document No. 190].

121. "*Standstill Agreement*" means that certain standstill agreement, dated as of May 6, 2019, by and among Akorn, certain Term Loan Lenders under the Term Loan Credit Agreement, and the Term Loan Agent (as may be amended, restated, or otherwise modified from time to time in accordance with its terms).

122. "*Subsequent Distribution Date*" means a date following the Initial Distribution Date on which the Disbursing Agent in its reasonable discretion, elects to make distributions to Holders of certain Allowed Claims pursuant to the Plan.

123. "*Term Loan Agent*" means 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.

124. "*Term Loan Claim*" means any Claim against any of the Debtors on account of the Term Loan Credit Agreement, including Claims for all principal amounts outstanding, interest, fees, expenses, costs, and other charges and obligations.

125. "*Term Loan Credit Agreement*" means that certain Term Loan Credit Agreement, dated as of April 17, 2014, by and among Akorn, as borrower, and certain of the Debtors as guarantors party thereto, the Term Loan Agent, and the other lender parties thereto, as may be amended, restated, or otherwise supplemented from time to time (including by the Standstill Agreement).

126. "*Term Loan Credit Bid Amount*" means the amount of the Term Loan Claims that comprise the credit bid under the Term Loan Credit Bid Transaction.

127. "*Term Loan Credit Bid Transaction*" means a Sale Transaction to the Term Loan Agent or its designee on account of a credit bid of some or all of the Term Loan Claims, which credit bid is selected by the Debtors as the highest and best bid for the Purchased Assets as set forth in the Bidding Procedures Order and as approved by the Bankruptcy Court pursuant to the Sale Order.

128. "*Term Loan Lenders*" means the lenders under the Term Loan Credit Agreement, each in their capacities as such.

129. "*Term Loan*" or "*Term Loans*" means the loans outstanding under the Term Loan Credit Agreement.

130. "*Transferred Assets*" means the Purchased Assets, the Transferred Causes of Action, and the Interests of any Debtors that are transferred to Purchaser as part of the Sale Transaction.

131. "*Transferred Causes of Action*" means any and all Causes of Action held by the Debtors as of the Effective Date that are not expressly released or retained by the Debtors pursuant to the Sale Transaction; *provided that* Transferred Causes of Action did not include (i) Avoidance Actions not related to the Transferred Assets; (ii) certain Causes of Action to be mutually agreed upon by the Debtors and the Purchaser; or (iii) Causes of Action that are settled, released, or exculpated under the Plan.

132. "*U.S. Person*" has the meaning given to such term in rule 902 promulgated under the Securities Act.

133. "*U.S. Trustee Fees*" means fees arising under 28 U.S.C. § 1930(a)(6) and, to the extent applicable, accrued interest thereon arising under 31 U.S.C. § 3717.

134. "*U.S. Trustee*" means the Office of the United States Trustee for the District of Delaware.

135. "*Undeliverable Distribution*" means any distribution under the Plan on account of an Allowed Claim or Allowed Interest to a Holder that has not: (a) accepted a particular distribution or, in the case of distributions made by check, negotiated such check; (b) given notice to the Debtors of an intent to accept a particular distribution; (c) responded to the Debtors' requests for information necessary to facilitate a particular distribution; or (d) taken any other action necessary to facilitate such distribution.

136. "*Unexpired Lease*" means a lease of nonresidential real property to which one or more of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

137. "*Unimpaired*" means a Class of Claims or Interests that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

138. "*Utility Orders*" means the Interim Utility Order and Final Utility Order.

139. "*Voting Deadline*" has the meaning set forth in the Disclosure Statement Order.

140. "*Voting Report*" means the report certifying the methodology for the tabulation of votes and results of voting under the Plan, prepared and filed by the Notice and Claims Agent.

141. "*Waterfall Recovery*" means the priority distribution of Distributable Proceeds, which shall be allocated and paid to the Holders of Claims or Interests, as applicable, until paid in full from time to time in the following priority (in each case on a Pro Rata basis): (a) *first,* on account of Allowed Administrative Priority Claims, DIP Facility Claims, and Priority Tax Claims, (b) *second*, on account of Allowed Other Secured Claims; (c) *third,* on account of Allowed Other Priority Claims; (d) *fourth,* on account of Allowed Term Loan Claims; (v) *fifth,* on account of any Allowed General Unsecured Claims that are not assumed by the Purchaser; and (e) *sixth*, on account of Allowed Section 510(b) Claims and Allowed Akorn Interests.

142. "*Wind-Down Amount*" means Cash in an amount, to be determined by the Debtors, which amount shall be retained by the Debtors in accordance with the terms of the Sale Transaction Documentation, including the wind-down budget attached as Exhibit G to the Stalking Horse APA (as defined in the Bidding Procedures) in the event that the Sale Transaction is a Term Loan Credit Bid Transaction, and used by the Plan Administrator to fund the Wind Down.

143. "*Wind-Down*" means the wind down and dissolution of the Debtors' Estates as set forth in Article IV.F.

B. Rules of Interpretation.

For purposes of the Plan: (i) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (ii) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (iii) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit, shall mean such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented; (iv) unless otherwise specified, all references herein to "Articles" and "Sections" are references to Articles and Sections, respectively, hereof or hereto; (v) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to any particular portion of the Plan; (vi) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; (vii) unless otherwise specified herein, the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (viii) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term in the Bankruptcy Code or the Bankruptcy Rules, as applicable; (ix) references to docket numbers of documents Filed in the Chapter 11 Cases are references to the docket numbers under the Bankruptcy Court's CM/ECF system; (x) all references to statutes, regulations, orders, rules of courts, and the like shall mean as amended from time to time, and as applicable to the Chapter 11 Cases, unless otherwise stated; (xi) any effectuating provisions may be interpreted (subject to the terms of the Restructuring Support Agreement) by the Debtors or the Plan Administrator in such a manner that is consistent with the overall purpose and intent of the Plan all without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity, and such interpretation shall control; *provided that* no effectuating provision shall be immaterial or deemed immaterial if it has any substantive legal or economic effect on any party; (xii) except as otherwise provided in the Plan, any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter; and (xiii) on and after the Effective Date, all references to the Debtors in this Plan shall be deemed references to the Debtors or the Plan Administrator, as applicable.

C. Computation of Time.

Unless otherwise specifically stated herein, the provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein. If the date on which a transaction may occur pursuant to the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next

succeeding Business Day. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable after the Effective Date.

D. Governing Law.

Except to the extent the Bankruptcy Code or Bankruptcy Rules apply, and subject to the provisions of any contract, lease, instrument, release, indenture, or other agreement or document entered into expressly in connection herewith, the rights and obligations arising hereunder shall be governed by, and construed and enforced in accordance with the Laws of the State of New York, without giving effect to conflict of laws principles.

E. Reference to Monetary Figures.

All references in the Plan to monetary figures shall refer to the legal tender of the United States, unless otherwise expressly provided.

F. Controlling Document.

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of an inconsistency between the Plan, the Disclosure Statement, and the Plan Supplement, the relevant Plan provision shall control (unless stated otherwise in such document or in the Confirmation Order). In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

ARTICLE II
ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, DIP FACILITY CLAIMS, AND PRIORITY TAX CLAIMS

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and DIP Facility Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III of the Plan.

A. Administrative Claims.

Except with respect to Professional Fee Claims and DIP Facility Claims, or as otherwise set forth herein, subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, and except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtors or the Plan Administrator, agree to less favorable treatment or such Holder has been paid by any applicable Debtor prior to the Effective Date, the Debtors or the Plan Administrator shall, in consultation with the Required Consenting Term Loan Lenders, pay each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash, which payment shall be made (x) in the ordinary course of business, or (y) on the later of (i) the Effective Date and (ii) the date on which such Administrative Claim becomes an Allowed Claim or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter) with a Cash distribution; *provided that* any Allowed Administrative Claim that has been expressly assumed by the Purchaser under the Sale Transaction Documentation shall not be an obligation of the Debtors as of or after the Effective Date.

Except as otherwise provided by Article II.A or by a Final Order entered by the Bankruptcy Court (including the Bar Date Order) on or prior to the Administrative Claims Bar Date, as applicable, unless previously Filed, requests for payment of Administrative Claims (other than requests for payment of Professional Fee Claims) must be Filed and served on the Debtors by the Administrative Claims Bar Date. For the avoidance of doubt, solely to the extent Cure Costs are not paid on the Effective Date, the counterparty to such Executory Contract and Unexpired Lease must File its Administrative Claim on or prior to the Administrative Claims Bar Date, and such Administrative Claim shall be asserted only with respect to and in the amount of such unpaid Cure Costs. With respect to Professional Fee Claims, the deadline for all requests for payment of such claims shall be forty-five (45) days after the Effective Date.

Holders of Administrative Claims that are required to File and serve a request for payment of such Administrative Claims that do not File and serve such a request by the Administrative Claims Bar Date, shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors, their Estates, the Purchaser, or the Plan Administrator, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date. For the avoidance of doubt, Holders of DIP Facility Claims shall not be required to File or serve any request for payment of such DIP Facility Claims.

B. Professional Compensation.

1. Final Fee Applications and Payment of Professional Fee Claims.

All final requests for payment of Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date shall be Filed no later than forty-five (45) days after the Effective Date. All such final requests will be subject to approval by the Bankruptcy Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, Bankruptcy Rules, and prior orders of the Bankruptcy Court, including the Interim Compensation Order, and once approved by the Bankruptcy Court, shall be promptly paid from the Professional Fee Escrow Account up to the full Allowed amount. To the extent that funds held in the Professional Fee Escrow Account are insufficient to satisfy the amount of Professional Fee Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency, which shall be satisfied in accordance with Article II.A of the Plan.

2. Professional Fee Escrow Amount.

As soon as possible after Confirmation and not later than the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Escrow Amount. The Professional Fee Escrow Account shall be maintained in trust for the Professionals. Such funds shall not be considered property of the Debtors' Estates. The amount of Professional Fee Claims owing to the Professionals shall be paid in Cash to such Professionals from funds held in the Professional Fee Escrow Account as soon as reasonably practicable after such Claims are Allowed by a Final Order. When all such Allowed amounts owing to Professionals have been paid in full, any remaining amount in the Professional Fee Escrow Account shall promptly be transferred to the Plan Administrator.

3. Allocation and Estimation of Professional Fees and Expenses.

Professionals shall reasonably estimate their unpaid Professional Fee Claims and other unpaid fees and expenses incurred before and as of the Confirmation Date, and shall deliver such estimate to the Debtors (and the Debtors shall deliver to the Ad Hoc Group Professionals) by the earlier of (a) five (5) Business Days after the Confirmation Date and (b) two (2) Business Days prior to the Effective Date; *provided that* such estimate shall not be considered an admission with respect to the fees and expenses of such Professional and such Professionals are not bound to any extent by the estimates. If a Professional does not provide an estimate, the Debtors may estimate the unbilled fees and expenses of such Professional.

4. Post-Confirmation Date Fees and Expenses.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors will, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Debtors or the Plan Administrator. Upon the Confirmation Date, any requirement that Professionals and Ordinary Course Professionals comply with sections 327 through 331 and 1103 of the Bankruptcy Code, the Interim Compensation Order, or the Ordinary Course Professionals Order, in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors and the Plan Administrator may employ and pay any Professional or Ordinary Course Professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

5. Substantial Contribution.

Except as otherwise specifically provided in the Plan, any Entity that requests compensation or expense reimbursement for making a substantial contribution in the Chapter 11 Cases pursuant to sections 503(b)(3), (4), or (5) of the Bankruptcy Code must File an application and serve such application on counsel for the Debtors, the Committee, the DIP Agent, and the Term Loan Agent, and as otherwise required by the Bankruptcy Court, the Bankruptcy Code, and the Bankruptcy Rules, on or before the Voting Deadline.

C. Priority Tax Claims.

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtors or the Plan Administrator, agree to a less favorable treatment, in full and final satisfaction, settlement, and release of and in exchange for each Allowed Priority Tax Claim, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, each Holder of such Allowed Priority Tax Claim shall receive, at the option of the Debtors or the Plan Administrator, as applicable, in consultation with the Required Consenting Term Loan Lenders, either (i) the full unpaid amount of such Allowed Priority Tax Claim in Cash on the later of the Effective Date and the date on which such Priority Tax Claim becomes an Allowed Claim or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Priority Tax Claim is due or as soon as reasonably practicable thereafter), or (ii) equal annual installment payments in Cash, of a total value equal to the Allowed amount of such Priority Tax Claim, over a period ending not later than five (5) years after the Petition Date; *provided that* any Allowed Priority Tax Claim that has been expressly assumed by the Purchaser under the Sale Transaction Documentation shall not be an obligation of the Debtors. In the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

D. DIP Facility Claims.

All DIP Facility Claims shall be deemed Allowed as of the Effective Date in an amount equal to the full amount due and owing under the DIP Credit Agreement, including, for the avoidance of doubt, (i) the principal amount outstanding under the DIP Facility on such date, (ii) all interest accrued and unpaid thereon through and including the date of payment, and (iii) all accrued and unpaid fees, expenses and noncontingent indemnification obligations payable under the DIP Facility and the Final DIP Order. On the Effective Date, in full and final satisfaction, settlement, **and** release~~, and discharge~~ of and in exchange for each Allowed DIP Facility Claim, each DIP Facility Claim shall be paid in full in Cash, except to the extent such DIP Facility Claims were credit bid pursuant to the terms of the Sale Transaction Documentation. All Liens and security interests granted by the Debtors to secure the obligations under the DIP Facility shall be of no further force or effect. For the avoidance of doubt, the DIP Facility Claims shall not be subject to any avoidance, reduction, setoff, recoupment, recharacterization, subordination (equitable or contractual or otherwise), counter-claim, defense, disallowance, impairment, objection or any challenges under applicable law or regulation.

E. U.S. Trustee.

The Debtors or the Plan Administrator, as applicable, shall timely pay all U.S. Trustee Fees for each quarter under 28 U.S.C. § 1930(a)(6), plus interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' businesses, until the entry of a Final Order dismissing or closing the Chapter 11 Cases, or converting the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code. Following Confirmation, the Debtors shall file with the Bankruptcy Court quarterly operating reports in a form reasonably acceptable to the U.S. Trustee.

ARTICLE III
CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Summary of Classification.

This Plan constitutes a separate chapter 11 plan for each Debtor. Except for the Claims addressed in Article II (or as otherwise set forth herein), all Claims against and Interests in a particular Debtor are placed in Classes for each of the Debtors. In accordance with section 1123(a)(1) of the Bankruptcy Code, the Debtors have not classified Administrative Claims, Priority Tax Claims, DIP Facility Claims, and Professional Fee Claims as described in Article II.

The categories of Claims and Interests listed below classify Claims and Interests for all purposes, including voting, Confirmation, and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. The Plan deems a Claim or Interest to be classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Interest qualifies within the description of such different Class. A Claim or an Interest is in a particular Class only to the extent that any such Claim or Interest is Allowed in that Class and has not been paid or otherwise settled prior to the Effective Date.

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	Term Loan Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote
Class 5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Deemed to Accept) / Not Entitled to Vote (Deemed to Reject)
Class 6	Intercompany Interests	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 7	Section 510(b) Claims	Impaired	Entitled to Vote
Class 8	Akorn Interests	Impaired	Entitled to Vote

B. Treatment of Claims and Interests.

Except to the extent that the Debtors or the Plan Administrator, as applicable, and a Holder of an Allowed Claim or Interest, as applicable, agrees to a less favorable treatment, such Holder shall receive under the Plan the treatment described below in full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of and in exchange for such Holder's Allowed Claim or Interest. Unless otherwise indicated, each Holder of an Allowed Claim or Interest, as applicable, shall receive such treatment on the later of (i) the Effective Date (or, if payment is not then due, in accordance with its terms in the ordinary course) or as soon as reasonably practicable thereafter, and (ii) the date on which such Holder's Claim or Interest becomes allowed.

1. Class 1—Other Priority Claims.

(a) *Classification*: Class 1 consists of all Other Priority Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Priority Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Priority Claim, each Holder of an Allowed Other Priority Claim shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired, in each case on the Effective Date.

(c) *Voting*: Class 1 is Unimpaired under the Plan. Each Holder of a Class 1 Other Priority Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each Holder of a Class 1 Other Priority Claim is not entitled to vote to accept or reject the Plan.

2. Class 2—Other Secured Claims.

(a) *Classification*: Class 2 consists of all Other Secured Claims.

(b) *Treatment*: Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, at the election of the Debtors, in consultation with the Required Consenting Term Loan Lenders, and in each case, on the Effective Date:

(i) payment in full in Cash of such Allowed Other Secured Claim;

(ii) the Collateral securing such Allowed Other Secured Claim;

(iii) Reinstatement of such Allowed Other Secured Claim, notwithstanding any contractual provision or applicable non-bankruptcy Law that entitles the holder of such claim to demand or to receive payment prior to the stated maturity of such Allowed Other Secured Claim from and after the occurrence of default; or

(iv) such other treatment rendering such Allowed Other Secured Claim Unimpaired.

(c) *Voting*: Class 2 is Unimpaired under the Plan. Each Holder of a Class 2 Other Secured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, each Holder of a Class 2 Other Secured Claim is not entitled to vote to accept or reject the Plan.

3. Class 3—Term Loan Claims.

(a) *Classification*: Class 3 consists of all Term Loan Claims.

(b) *Treatment*: In full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of Allowed Term Loan Claim shall receive on the Effective Date either:

(i) In the event the Sale Transaction is not a Term Loan Credit Bid Transaction, its Pro Rata share of the Distributable Proceeds pursuant to the Waterfall Recovery; or

(ii) In the event the Sale Transaction is a Term Loan Credit Bid Transaction, on account of the Allowed Term Loan Claims *less* the Term Loan Credit Bid Amount, its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery.

For the avoidance of doubt, in the event the Sale Transaction is a Term Loan Credit Bid Transaction, the Term Loan Lenders shall be entitled to immediate possession of the Purchased Assets as and solely to the extent set forth in the Sale Order, with no further order of the Bankruptcy Court required.

(c) *Voting*: Class 3 is Impaired under the Plan. Each Holder of a Class 3 Allowed Term Loan Claim is entitled to vote to accept or reject the Plan.

4. Class 4—General Unsecured Claims.

(a) *Classification*: Class 4 consists of all General Unsecured Claims.

(b) *Treatment*: In full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of Allowed General Unsecured Claim that is not assumed by the Purchaser shall receive its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery.

For the avoidance of doubt, all General Unsecured Claims that are assumed by the Purchaser pursuant to the Sale Transaction Documentation shall be satisfied by the Purchaser in full in Cash following the Effective Date in the ordinary course of business; *provided that* any Allowed General Unsecured Claim that has been expressly assumed by the Purchaser under the Sale Transaction shall not be an obligation of the Debtors as of or after the Effective Date.

(c) *Voting*: Class 4 is Impaired. Each Holder of a Class 4 Allowed General Unsecured Claim is entitled to vote to accept or reject the Plan.

5. Class 5—Intercompany Claims.

(a) *Classification*: Class 5 consists of all purported Intercompany Claims.

(b) *Treatment*: In full and final satisfaction of each Allowed Intercompany Claim, each Allowed Intercompany Claim, unless otherwise provided for under the Plan and subject to the Description of Transaction Steps, will either be Reinstated, distributed, contributed, set off, settled, cancelled and released or otherwise addressed at the option of the Debtors, in consultation with the Required Consenting Term Loan Lenders; provided, that no distributions shall be made on account of any such Intercompany Claims.

(c) *Voting*: Class 5 is either Unimpaired, and the Holders of Intercompany Claims are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code, or Impaired or the Holders of Allowed Class 5 Claims are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. Holders of Intercompany Claims are not entitled to vote to accept or reject the Plan.

6. Class 6—Intercompany Interests.

(a) *Classification*: Class 6 consists of all Intercompany Interests.

(b) *Treatment*: In full and final satisfaction of each Allowed Intercompany Interest, subject to the Description of Transaction Steps, each Intercompany Interest shall be Reinstated solely to maintain the Debtors' corporate structure.

(c) *Voting*: Class 6 is Unimpaired, and Holders of Intercompany Interests are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code. Holders of Intercompany Interests are not entitled to vote to accept or reject the Plan.

7. Class 7—Section 510(b) Claims.

(a) *Classification:* Class 7 consists of all Section 510(b) Claims.

(b) *Treatment*: On the Effective Date, in full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Claim, each Holder of an Allowed Class 7 Section 510(b) Claim shall receive its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery; *provided that* for purposes of receiving the treatment provided herein, each Holder of an Allowed Section 510(b) Claim shall be treated as if such Holder held a number of Allowed Class 8 Akorn Interests equal in value to the amount of its Allowed Section 510(b) Claim.

(c) *Voting:* Class 7 is Impaired. Each Holder of a Class 7 Allowed Section 510(b) Claim is entitled to vote to accept or reject the Plan.

8. Class 8—Akorn Interests.

(a) *Classification:* Class 8 consists of all Akorn Interests.

(b) *Treatment*: On the Effective Date, in full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Interest, each Holder of Allowed Class 8 Akorn Interests shall receive its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery.

(c) *Voting:* Class 8 is Impaired. Each Holder of Class 8 Allowed Akorn Interests is entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims.

Except as otherwise provided in the Plan, nothing under the Plan shall affect, diminish, or impair the rights of the Debtors or the Purchaser, as applicable, with respect to any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Unimpaired Claims.

D. Elimination of Vacant Classes.

Any Class of Claims or Interests that does not have a Holder of an Allowed Claim or Allowed Interest or a Claim or Interest temporarily Allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

E. Voting Classes; Presumed Acceptance by Non-Voting Classes.

If a Class contains Claims eligible to vote and no Holder of Claims eligible to vote in such Class votes to accept or reject the Plan, the Plan shall be presumed accepted by the Holders of such Claims in such Class.

F. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code.

Section 1129(a)(10) of the Bankruptcy Code is satisfied for purposes of Confirmation by acceptance of the Plan by at least one Impaired Class of Claims or Interests. The Debtors shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any rejecting Class of Claims or Interests. The Debtors reserve the right to modify the Plan in accordance with Article X to the extent, if any, that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification, including by modifying the treatment applicable to a Class of Claims or Interests to render such Class of Claims or Interests Unimpaired to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules.

G. Subordinated Claims.

The allowance, classification, and treatment of all Allowed Claims and Allowed Interests and the respective distributions and treatments under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

ARTICLE IV
MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Settlement of Claims.

Except as otherwise expressly provided herein, pursuant to section 1123 of the Bankruptcy Code ~~and Bankruptcy Rule 9019,~~ and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, ~~discharged,~~ or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion, proposed by the Debtors, to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies ~~pursuant to Bankruptcy Rule 9019,~~ and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code ~~and Bankruptcy Rule 9019,~~ as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Distributions made to Holders of Allowed Claims in any Class are intended to be final.

B. Sources of Plan Consideration.

Cash on hand, borrowings under the DIP Facility, the Distributable Proceeds, if any, the Wind-Down Amount, the Debtors' rights under the Sale Transaction Documentation, payments made directly by the Purchaser on account of any Assumed Liabilities under the Sale Transaction Documentation, payments of Cure Costs made by the Purchaser pursuant to sections 365 or 1123 of the Bankruptcy Code, the return of any utility deposits as set forth in the Utility Orders, and all Causes of Action not previously settled, released, or exculpated under the Plan, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims and subject to the terms provided herein. Unless otherwise agreed in writing by the Debtors and the Purchaser, distributions required by this Plan on account of Allowed Claims that are Assumed Liabilities shall be the sole responsibility of the Purchaser to the extent such Claim is Allowed against the Debtors.

C. Restructuring Transactions.

Upon the entry of the Confirmation Order, the Debtors, the Plan Administrator, and the Purchaser are authorized, without further order of the Bankruptcy Court, subject to the terms of the Restructuring Support Agreement, to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under or in connection with the Plan that

are consistent with and pursuant to the terms and conditions of the Plan and the Restructuring Support Agreement, including: (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, sale, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (d) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state Law; and (e) any transaction described in the Description of Transactions Steps, if applicable.

The Confirmation Order shall and shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

1. The Purchaser Assumed Claims.

The Sale Transaction Documentation provides that as part of the Sale Transaction, the Purchaser assumed certain obligations owed by the Debtors to their customers and trade vendors. Following such assumption by the Purchaser, the Purchaser shall satisfy such obligations in Cash, and for the avoidance of doubt, any obligations that were assumed by the Purchaser shall cease to be Claims against the Debtors following such assumption

2. Payment of Cure Costs and Other Amounts.

On the Effective Date, the Debtors shall pay all Cure Costs that are required to be paid (if any) pursuant to and in accordance with sections 365 or 1123 of the Bankruptcy Code with respect to any Executory Contracts or Unexpired Leases that are assumed by the Debtors pursuant to the Plan. For the avoidance of doubt, the Debtors shall have no obligations to pay any Cure Costs for any contract or lease that was assumed by the Purchaser pursuant to the Sale Order.

D. Vesting of Assets.

Except as otherwise provided in the Plan, the Sale Transaction Documentation, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date the Retained Assets shall vest in the Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, and other encumbrances. For the avoidance of doubt, all Transferred Causes of Action were transferred to the Purchaser in the Sale Transaction, and the Retained Causes of Action shall vest in the Debtors on the Effective Date for prosecution, settlement, or other action as determined by the Plan Administrator.

On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator may operate the Debtors' businesses and use, acquire, or dispose of property and, as applicable, compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

E. Plan Administrator.

The Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Debtors shall be deemed to have resigned, solely in their capacities as such, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Debtors and shall succeed to the powers of the Debtors' managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors. For the avoidance of doubt, the foregoing shall not limit the authority of the Debtors or the Plan Administrator, as applicable, to continue the employment any former manager or officer.

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to make distributions thereunder and wind down the businesses and affairs of the Debtors, including: (i) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Debtors remaining after consummation of the Sale Transaction; (ii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iii) making distributions as contemplated under the Plan; (iv) establishing and maintaining bank accounts in the name of the Debtors; (v) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (vi) paying all reasonable fees, expenses, debts, charges, and liabilities of the Debtors; (vii) administering and paying taxes of the Debtors, including filing tax returns; (viii) representing the interests of the Debtors before any taxing authority in all matters, including any action, suit, proceeding or audit; and (ix) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court, *provided that* such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Debtors shall be terminated.

1. Appointment of the Plan Administrator.

The Plan Administrator shall be appointed by the Debtors, in consultation with the Purchaser. The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out its responsibilities under this Plan, and as otherwise provided in the Confirmation Order.

2. Retention of Professionals.

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Debtors, upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court.

3. Compensation of the Plan Administrator.

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement.

F. Wind-Down.

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (i) cause the Debtors to comply with, and abide by, the terms of the Plan and any other documents contemplated thereby; (ii) take any actions necessary to wind down the Debtors' Estates; and (iii) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date, except as set forth herein, the Debtors (x) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, and (y) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date.

The Filing of the final monthly operating report (for the month in which the Effective Date occurs) and all subsequent quarterly operating reports shall be the responsibility of the Plan Administrator.

G. Wind-Down Amount.

On or prior to the Effective Date, the Debtors shall retain the Wind-Down Amount in accordance with the terms of the Sale Transaction Documentation. The Wind-Down Amount shall be used by the Plan Administrator solely to satisfy the distributions set forth herein, the expenses of the Debtors and the Plan Administrator as set forth in the Plan; *provided that* all costs and expenses associated with the winding down of the Debtors and the storage of records and documents shall constitute expenses of the Debtors and shall be paid from the Wind-Down Amount. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

H. Plan Administrator Exculpation, Indemnification, Insurance, and Liability Limitation.

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for actual fraud, willful misconduct, or gross negligence, in all respects by the Debtors. The Plan Administrator may obtain, at the expense of the Debtors, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

I. Tax Returns.

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

J. Cancellation of Notes, Instruments, Certificates, and Other Documents.

On the Effective Date, except as otherwise specifically provided for in the Plan or to the extent otherwise assumed by the Purchaser: (i) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of giving rise to any Claim shall be cancelled and deemed surrendered as to the Debtors, and the Debtors shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; *provided*, *however*, that notwithstanding anything to the contrary contained herein, any indenture or agreement that governs the rights of the DIP Agent and the Term Loan Agent shall continue in effect to allow the DIP Agent or the Term Loan Agent, as applicable, to (A) enforce its rights, Claims, and interests (and those of any predecessor or successor thereto) vis-à-vis any parties other than the Debtors, (B) receive distributions under the Plan and to distribute them to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, in accordance with the terms of such agreements, (C) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, including any rights to priority of payment and/or to exercise charging liens, and (D) appear and be heard in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court, including to enforce any obligation owed to the DIP Agent, the Term Loan Agent, or Holders of DIP Facility Claims and Term Loan Claims under the Plan, as applicable.

K. Corporate Action.

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Debtors or the Plan Administrator, as applicable) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, the Plan Administrator, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

Upon the Effective Date or as soon as reasonably practicable thereafter, after making all distributions provided for under the Plan, the Debtors shall be deemed to have been dissolved and terminated, except as necessary to satisfy their obligations under the Plan. The directors, managers, and officers of the Debtors shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate to implement the provisions of this Article IV.K.

The authorizations and approvals contemplated by this Article IV.K shall be effective notwithstanding any requirements under applicable nonbankruptcy Law.

L. Dissolution of the Board of the Debtors.

As of the Effective Date, the existing boards of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor.

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs other than matters substantially related to the transactions described in Article IV.C.1 of the Plan. Subject in all respects to the terms of this Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve any of the Debtors, and shall: (i) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable Laws of the applicable state(s) of formation; and (ii) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

The filing by the Plan Administrator of any of the Debtors' certificates of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of any of the Debtors or any of their affiliates.

M. Release of Liens.

Except as otherwise expressly provided herein, on the Effective Date, all Liens on any property of any Debtors shall automatically terminate, all property subject to such Liens shall be automatically released, and all guarantees of any Debtors shall automatically be ~~discharged and~~ released.

N. Effectuating Documents; Further Transactions.

The Debtors and the officers and members thereof are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan

and the Restructuring Support Agreement, without the need for any approvals, authorizations, notice, or consents, except for those expressly required pursuant to the Plan.

O. Exemption from Certain Taxes and Fees.

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan, the Sale Transaction, or the Sale Transaction Documentation or pursuant to: (i) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (ii) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

P. Causes of Action.

Pursuant to the Sale Transaction Documentation, the Debtors assigned and transferred to the Purchaser all of the Transferred Causes of Action pursuant to the Sale Transaction Documentation in connection with the Sale Transaction. For the avoidance of doubt, the Debtors or the Plan Administrator, as applicable, will retain the right to enforce the terms of the Sale Transaction Documentation. Any Retained Causes of Action shall remain with the Debtors and shall vest with the Plan Administrator as of the Effective Date.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any such Cause of Action against them as any indication that the Debtors will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

Q. Closing the Chapter 11 Cases.

For the avoidance of doubt, upon the occurrence of the Effective Date, the Debtors or Plan Administrator, as applicable, shall be permitted to ~~close~~**file a motion for entry of an order closing** all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Akorn, and any other Debtor identified in the Description of Transaction Steps, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of Akorn, irrespective of whether such Claim(s) were filed against a Debtor whose Chapter 11 Case was closed.

When all Disputed Claims have become Allowed or disallowed and all remaining Cash has been distributed in accordance with the Plan, the Debtors or Plan Administrator, as applicable, shall seek authority from the Bankruptcy Court to close any remaining Chapter 11 Cases of the Debtors in accordance with the Bankruptcy Code and the Bankruptcy Rules.

ARTICLE V
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases.

Except as otherwise provided herein or provided in the Sale Transaction Documentation, each Executory Contract and Unexpired Lease (other than any Executory Contract or Unexpired Lease previously rejected, assumed, or assumed and assigned), any employee benefit plans, severance plans, and other Executory Contracts under which employee obligations arise, shall be deemed automatically rejected on the Effective Date pursuant to sections 365

and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) is specifically described in the Plan as to be assumed and assigned to the Plan Administrator, or other Entity, in connection with Confirmation of the Plan, or is specifically scheduled to be assumed or assumed and assigned to the Plan Administrator, or other Entity, pursuant to the Plan or the Plan Supplement; (2) is subject to a pending motion to assume such Unexpired Lease or Executory Contract as of the Effective Date; (3) is to be assumed by the Debtors or assumed by the Debtors and assigned to the Purchaser or another third party, as applicable, in connection with the Sale Transaction following the consummation thereof; (4) is a contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan; (5) is a D&O Policy; or (6) is the Sale Transaction Documentation.

Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions, assignments, and rejections, including the assumption and assignment of the Executory Contracts or Unexpired Leases as provided in the Sale Transaction Documentation and the Plan Supplement, pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Assumptions or rejections of Executory Contracts and Unexpired Leases pursuant to the Plan are effective as of the Effective Date. Any motions to assume Executory Contracts or Unexpired Leases pending on the Effective Date shall be subject to approval by a Final Order of the Bankruptcy Court on or after the Effective Date.

If certain, but not all, of a contract counterparty's Executory Contracts and Unexpired Leases are assumed pursuant to the Plan, the Confirmation Order will be a determination that such counterparty's Executory Contracts and Unexpired Leases that are being rejected pursuant to the Plan are severable agreements that are not integrated with those Executory Contracts and Unexpired Leases that are being assumed pursuant to the Plan. Parties seeking to contest this finding with respect to their Executory Contracts and/or Unexpired Leases must file a timely objection by the Confirmation Objection Deadline on the grounds that their agreements are integrated and not severable.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases.

Unless otherwise provided by a Final Order of the Bankruptcy Court, any Proof of Claim based on the rejection of the Debtors' Executory Contracts or Unexpired Leases, pursuant to the Plan or otherwise, must be Filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the Plan Administrator, as applicable, no later than thirty (30) days after the effective date of the rejection of such Executory Contract or Unexpired Lease. In addition, any objection to the rejection of an Executory Contract or Unexpired Lease must be Filed with the Bankruptcy Court and served on the Debtors or, after the Effective Date, the Plan Administrator, as applicable, no later than fourteen (14) days after service of the Debtors' proposed rejection of such Executory Contract or Unexpired Lease.

Any Holders of Claims arising from the rejection of an Executory Contract or Unexpired Lease for which Proofs of Claim were required to be but were not timely Filed shall not (i) be treated as a creditor with respect to such Claim, (ii) be permitted to vote to accept or reject the Plan on account of any Claim arising from such rejection, or (iii) participate in any distribution in the Chapter 11 Cases on account of such Claim. Claims arising from the rejection of an Executory Contract or Unexpired Lease not Filed with the Bankruptcy Court within such time will be automatically disallowed, forever barred from assertion, and shall not be enforceable against the Debtors, the Debtors' Estates, or the property for any of the foregoing without the need for any objection by the Debtors or further notice to, or action, order, or approval of the Bankruptcy Court or any other Entity, and any Claim arising out of the rejection of the Executory Contract or Unexpired Lease shall be deemed fully compromised, settled, and released, notwithstanding anything in the Schedules or a Proof of Claim to the contrary. All Allowed Claims arising from the rejection of the Debtors' prepetition Executory Contracts or prepetition Unexpired Leases shall be classified as General Unsecured Claims against the appropriate Debtor, except as otherwise provided by order of the Bankruptcy Court.

C. Cure of Defaults for Assumed Executory Contracts and Unexpired Leases.

Any monetary defaults under an Executory Contract or Unexpired Lease to be assumed by the Debtors as set forth in Article V.A, as reflected on the Cure Notice shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of such Cure Costs in Cash on or about the Effective Date, subject to the limitations described below and set forth in Article IV.C herein, or on such other terms as the parties to such Executory

Contracts or Unexpired Leases may otherwise agree. In the event of a dispute regarding (i) the Cure Costs, (ii) the ability of any assignee, as applicable, to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the Executory Contract or Unexpired Lease to be assumed, or (iii) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption.

Assumption (or assumption and assignment) of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed (or assumed and assigned) Executory Contract or Unexpired Lease at any time before the date that the Debtors assume such Executory Contract or Unexpired Lease. **All liabilities reflected in the Schedules and any Proof of Claim Filed with respect to an Executory Contract or Unexpired Lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court**.

D. D&O Policies.

The D&O Policies shall be assumed by the Debtors on behalf of the applicable Debtor effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code, and nothing shall alter, modify, or amend, affect, or impair the terms and conditions of (or the coverage provided by) any of the D&O Policies including the coverage for defense and indemnity under any of the D&O Policies which shall remain available to all individuals within the definition of "Insured" in any of the D&O Policies.

E. Modifications, Amendments, Supplements, Restatements, or Other Agreements.

Unless otherwise provided in the Plan, each Executory Contract or Unexpired Lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such Executory Contract or Unexpired Lease, and Executory Contracts and Unexpired Leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

Modifications, amendments, supplements, and restatements to prepetition Executory Contracts and Unexpired Leases that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease, or the validity, priority, or amount of any Claims that may arise in connection therewith, absent a Final Order of the Bankruptcy Court to the contrary.

F. Reservation of Rights.

Neither the exclusion nor inclusion of any Executory Contract or Unexpired Lease on the Assumed Contracts and Leases List, nor anything contained in the Plan, shall constitute an admission by the Debtors or any other Entity, as applicable, that any such contract or lease is in fact an Executory Contract or Unexpired Lease or that either any Debtor or any other Entity, as applicable, has any liability thereunder. In the event of a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtors or the Plan Administrator, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter the treatment of such contract or lease as otherwise provided in the Plan.

G. Nonoccurrence of Effective Date.

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

ARTICLE VI
PROVISIONS GOVERNING DISTRIBUTIONS

A. Timing and Calculation of Amounts to Be Distributed.

Unless otherwise provided in the Plan, on the Effective Date or as soon as reasonably practicable thereafter (or, if a Claim is not an Allowed Claim on the Effective Date, on the date that such Claim becomes Allowed or as soon as reasonably practicable thereafter), each Holder of an Allowed Claim against or Allowed Interest in, as applicable, the Debtors shall receive the full amount of the distributions that the Plan provides for Allowed Claims in the applicable Class from the Debtors or the Disbursing Agent on behalf of the Debtors, as applicable. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, in which case such payment shall be deemed to have occurred when due. If and to the extent that there are Disputed Claims, distributions on account of any such Disputed Claims shall be made pursuant to the provisions set forth in Article VII. Notwithstanding anything to the contrary in the Plan, no Holder of an Allowed Claim shall, on account of such Allowed Claim, receive a distribution in excess of the Allowed amount of such Claim plus any interest accruing on such Claim that is actually payable in accordance with the Plan.

B. Rights and Powers of the Disbursing Agent.

1. Powers of the Debtors and the Disbursing Agent.

Except as otherwise set forth herein, all distributions under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter by the Debtors or the Disbursing Agent (or its designee(s)), the timing of which shall be subject to the reasonable discretion of the Debtors or the Disbursing Agent, as applicable.

On and after the Effective Date, the Disbursing Agent and its designees or representatives shall have the right to object to, Allow, or otherwise resolve any General Unsecured Claim, Priority Claim, or Other Secured Claim, subject to the terms hereof.

The Debtors and the Disbursing Agent, as applicable, shall not be required to give any bond or surety or other security for the performance of their duties unless otherwise ordered by the Bankruptcy Court. However, in the event that the Disbursing Agent is so ordered after the Effective Date, all costs and expenses of procuring any such bond or surety shall be paid for with Cash by the Debtors.

2. Fees of Disbursing Agent and Expenses Incurred On or After the Effective Date.

Except as otherwise ordered by the Bankruptcy Court, the reasonable and documented fees and expenses incurred by the Disbursing Agent on or after the Effective Date (including taxes) and any reasonable compensation and expense reimbursement Claims (including attorney fees and expenses) made by the Disbursing Agent in connection with such person's duties shall be paid without any further notice to or action, order, or approval of the Bankruptcy Court in Cash from the Wind-Down Amount.

C. Delivery of Distributions and Undeliverable or Unclaimed Distributions.

1. Record Date for Distribution.

Except as provided herein, on the Distribution Record Date, the Claims Register shall be closed and the Debtors and the Disbursing Agent, or any other party responsible for making distributions, shall instead be authorized and entitled to recognize only those record Holders listed on the Claims Register as of the close of business on the Distribution Record Date.

2. Delivery of Distributions on DIP Facility Claims.

Notwithstanding any provision of the Plan to the contrary, to the extent the DIP Agent is not the Purchaser, all distributions on account of Allowed DIP Facility Claims shall be governed by the documents governing the DIP Facility and such distribution shall be deemed completed when made to the DIP Agent, which shall be deemed the Holder of their respective portion of the Allowed DIP Facility Claims for purposes of distributions to be made hereunder. The DIP Agent shall hold or direct such distributions for the benefit of their respective Holders of Allowed DIP Facility Claims. As soon as practicable following compliance with the requirements set forth in this Article VI, the DIP Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of their respective Holders of DIP Facility Claims.

3. Delivery of Distributions on Term Loan Claims.

Notwithstanding any provision of the Plan to the contrary, all distributions on account of Allowed Term Loan Claims shall be governed by the Term Loan Credit Agreement and shall be deemed completed when made to the Term Loan Agent, which shall be deemed the Holder of their respective portion of the Allowed Term Loan Claims for purposes of distributions to be made hereunder. The Term Loan Agent shall hold or direct such distributions for the benefit of their respective Holders of Allowed Term Loan Claims. As soon as practicable following compliance with the requirements set forth in this Article VI, the Term Loan Agent shall arrange to deliver or direct the delivery of such distributions to or on behalf of their respective Holders of Term Loan Claims.

4. Delivery of Distributions in General.

(a) Payments and Distributions on Disputed Claims.

Distributions made after the Effective Date to Holders of Disputed Claims that are not Allowed Claims or Disputed Interests that are not Allowed Interests, as applicable, as of the Effective Date but which later become Allowed Claims, or Allowed Interests, as applicable, shall, in the reasonable discretion of the Disbursing Agent, be deemed to have been made on the Effective Date unless the Disbursing Agent and the Holder of such Claim agree otherwise.

(b) Special Rules for Distributions to Holders of Disputed Claims.

Notwithstanding any provision otherwise in the Plan and except as may be agreed to by, as applicable, the Debtors or the Disbursing Agent, as applicable, on the one hand, and the Holder of a Disputed Claim or Disputed Interest, as applicable, on the other hand, no partial payments and no partial distributions shall be made with respect to any Disputed Claim or Disputed Interest, other than with respect to Professional Fee Claims, until all Disputed Claims held by the Holder of such Disputed Claim or Disputed Interest have become Allowed Claims or Allowed Interests or have otherwise been resolved by settlement or Final Order.

(c) Distributions.

On and after the Effective Date, the Debtors shall make the distributions required to be made on account of Allowed Claims or Allowed Interests under the Plan. Any distribution that is not made on the Initial Distribution Date or on any other date specified in the Plan because the Claim or Interest that would have been entitled to receive that distribution is not an Allowed Claim or Allowed Interest on such date, shall be held by the Debtors or the Disbursing Agent in reserve in accordance with the Plan, as applicable, and distributed on the next Subsequent Distribution Date that occurs after such Claim or Interest is Allowed. Subject to Article VI.E, no interest shall accrue or be paid on the unpaid amount of any distribution paid pursuant to the Plan.

5. Minimum; *De Minimis* Distributions.

No Cash payment of less than $100, in the reasonable discretion of the Disbursing Agent, shall be made to a Holder of an Allowed Claim or Allowed Interest on account of such Allowed Claim or Allowed Interest, and each Claim or Interest to which this limitation applies shall be ~~discharged~~**satisfied** pursuant to Article VIII of the Plan,

and its Holder shall be forever barred pursuant to Article VIII of the Plan from asserting that Claim against or Interest in the Debtors or their property.

6. Undeliverable Distributions and Unclaimed Property.

In the event that any distribution to any Holder is returned as undeliverable, no distribution to such Holder shall be made unless and until the Disbursing Agent, as applicable, has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest; *provided that* such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of six (6) months from the date the distribution is made. After such date, all unclaimed property or interests in property shall revert (notwithstanding any applicable federal or state escheat, abandoned, or unclaimed property Laws to the contrary) to the Debtors or the Disbursing Agent, as applicable, automatically and without need for a further order by the Bankruptcy Court and the Claim or Interest of any holder to such property or interest in property shall be released, settled, compromised, and forever barred.

7. Manner of Payment Pursuant to the Plan.

Any payment in Cash to be made pursuant to the Plan shall be made at the election of the Disbursing Agent, by check, Automated Clearing House, credit card, or wire transfer, or as otherwise provided in the applicable agreements, at the sole and exclusive discretion of the Disbursing Agent.

D. Compliance with Tax Requirements/Allocations.

In connection with the Plan, to the extent applicable, the Debtors shall comply with all tax withholding and reporting requirements imposed on them by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to such withholding and reporting requirements. Notwithstanding any provision in the Plan to the contrary, the Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements, including liquidating a portion of the distribution to be made under the Plan to generate sufficient funds to pay applicable withholding taxes, withholding distributions pending receipt of information necessary to facilitate such distributions, or establishing any other mechanisms they believe are reasonable and appropriate. The Debtors reserve the right to allocate all distributions made under the Plan in compliance with applicable wage garnishments, alimony, child support, and other spousal awards, liens, and encumbrances. All Persons holding Claims or Interests shall be required to provide any information necessary to effect information reporting and the withholding of such taxes. Notwithstanding any other provision of the Plan to the contrary, each Holder of an Allowed Claim or Allowed Interest shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

E. Allocation of Plan Distributions Between Principal and Interest.

Distributions in respect of Allowed Claims shall be allocated first to the principal amount of such Claims (as determined for federal income tax purposes) and then, to the extent the consideration exceeds the principal amount of the Claims, to any portion of such Claims for accrued but unpaid interest as Allowed therein.

F. Setoffs and Recoupment.

Except as otherwise expressly provided herein, the Debtors may, but shall not be required to, setoff against or recoup from any Claims of any nature whatsoever that the Debtors may have against the claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors of any such Claim it may have against the Holder of such Claim. Notwithstanding anything to the contrary in the Plan, nothing in the Plan or the Plan Supplement shall discharge, release, impair, or otherwise preclude any valid right of setoff or recoupment of the Debtors' customers under applicable Law or an applicable contract that is assigned to the Purchaser, which valid right of setoff or recoupment shall continue against the Purchaser following the Effective Date.

G. Claims Paid or Payable by Third Parties.

1. Claims Paid by Third Parties.

The Debtors shall reduce in full a Claim, and such Claim shall be disallowed without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, to the extent that the Holder of such Claim receives payment in full on account of such Claim from a party that is not a Debtor. Subject to the last sentence of this paragraph, to the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment from a party that is not a Debtor on account of such Claim, such Holder shall, within fourteen (14) days of receipt thereof, repay or return the distribution to the Debtors to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan. The failure of such Holder to timely repay or return such distribution shall result in the Holder owing the Debtors annualized interest at the Federal Judgment Rate on such amount owed for each Business Day after the 14-day grace period specified above until the amount is repaid.

2. Claims Payable by Insurance, Third Parties.

No distributions under the Plan shall be made on account of a Claim that is payable pursuant to one of the Debtors' insurance policies, including the D&O Policies, other non-Debtor payment agreements, or collateral held by a third party, until the Holder of such Claim has exhausted all remedies with respect to such insurance policy, other non-Debtor payment agreement, or collateral, as applicable. To the extent that one or more of the Debtors' insurers or non-Debtor-payors pays or satisfies in full or in part a Claim (if and to the extent finally adjudicated by a court of competent jurisdiction or otherwise settled), or such collateral or proceeds from such collateral is used to satisfy such Claim, then immediately upon such payment, the applicable portion of such Claim shall be expunged without a Claim objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies.

Notwithstanding anything to the contrary in this Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies (including the D&O Policies), nor shall anything contained herein (a) constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under any insurance policy, applicable law, equity, or otherwise, or (b) establish, determine, or otherwise imply any liability or obligation, including any coverage obligation, of any insurer.

H. Indefeasible Distributions.

Any and all distributions made under the Plan shall be indefeasible and not subject to clawback.

ARTICLE VII
PROCEDURES FOR RESOLVING CONTINGENT, UNLIQUIDATED, AND DISPUTED CLAIMS

A. Allowance of Claims and Interests.

On and after the Effective Date, the Debtors shall have and shall retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest immediately before the Effective Date, and, with respect to any Claims or Interests that constitute Assumed Liabilities, the Purchaser shall have and retain any and all rights, defenses, and other Transferred Causes of Action that the Debtors had with respect to such Claims or Interests immediately before the Effective Date. Except as expressly provided in the Plan or in any order entered in the Chapter 11 Cases before the Effective Date (including the Confirmation Order), no Claim or Interest shall become an Allowed Claim or Allowed Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order (when it becomes a Final Order), in the Chapter 11 Cases allowing such Claim or Interest.

Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, or that is not or has not been Allowed by a Final Order, is not considered Allowed and shall be expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court.

B. Claims and Interests Administration Responsibilities.

Except as otherwise specifically provided in the Plan and notwithstanding any requirements that may be imposed pursuant to Bankruptcy Rule 9019, on and after the Effective Date, the Debtors, by order of the Bankruptcy Court, shall have the sole authority with regard to all Claims and Interests: (i) to File, withdraw, or litigate to judgment objections to Claims and Interests; (ii) to settle or compromise any Disputed Claim or Disputed Interest without any further notice to or action, order, or approval by the Bankruptcy Court; and (iii) to administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims and Interests.

As of the Effective Date, the Debtors or the Plan Administrator, as applicable, may (but are not required to), at any time, request that the Bankruptcy Court estimate any Claim or Interest pursuant to applicable law, including pursuant to section 502(c) of the Bankruptcy Code and/or Bankruptcy Rule 3012, for any reason, regardless of whether any party previously has objected to such Claim or Interest or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim or Interest, including during the litigation of any objection to any Claim or Interest or during the pendency of any appeal relating to such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been expunged from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any Claim or Interest, that estimated amount shall constitute a maximum limitation on such Claim or Interest for all purposes under the Plan (including for purposes of distributions) and may be used as evidence in any supplemental proceedings, and the Plan Administrator may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim or Interest. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim or Interest that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek reconsideration of such estimation unless such Holder has Filed a motion requesting the right to seek such reconsideration on or before seven (7) days after the date on which such Claim or Interest is estimated. Each of the foregoing Claims or Interests and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims or Interests may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

D. Adjustment to Claims or Interests without Objection.

Any Claim or Interest that has been paid or satisfied, or any Claim or Interest that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors, without an objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. The Debtors shall provide any Holder of such a Claim or Interest with fourteen (14) days' notice prior to the Claim or Interest being adjusted or expunged from the Claims Register as the result as the result of a Claim or Interest being paid, satisfied, amended or superseded.

E. Disallowance of Claims.

Other than with respect to Claims Allowed under the Plan, no Claim of any Entity from which property is recoverable under sections 542, 543, 550, or 553 of the Bankruptcy Code or that is a transferee of a transfer avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be deemed Allowed, unless and until such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under sections 522(i), 542, 543, 550, or 553 of the Bankruptcy Code, and Holders of such Claims may not receive any distributions on account of such Claims until such time as such Causes of Action against that Entity have been settled or a Bankruptcy Court order with respect thereto has been entered and all sums

due, if any, to the Debtors by that Entity have been turned over or paid to the Debtors. All Proofs of Claim Filed on account of an indemnification obligation to a director, officer, or employee shall automatically be deemed satisfied and expunged from the Claims Register as of the Effective Date to the extent such indemnification obligation is assumed (or honored or reaffirmed, as the case may be) pursuant to the Plan, without any further notice to or action, order, or approval of the Bankruptcy Court.

F. Amendments to Claims.

On or after the Effective Date, except as provided in the Plan or the Confirmation Order, a Claim or Interest may not be Filed or amended without the prior authorization of the Debtors and any such new or amended Claim or Interest Filed shall automatically be deemed disallowed in full and expunged without any further action; *provided that* a Claim may be Filed after the Effective Date if the Bankruptcy Court enters an order permitting such late filing.

G. No Distributions Pending Allowance.

If an objection to a Claim or Interest or any portion thereof is Filed as set forth in Article VII of the Plan, or if such Claim or Interest is scheduled as Disputed, no payment or distribution provided under the Plan shall be made on account of such Claim or Interest or any portion thereof unless and until such Disputed Claim or Disputed Interest becomes an Allowed Claim or Allowed Interest.

H. Distributions After Allowance.

To the extent that a Disputed Claim or Disputed Interest ultimately becomes an Allowed Claim or Allowed Interest, distributions, if any, shall be made to the Holder of such Allowed Claim or Allowed Interest in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim or Disputed Interest becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim or Interest the distribution, if any, to which such Holder is entitled under the Plan as of the Effective Date, less any previous distribution, if any, that was made on account of the undisputed portion of such Claim or Interest, without any interest, dividends, or accruals to be paid on account of such Claim or Interest unless required under applicable bankruptcy Law or as otherwise provided in Article III.B of the Plan.

I. Single Satisfaction of Claims.

Holders of Allowed Claims may assert such Claims against the Debtor(s) obligated with respect to such Claims, and such Claims shall be entitled to share in the recovery provided for the applicable Class of Claims against the applicable Debtor(s) based upon the full Allowed amount of such Claims. Notwithstanding the foregoing, in no case shall the aggregate value of all property received or retained under the Plan on account of any Allowed Claim exceed 100 percent of the underlying Allowed Claim plus applicable interest, if any.

ARTICLE VIII
SETTLEMENT, RELEASE, INJUNCTION, AND RELATED PROVISIONS

A. Settlement, Compromise, and Release of Claims and Interests.

Pursuant to section 1123 of the Bankruptcy Code ~~and Bankruptcy Rule 9019~~ and in consideration for the distributions and other benefits provided pursuant to the Plan, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Interest may have with respect to any Allowed Claim or Interest, or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions of the Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Plan Administrator may compromise and settle Claims against, and Interests in, the Debtors and their Estates and Causes of Action against other Entities.

B. ~~Discharge~~Satisfaction of Claims and Termination of Interests.

~~Pursuant to section 1141(d) of the Bankruptcy Code, and except~~Except as otherwise specifically provided in the Plan or in a contract, instrument, or other agreement or document executed pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction~~, discharge,~~ and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Plan Administrator), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code; or (iii) the Holder of such a Claim or Interest has voted to accept the Plan. Any default or "event of default" by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date with respect to a Claim that is Unimpaired by the Plan. ~~The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.~~

C. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

D. Release of Liens.

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, ~~and discharged,~~ and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. In addition, the Term Loan Agent and the DIP Agent shall be authorized to execute and deliver all documents reasonably requested by the Debtors or the Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

E. Releases by the Debtors.

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, their Estates, the Plan Administrator, and the Acquired Entities from any and all Causes of Action, including any derivative claims asserted on behalf of the Debtors, that the Debtors, or their Estates, or the Plan Administrator, or the Acquired Entities would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in a Debtor, or that any Holder of any Claim or Interest could have asserted on behalf of the Debtors or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' capital structure, the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court

restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction Documentation, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between and Debtor and any Released Party, and any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence. Notwithstanding the inclusion of any Released Parties as a potential party to any Transferred Causes of Action or Retained Causes of Action, such parties shall remain Released Parties.

Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the releases contained in the Plan do not (i) release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) affect the rights of Holders of Allowed Claims and Interests to receive distributions under the Plan, or (iii) release any Claims or Causes of Action against any non-Released Party.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval~~, pursuant to Bankruptcy Rule 9019,~~ of the releases herein, which includes by reference each of the related provisions and definitions contained herein, *and further*, shall constitute the Bankruptcy Court's finding that the releases herein are: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the releases herein; (iii) in the best interests of the Debtors and all Holders of Claims and Interests; (iv) fair, equitable and reasonable; (v) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (vi) a bar to any of the Debtors asserting any claim released by the releases herein against any of the Released Parties.

F. Releases by Holders of Claims and Interests.

As of the Effective Date, except as otherwise provided herein, each Releasing Party is deemed to have released and discharged each Debtor and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, or the Plan, the Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between any Debtor and any Released Party, and any other related act or omission, transaction, agreement, event, or other occurrence taking place

on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence.

Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the releases contained in the Plan do not (i) release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) affect the rights of Holders of Allowed Claims and Interests to receive distributions under the Plan, or (iii) release any Claims or Causes of Action against any non-Released Party.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval~~, pursuant to Bankruptcy Rule 9019,~~ of the releases of Holders of Claims and Interests, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the release herein is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the Releasing Parties; (iii) in the best interests of the Debtors and all Holders of Claims and Interests; (iv) fair, equitable and reasonable; (v) given and made after notice and opportunity for hearing; and (vi) a bar to any of the Releasing Parties asserting any Claim released by the release herein against any of the Released Parties.

G. Exculpation.

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the DIP Loan Documents, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement or the Plan, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that constitutes willful misconduct, actual fraud, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary herein, nothing in this Article VIII.G shall release or exculpate any Exculpated Party for any act or omission arising before the Petition Date or after the Effective Date.

H. Injunction.

Except as otherwise expressly provided in the Plan or for distributions required to be paid or delivered pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to the Plan~~ shall be discharged pursuant to the Plan,~~ or are subject to Exculpation pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Released Parties, or the Exculpated Parties (to the extent of the Exculpation provided pursuant to the Plan with respect to the

Exculpated Parties): (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Notwithstanding anything to the contrary in the Plan, the Plan Supplement, or the Confirmation Order, the automatic stay pursuant to section 362 of the Bankruptcy Code shall remain in full force and effect with respect to the Debtors until the closing of these Chapter 11 Cases.

I. Protection Against Discriminatory Treatment.

Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against the Debtors or Acquired Entities or deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, the Debtors, the Acquired Entities, or another Entity with whom the Debtors or Acquired Entities have been associated, solely because the Debtors have been debtors under chapter 11 of the Bankruptcy Code~~,~~ may have been insolvent before the commencement of the Chapter 11 Cases (or during the Chapter 11 Cases), or have not paid a debt that is dischargeable in the Chapter 11 Cases.

J. Recoupment.

In no event shall any Holder of Claims or Interests be entitled to recoup any Claim against any claim, right, or Cause of Action of the Debtors, unless such Holder actually has performed such recoupment and provided notice thereof in writing to the Debtors on or before the Confirmation Date, notwithstanding any indication in any Proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of recoupment.

K. Subordination Rights.

Any distributions under the Plan to Holders shall be received and retained free from any obligations to hold or transfer the same to any other Holder and shall not be subject to levy, garnishment, attachment, or other legal process by any Holder by reason of claimed contractual subordination rights. Any such subordination rights shall be waived, and the Confirmation Order shall constitute an injunction enjoining any Entity from enforcing or attempting to enforce any contractual, legal, or equitable subordination rights to property distributed under the Plan, in each case other than as provided in the Plan.

L. Reimbursement or Contribution.

If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever disallowed and expunged notwithstanding section 502(j) of the Bankruptcy Code, unless before the Confirmation Date: (i) such Claim has been adjudicated as non-contingent; or (ii) the relevant Holder of a Claim has Filed a non-contingent Proof of Claim on account of such Claim and a Final Order has been entered before the Confirmation Date determining such Claim as no longer contingent.

ARTICLE IX
CONDITIONS PRECEDENT TO CONFIRMATION AND THE EFFECTIVE DATE

A. Conditions Precedent to Confirmation.

It shall be a condition to Confirmation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of the Plan: (i) the Bankruptcy Court shall have entered the Disclosure Statement Order and the Confirmation Order and (ii) the Sale Transaction Documentation shall not have been terminated in accordance with its terms.

B. Conditions Precedent to the Effective Date.

It shall be a condition to Consummation that the following conditions shall have been satisfied or waived pursuant to the provisions of the Plan:

1. the Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code;
2. the Bankruptcy Court shall have entered the Confirmation Order, in form and substance acceptable to the Debtors and the Required Consenting Term Loan Lenders, and which shall have become a Final Order that has not been stayed or modified or vacated and shall:
   (a) authorize the Debtors to take all actions necessary to enter into, implement, and consummate the contracts, instruments, releases, leases, and other agreements or documents created in connection with the Plan;
   (b) decree that the provisions of the Confirmation Order and the Plan are nonseverable and mutually dependent;
   (c) authorize the implementation of the Plan in accordance with its terms; and
   (d) provide that, pursuant to section 1146 of the Bankruptcy Code, the assignment or surrender of any lease or sublease, and the delivery of any deed or other instrument or transfer order, in furtherance of, or in connection with the Plan, including any deeds, bills of sale, or assignments executed in connection with any disposition or transfer of assets contemplated under the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, or other similar tax;
3. the Bankruptcy Court shall have entered the Sale Order;
4. the occurrence of the Closing (as such term is defined and described in the Sale Transaction Documentation);
5. there shall not be in effect any (a) order, opinion, ruling, or other decision entered by any court or other governmental unit or (b) U.S. or other applicable law staying, restraining, enjoining, prohibiting, or otherwise making illegal the implementation of any of the transactions contemplated by the Plan;
6. all governmental and material third party approvals and consents, including Bankruptcy Court approval, that are necessary to implement the Restructuring Transactions shall have been obtained, not be subject to unfulfilled conditions, and be in full force and effect, and all applicable waiting periods (including all applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended) shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent, or otherwise impose materially adverse conditions on such transactions;
7. the Final DIP Order shall have been entered by the Bankruptcy Court, and shall have become a Final Order;
8. the Debtors shall not be in default under the Final DIP Order (or, to the extent that the Debtors are in default on the proposed Effective Date, such default shall have been waived by the DIP Lenders or cured by the Debtors in a manner consistent with the Final DIP Order) and the DIP Facility shall remain in full force and effect and shall not have been terminated, and the parties thereto shall otherwise be in compliance therewith;
9. the Restructuring Support Agreement shall not have terminated as to all parties thereto and shall remain in full force and effect and the Debtors and other parties then party thereto shall be in compliance therewith;
10. the Debtors shall have implemented the Restructuring Transactions, and all transactions contemplated by the Restructuring Support Agreement, in a manner consistent in all respects with the Restructuring Support Agreement and the Plan;

11. each document or agreement constituting the Definitive Documents (as defined in the Restructuring Support Agreement) shall have been execute and/or effectuated and shall be in form and substance consistent with the Restructuring Support Agreement, including, without limitation, any consent rights included therein;

12. the Debtors shall have paid or reimbursed all fees and out-of-pocket expenses of the Consenting Term Loan Lenders (as applicable), including the fees and expenses of the Ad Hoc Group Professionals;

13. with respect to all actions, documents and agreements necessary to implement the Plan: (a) all conditions precedent to such documents and agreements (other than any conditions precedent related to the occurrence of the Effective Date) shall have been satisfied or waived pursuant to the terms of such documents or agreements; (b) such documents and agreements shall have been tendered for delivery to the required parties and been approved by any required parties and, to the extent required, filed with and approved by any applicable Governmental Units in accordance with applicable laws; and (c) such documents and agreements shall have been effected or executed, and in each case all such actions, documents and agreements shall be consistent with the Restructuring Support Agreement, including, without limitation, any consent rights included therein;

14. all material authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan and the transactions contemplated herein shall have been obtained;

15. the establishment of a Professional Fee Escrow Account funded in the amount of estimated accrued but unpaid Professional fees incurred by the legal counsel and other advisors to the Debtors and any statutory committees during the Chapter 11 Cases; and

16. the Wind-Down Amount has been funded in accordance with, and as limited by, the terms of the Sale Transaction Documentation and the Restructuring Support Agreement.

On the Effective Date, the Plan shall be deemed substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

C. Waiver of Conditions.

The conditions to Consummation set forth in Article IX.B may be waived by the Debtors with the consent of the Required Consenting Term Loan Lenders and, as applicable, the DIP Lenders, at any time, without any notice to any other parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm the Plan or consummate the Plan.

D. Substantial Consummation.

"Substantial Consummation" of the Plan, as defined in section 1101(2) of the Bankruptcy Code, shall be deemed to occur on the Effective Date.

E. Effect of Non-Occurrence of Conditions to the Effective Date.

If the Effective Date does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims by or Claims against or Interests in the Debtors; (ii) prejudice in any manner the rights of the Debtors, the Debtors' Estates, any Holders, or any other Entity; or (iii) constitute an admission, acknowledgment, offer, or undertaking by the Debtors, the Debtors' Estates, any Holders, or any other Entity in any respect.

ARTICLE X
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendments.

Subject to the Restructuring Support Agreement and the limitations contained in the Plan, the Debtors, reserve the right to modify the Plan as to material terms and seek Confirmation consistent with the Bankruptcy Code and, as appropriate, not resolicit votes on such modified Plan. Subject to the Restructuring Support Agreement and certain restrictions and requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and those restrictions on modifications set forth in the Plan, the Debtors, expressly reserve their rights to alter,

amend, or modify materially the Plan with respect to the Debtors, one or more times, after Confirmation, and, to the extent necessary, may initiate proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, in such matters as may be necessary to carry out the purposes and intent of the Plan and the Restructuring Support Agreement. Any such modification or supplement shall be considered a modification of the Plan and shall be made in accordance with Article X. Notwithstanding anything to the contrary herein, the Debtors shall not amend or modify the Plan in a manner inconsistent with the Restructuring Support Agreement or the consent rights (if any) set forth in the DIP Loan Documents.

B. Effect of Confirmation on Modifications.

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan occurring after the solicitation thereof and before the Confirmation Date are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of the Plan.

Subject to the terms of the Sale Transaction Documentation, the Debtors, with the consent of the Required Consenting Term Loan Lenders, reserve the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan for any Debtor or all Debtors, prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan with respect to any Debtor, or if Confirmation or Consummation does not occur with respect to any Debtor, then: (i) the Plan with respect to such Debtor shall be null and void in all respects; (ii) any settlement or compromise embodied in the Plan with respect to such Debtor (including the fixing or limiting to an amount certain of any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases effected by the Plan with respect to such Debtor, and any document or agreement executed pursuant to the Plan with respect to such Debtor, shall be deemed null and void; and (iii) nothing contained in the Plan with respect to such Debtor shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Debtors, their Estates, or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors, the Debtors' Estates, or any other Entity. For the avoidance of doubt, except as provided in the Restructuring Support Agreement, nothing in the Plan shall be construed as requiring termination or avoidance of the Restructuring Support Agreement upon non-occurrence of the Effective Date (subject, in all respects, to any consent, termination, or other rights of the Consenting Term Loan Lenders under the Restructuring Support Agreement) or as otherwise preventing the Restructuring Support Agreement from being effective in accordance with its terms.

ARTICLE XI
RETENTION OF JURISDICTION

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, Secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the Secured or unsecured status, priority, amount, or allowance of Claims or Interests;
2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan;
3. Resolve any matters related to: (a) the assumption, assumption and assignment, or rejection of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable in any manner and to hear, determine, and, if necessary, liquidate, any Claims arising therefrom, including Claims related to the rejection of an Executory Contract or Unexpired Lease, Cure Costs pursuant to section 365 of the Bankruptcy Code, or any other matter related to such Executory Contract or Unexpired Lease; (b) any potential contractual obligation under any Executory Contract or Unexpired Lease that is assumed and/or assigned; (c) the

Debtors amending, modifying, or supplementing, after the Effective Date, pursuant to Article V of the Plan, any Executory Contracts or Unexpired Leases to the Assumed Contracts and Leases List or otherwise; and (d) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that distributions to Holders of Allowed Claims and Allowed Interests are accomplished pursuant to the provisions of the Plan;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to Causes of Action;

7. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

9. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

10. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the Consummation, interpretation, or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;

11. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Entity with Consummation or enforcement of the Plan;

12. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the settlements, compromises, releases, injunctions, exculpations, and other provisions contained in Article VIII of the Plan and enter such orders as may be necessary or appropriate to implement or enforce such releases, injunctions, and other provisions;

13. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by the Holder of a Claim or Interest for amounts not timely repaid pursuant to Article VI.G;

14. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

15. Determine any other matters that may arise in connection with or relate to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with the Plan or the Disclosure Statement;

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan or any transactions contemplated therein;

17. Adjudicate any and all matters related to the enforcement of the Restructuring Support Agreement;

18. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

19. Determine requests for the payment of Claims and Interests entitled to priority pursuant to section 507 of the Bankruptcy Code;

20. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

21. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

22. Hear and determine matters concerning section 1145 of the Bankruptcy Code;

23. Hear and determine all disputes involving the existence, nature, or scope of the Debtors' release, including any dispute relating to any liability arising out of the termination of employment or the termination of any employee or retiree benefit program, regardless of whether such termination occurred before or after the Effective Date;

24. Enforce all orders previously entered by the Bankruptcy Court;

25. Hear any other matter not inconsistent with the Bankruptcy Code; and

26. Enter an order concluding or closing the Chapter 11 Cases.

ARTICLE XII
MISCELLANEOUS PROVISIONS

A. Immediate Binding Effect.

Subject to Article VIII of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, any and all Holders of Claims or Interests (irrespective of whether the Holders of such Claims or Interests accepted or rejected the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, and injunction described in the Plan, each Entity acquiring property under the Plan, and any and all non-Debtor parties to Executory Contracts and Unexpired Leases with the Debtors. All Claims and debts shall be as fixed, adjusted, or compromised, as applicable, pursuant to the Plan regardless of whether any Holder of a Claim or debt has voted on the Plan.

B. Additional Documents.

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan and the Restructuring Support Agreement. The Debtors, all Holders of Claims or Interests receiving distributions pursuant to the Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

C. Payment of Statutory Fees.

All fees payable pursuant to 28 U.S.C. § 1930(a) shall be paid by the Debtors for each quarter (including any fraction thereof) until the Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first.

D. Dissolution of Statutory Committees.

On the Effective Date, any other statutory committee appointed in the Chapter 11 Cases shall dissolve and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Cases.

Following the Effective Date, the Committee shall remain in place with respect to the Debtors solely for the limited purpose of addressing (i) all final fee applications for all Professionals, and (ii) the resolution of any appeals of the Confirmation Order. Upon the dissolution of the Committee, the members of the Committee and their respective professionals will cease to have any duty, obligation or role arising from or related to the Debtors' Chapter 11 Cases and shall be released and discharged from all rights and duties from or related to the Debtors' Chapter 11 Cases. The Debtors shall not be responsible for paying any fees or expenses incurred by the members of or advisors to any statutory committee (including the Committee) after the Effective Date, except for those fees and expenses incurred by such committee's professionals in connection with the matters identified in clauses (i) and (ii) in the forgoing sentence.

E. Reservation of Rights.

The Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order. Neither the Plan, any statement or provision contained in the Plan, nor any action taken or not taken by the Debtors or any Debtor with respect to the Plan, the Disclosure Statement, the Confirmation Order, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors or any Debtor with respect to the Holders of Claims or Interests prior to the Effective Date.

F. Successors and Assigns.

The rights, benefits, and obligations of any Entity named or referred to in the Plan or the Confirmation Order shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor, or assign,

Affiliate, officer, director, manager, trustee, agent, representative, attorney, beneficiaries, or guardian, if any, of each Entity.

G. Service of Documents.

Any pleading, notice, or other document required by the Plan to be served on or delivered to the Debtors shall be served on:

If to the Debtors:

Akorn, Inc.
1925 W. Field Court, Suite 300
Lake Forest, Illinois 60045
Attention: Joseph Bonaccorsi
Email address: joe.bonaccorsi@akorn.com

with copies to:

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Patrick J. Nash, Jr., P.C., Gregory F. Pesce, and Christopher M. Hayes
Email addresses: patrick.nash@kirkland.com
gregory.pesce@kirkland.com
christopher.hayes@kirkland.com

and

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Nicole L. Greenblatt, P.C.
Email addresses: nicole.greenblatt@kirkland.com

If to the Committee:

Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654-3456
Attention: Catherine L. Steege, Landon S. Raiford, and William A. Williams
Email addresses: CSteege@jenner.com
LRaiford@jenner.com
WWilliams@jenner.com

If to the Consenting Term Loan Lenders:

To each Consenting Term Loan Lender at the addresses or e-mail addresses set forth in the Consenting Term Loan Lender's signature page to the Restructuring Support Agreement (or to the signature page to a joinder or transfer agreement in the case of any Consenting Term Loan Lender that becomes a party thereto after the Restructuring Support Agreement effective date).

With copies to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: Scott J. Greenberg and Steven A. Domanowski
Email addresses: sgreenberg@gibsondunn.com
sdomanowski@gibsondunn.com

and

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Attention: Robert S. Brady
Email addresses: rbrady@ycst.com

After the Effective Date, the Debtors shall have authority to send a notice to Entities that to continue to receive documents pursuant to Bankruptcy Rule 2002, such Entity must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Debtors are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities who have Filed such renewed requests.

H. Enforcement of Confirmation Order.

On and after the Effective Date, the Debtors and the Plan Administrator, as applicable, shall be entitled to enforce the terms of the Confirmation Order and the Plan (which shall include, for the avoidance of doubt, the Plan Supplement).

I. Term of Injunctions or Stays.

Unless otherwise provided in the Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order (including the injunction set forth in Article VIII.H shall remain in full force and effect in accordance with their terms).

J. Compensation and Benefits Programs.

On the Effective Date or as soon as reasonably practicable thereafter, the Debtors shall pay all compensation and benefit obligations under any present compensation, benefit, or incentive programs, including any programs approved pursuant to an Order of the Bankruptcy Court, other than any compensation, benefit, and incentive obligations assumed by the Purchaser pursuant to the Sale Transaction Documentation.

K. Entire Agreement.

Except as otherwise indicated, and without limiting the effectiveness of the Restructuring Support Agreement, the Plan, the Confirmation Order, and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

L. Exhibits.

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are Filed, copies of such exhibits and documents shall be available upon written request to the Debtors' counsel at the address above or by downloading such exhibits

and documents from the Debtors' restructuring website www.kccllc.net/akorn or the Bankruptcy Court's website at www.deb.uscourts.gov.

M. Certain Consent Rights.

Notwithstanding anything in the Plan to the contrary, any and all consent rights of (x) the Required Consenting Term Loan Lenders and the DIP Lenders set forth in the Restructuring Support Agreement, (y) the DIP Agent and the DIP Lenders set forth in the DIP Loan Documents (if any), and (z) the Debtors with respect to the form and substance of the Plan and the Plan Supplement are fully enforceable as if stated in full herein until such time as the Restructuring Support Agreement is terminated in accordance with its terms. In case of a conflict between the consent rights of the Required Consenting Term Loan Lenders, the DIP Agent, the DIP Lenders, or the Debtors that are set forth in the Restructuring Support Agreement or the DIP Loan Documents (if any) with those parties' consent rights that are set forth in the Plan or the Plan Supplement, the consent rights in the Restructuring Support Agreement or the DIP Loan Documents (if any) (as applicable) shall control.

N. Nonseverability of Plan Provisions.

If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall not alter or interpret such term or provision to make it valid or enforceable, *provided that* at the request of the Debtors, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such terms or provision shall then be applicable as altered or interpreted, *provided*, *further*, that any such alteration or interpretation shall be acceptable to the Debtors. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (i) valid and enforceable pursuant to its terms; (ii) integral to the Plan and may not be deleted or modified without the consent of the Debtors, the Required Consenting Term Loan Lenders, the DIP Lenders, and the DIP Agent (to the extent of its consent right set forth in the DIP Loan Documents (if any)); and (iii) nonseverable and mutually dependent.

O. Votes Solicited in Good Faith.

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, and, therefore, neither any of such parties or individuals will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

P. Waiver.

Each Holder of a Claim or an Interest shall be deemed to have waived any right to assert any argument, including the right to argue that its Claim or Interest should be Allowed in a certain amount, in a certain priority, Secured or not subordinated by virtue of an agreement made with the Debtors or their counsel, or any other Entity, if such agreement was not disclosed in the Plan, the Disclosure Statement, the Restructuring Support Agreement, or papers Filed with the Bankruptcy Court before the Confirmation Date.

Respectfully submitted,

Dated: ~~May 26,~~**June 30,** 2020

Akorn, Inc.
on behalf of itself and all other Debtors

/s/ *Joseph Bonaccorsi*

Name: Joseph Bonaccorsi

Title:	Executive Vice President and General Counsel
Company:	Akorn, Inc.

Document comparison by Workshare Compare on Tuesday, June 30, 2020 10:21:38 AM

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Moved to	0
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EXHIBIT 2

THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCE OR REJECTION MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THE DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
AKORN, INC., *et al.*,[1]	)	Case No. 20-11177 (KBO)
Debtors.	)	(Jointly Administered)

DISCLOSURE STATEMENT FOR JOINT CHAPTER 11 PLAN OF AKORN, INC. AND ITS DEBTOR AFFILIATES

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[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.

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT

THE DEADLINE TO VOTE ON THE PLAN IS
[August ~~15~~14], 2020, at 5:00 p.m. (prevailing Eastern Time)

THE DEADLINE TO OBJECT TO THE PLAN IS
[August ~~15~~14], 2020, at 4:00 p.m. (prevailing Eastern Time)

FOR YOUR VOTE TO BE COUNTED, YOUR BALLOT MUST BE ACTUALLY RECEIVED BY KURTZMAN CARSON CONSULTANTS LLC ON OR BEFORE THE VOTING DEADLINE AS DESCRIBED HEREIN

THE DEBTORS ARE PROVIDING THE INFORMATION IN THIS DISCLOSURE STATEMENT TO HOLDERS OF CLAIMS AND INTERESTS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE JOINT CHAPTER 11 PLAN OF AKORN, INC. AND ITS DEBTOR AFFILIATES.[2]

THE PLAN IS SUPPORTED BY THE DEBTORS AND CERTAIN PARTIES IN INTEREST THAT HAVE EXECUTED THE RESTRUCTURING SUPPORT AGREEMENT, INCLUDING HOLDERS OF APPROXIMATELY 80 PERCENT IN PRINCIPAL AMOUNT OF TERM LOAN CLAIMS. THE DEBTORS URGE HOLDERS OF CLAIMS AND INTERESTS WHOSE VOTES ARE BEING SOLICITED TO VOTE TO ACCEPT THE PLAN.

NOTHING IN THIS DISCLOSURE STATEMENT MAY BE RELIED UPON OR USED BY ANY ENTITY FOR ANY OTHER PURPOSE. BEFORE DECIDING WHETHER TO VOTE FOR OR AGAINST THE PLAN, EACH HOLDER ENTITLED TO VOTE SHOULD CAREFULLY CONSIDER ALL OF THE INFORMATION IN THIS DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED HEREIN.

THE DEBTORS URGE EACH HOLDER OF A CLAIM OR INTEREST TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX, BUSINESS, OR OTHER ADVICE IN REVIEWING THIS DISCLOSURE STATEMENT, THE PLAN, AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE PLAN OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN.

THIS DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, AND CERTAIN EVENTS IN THESE CHAPTER 11 CASES. ALTHOUGH THE DEBTORS BELIEVE THAT THESE SUMMARIES ARE FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THIS DISCLOSURE STATEMENT AND THE TERMS AND

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (as may be amended, supplemented or modified from time to time, the "Plan"), attached hereto as **Exhibit A**.

PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTORS' MANAGEMENT OR THIRD-PARTY ADVISORS EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED. THE DEBTORS DO NOT REPRESENT OR WARRANT THAT THE INFORMATION CONTAINED HEREIN OR ATTACHED HERETO IS WITHOUT ANY MATERIAL INACCURACY OR OMISSION.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016(b) AND IS NOT NECESSARILY PREPARED IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS.

THIS DISCLOSURE STATEMENT WAS NOT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE AUTHORITY AND NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE AUTHORITY HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THIS DISCLOSURE STATEMENT OR UPON THE MERITS OF THE PLAN.

IN PREPARING THIS DISCLOSURE STATEMENT, THE DEBTORS RELIED ON FINANCIAL DATA DERIVED FROM THE DEBTORS' BOOKS AND RECORDS AND ON VARIOUS ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES. WHILE THE DEBTORS BELIEVE THAT SUCH FINANCIAL INFORMATION FAIRLY REFLECTS THE FINANCIAL CONDITION OF THE DEBTORS AS OF THE DATE HEREOF AND THAT THE ASSUMPTIONS REGARDING FUTURE EVENTS REFLECT REASONABLE BUSINESS JUDGMENTS, NO REPRESENTATIONS OR WARRANTIES ARE MADE AS TO THE ACCURACY OF THE FINANCIAL INFORMATION CONTAINED HEREIN OR ASSUMPTIONS REGARDING THE DEBTORS' BUSINESSES AND THEIR FUTURE RESULTS AND OPERATIONS. THE DEBTORS EXPRESSLY CAUTION READERS NOT TO PLACE UNDUE RELIANCE ON ANY FORWARD-LOOKING STATEMENTS CONTAINED HEREIN.

THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION, OR WAIVER.

THE DEBTORS ARE MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTORS MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THIS DISCLOSURE STATEMENT, THE DEBTORS HAVE NO AFFIRMATIVE DUTY TO DO SO, AND EXPRESSLY DISCLAIM ANY DUTY TO PUBLICLY UPDATE ANY FORWARD-LOOKING STATEMENTS, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THIS DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THIS DISCLOSURE STATEMENT WAS FILED. THE DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. ANY ANALYSES, ESTIMATES, OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT

TO BE ACCURATE. INFORMATION CONTAINED HEREIN IS SUBJECT TO COMPLETION, MODIFICATION, OR AMENDMENT. THE DEBTORS RESERVE THE RIGHT TO FILE AN AMENDED OR MODIFIED PLAN AND RELATED DISCLOSURE STATEMENT FROM TIME TO TIME, SUBJECT TO THE TERMS OF THE PLAN.

THE DEBTORS HAVE NOT AUTHORIZED ANY ENTITY TO GIVE ANY INFORMATION ABOUT OR CONCERNING THE PLAN OTHER THAN THAT WHICH IS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DEBTORS HAVE NOT AUTHORIZED ANY REPRESENTATIONS CONCERNING THE DEBTORS OR THE VALUE OF THEIR PROPERTY OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT.

THE CONFIRMATION AND EFFECTIVENESS OF THE PLAN ARE SUBJECT TO CERTAIN MATERIAL CONDITIONS PRECEDENT DESCRIBED HEREIN AND SET FORTH IN ARTICLE IX OF THE PLAN. THERE IS NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED, OR IF CONFIRMED, THAT THE CONDITIONS PRECEDENT TO BE SATISFIED FOR THE PLAN TO GO EFFECTIVE WILL BE SATISFIED.

IF CONFIRMATION OR EFFECTIVENESS OF THE PLAN DOES NOT OCCUR, THE PLAN SHALL ACT AS A MOTION SEEKING A DISMISSAL OF THE CHAPTER 11 CASES IN ACCORDANCE WITH THE BANKRUPTCY CODE.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AND INTERESTS (INCLUDING THOSE HOLDERS OF CLAIMS AND INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN, OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

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EXHIBITS

EXHIBIT A Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates

EXHIBIT B Wind-Down Budget

EXHIBIT C Restructuring Support Agreement

Article I.
INTRODUCTION

The Debtors submit this disclosure statement (this "Disclosure Statement") pursuant to section 1125 of the Bankruptcy Code to Holders of Claims against and Interests in the Debtors in connection with the solicitation of votes to accept or reject the Plan.[3] A copy of the Plan is attached hereto as **Exhibit A** and incorporated herein by reference. The Plan constitutes a separate chapter 11 plan for each of the Debtors. The rules of interpretation set forth in Article I.B of the Plan govern the interpretation of this Disclosure Statement.

THE DEBTORS BELIEVE THAT THE TRANSACTIONS CONTEMPLATED UNDER THE PLAN ARE FAIR AND EQUITABLE, MAXIMIZE THE VALUE OF THE DEBTORS' ESTATES, AND PROVIDE THE BEST RECOVERY TO HOLDERS OF CLAIMS AND INTERESTS UNDER THE CIRCUMSTANCES. EACH OF THE DEBTORS AND THE PARTIES IN INTEREST THAT HAVE EXECUTED THE RESTRUCTURING SUPPORT AGREEMENT, INCLUDING HOLDERS OF APPROXIMATELY 80 PERCENT IN PRINCIPAL AMOUNT OF TERM LOAN CLAIMS, SUPPORT CONFIRMATION OF THE PLAN. ACCORDINGLY, THE DEBTORS BELIEVE THAT THE PLAN IS THE BEST AVAILABLE ALTERNATIVE FOR COMPLETING THE CHAPTER 11 CASES. THE DEBTORS STRONGLY RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN.[4]

A. *Preliminary Statement.*

Akorn, Inc. (together with its Debtor and non-Debtor affiliates, "Akorn") is a specialty generic pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, branded and private-label over-the-counter consumer health products, and animal health pharmaceuticals. Akorn focuses on difficult-to-manufacture sterile and non-sterile dosage forms including, but not limited to, ophthalmics, injectables, oral liquids, otics, topicals, inhalants, and nasal sprays. Akorn was founded in 1971 in Abita Springs, Louisiana. In 1997, Akorn relocated its corporate offices to the Chicago, Illinois area; today, Akorn maintains its principal corporate offices in Lake Forest, Illinois.

Historically, Akorn explored and executed strategic mergers and acquisitions to, among other things, expand its product portfolio and pharmaceutical research and development and manufacturing capabilities. In April of 2017, Akorn and Fresenius Kabi AG ("Fresenius") announced a proposed merger that, if consummated, would have resulted in in Akorn shareholders receiving $34 per common share and Akorn becoming a wholly-owned subsidiary of Fresenius. As discussed further herein, following approval of the merger by Akorn shareholders, Akorn's business entered into a period of decline, leading Fresenius to seek to

[3] The summary of the Plan provided herein is qualified in its entirety by reference to the Plan. In the case of any inconsistency between this Disclosure Statement and the Plan, the Plan will govern.

[4] If the Plan is not confirmed or the Effective Date does not occur, the Debtors reserve all of their rights regarding the Disclosure Statement and the Plan and any statement set forth in the Disclosure Statement and the Plan, as applicable. Furthermore, if the Plan is not confirmed or the Effective Date does not occur, nothing in the Disclosure Statement or the Plan shall be deemed an admission by the Debtors, and the Debtors reserve all such rights regarding the Disclosure Statement and the Plan and any statement set forth in the Disclosure Statement and the Plan.

terminate the merger. Ensuing litigation in the Court of Chancery for the State of Delaware (the "Delaware Chancery Court") resulted in a decision finding that Akorn's business had suffered a "material adverse effect" that permitted Fresenius to terminate the merger.

Fresenius's initial announcement that the merger was at risk and the ensuing Delaware Chancery Court opinion prompted federal securities class action litigation against Akorn and certain of its former directors and officers, as well as federal and state law derivative litigation, relating to regulatory compliance issues. On March 13, 2020, the United States District Court for the Northern District of Illinois (the "Illinois District Court") granted final approval to a settlement of the securities class action litigation resolving the securities claims of a class of investors who acquired Akorn common stock from November 3, 2016 through January 8, 2019. However, four groups of hedge funds have "opted out" of the settlement class, filed separate securities law claims, and made clear they intend to continue to litigate their claims against Akorn and the other defendants.

Following the terminated merger and related shareholder litigation, a group of Term Loan Lenders (the "Ad Hoc Group") organized and asserted certain purported defaults under the Debtors' Term Loan Credit Agreement. After significant arm's-length negotiations with the Ad Hoc Group, the Debtors ultimately entered into the Standstill Agreement with certain of the Term Loan Lenders, pursuant to which the Term Loan Lenders party thereto agreed, among other things, not to declare an event of default under the Term Loan Credit Agreement for the duration of an agreed-upon standstill period. The standstill period expired prior to commencement of the Chapter 11 Cases.

Notwithstanding these challenging nonoperational headwinds, Akorn's business is in the midst of a significant financial and operational turnaround. Thanks in part to Akorn's ongoing operational turnaround and in part to company-specific and industrywide tailwinds—including savings to the U.S. healthcare system from generics that continue to drive substitution, loss of exclusivity of brand-name pharmaceuticals driving generic opportunities, and the attractiveness of alternative dosage forms that comprise the substantial majority of Akorn's product portfolio—Akorn is poised for sustainable near-term business success. Yet the overhang of the Fresenius Litigation, the related shareholder litigation with the remaining opt-outs, and ongoing debt service obligations have deterred new financing sources from investing in and/or acquiring Akorn's business outside of the chapter 11 context, obstructing out-of-court solutions to Akorn's current capital structure. These headwinds continue to undermine Akorn's performance.

In response, the Debtors and their advisors worked tirelessly in the months leading up to the Petition Date to find alternatives to a chapter 11 filing, but ultimately determined that the only viable course of action was to commence the Chapter 11 Cases to pursue and facilitate a sale of the Debtors through an in-court process, as more fully described below. In the months leading up to commencement of the Chapter 11 Cases, the Debtors, with the assistance of their advisors, robustly marketed a potential going-concern transaction of the Debtors' business, which included outreach to dozens of financial and strategic partners, substantial due diligence conducted by multiple parties, and initial indications of interest at valuations sufficient to fully pay the outstanding balance of the Debtors' Term Loans. As the Debtors' nearly four-month marketing process drew to a close in late March, a confluence of factors adversely impacted interested parties' valuation levels, including perceived operational risks associated with Akorn's

ongoing FDA remediation efforts, perceived risks around obtaining approvals for new products in their pipeline, and the impact of the COVID-19 pandemic on capital markets and the availability of financing. As a result, the Debtors did not receive any binding bids sufficient to fully repay the Term Loans. Consequently, on March 28, 2020, an immediate event of default under the Term Loan Credit Agreement occurred, and, as discussed further herein, the Debtors and the Ad Hoc Group pivoted to a prenegotiated set of alternative milestones that contemplated a credit bid by their Term Loan Lenders that will serve as the "stalking horse" for a further marketing process to be conducted inside the Debtors' Chapter 11 Cases.

After pivoting to the new timeline, the Debtors, their advisors, and the Ad Hoc Group and its advisors worked tirelessly to negotiate the definitive documentation for a value-maximizing credit bid from the Term Loan Lenders that enticed further bidding as markets began to stabilize in the wake of the COVID-19 crisis. The stalking horse bid set the floor for a further market test and a potential sale to a third-party Purchaser, only if such Purchaser submits an actionable bid that is higher or otherwise better than the stalking horse bid. The Term Lenders' support for the sale process is also memorialized in the Restructuring Support Agreement executed by holders of approximately 80% in principal amount of the term loans. To execute the value-maximizing restructuring contemplated by the Restructuring Support Agreement, certain of the Restructuring Support Agreement parties also have agreed to provide $30 million of debtor-in-possession ("DIP") financing to fund the chapter 11 cases and sale process. The DIP financing commitment sends a strong signal to the Debtors' employees, customers, and trade partners of the confidence the Term Lenders have in the value of their business and to ensure there is adequate funding to ensure operational stability through closing of the Sale Transaction. Together, the Restructuring Support Agreement and DIP financing provide a framework for the postpetition marketing process for the Debtors' business and a wind-down plan for the Debtors' Estates that will finally resolve these Chapter 11 Cases on substantially the same timeline as contemplated by the sale process. To that end, the Debtors filed a motion to approve the Bidding Procedure and sale of the Debtors, and expect to move swiftly through the Chapter 11 Cases.

In parallel, the Debtors have filed the Plan. The terms of the Plan are more fully described herein, but, in general, the Plan contemplates that a Plan Administrator will be appointed on the Effective Date to wind down the Debtors' Estates, monetize any remaining assets, and make distributions to creditors in accordance with the priorities established by the Bankruptcy Code. Significantly, the Stalking Horse APA includes the Purchaser's agreement to fund a $35 million ~~w~~**W**ind-~~d~~**D**own budget, pursuant to which the Debtors intend to satisfy their post-closing obligations under the Sale Transaction Documentation and otherwise bring these Chapter 11 Cases to conclusion.

The Debtors believe that the Plan is in the best interest of the Debtors' Estates, and therefore the Debtors seek to confirm the Plan. The Plan provides the best available alternative for the Debtors' Estates and recoveries following consummation of the Sale Transaction. If the Debtors' business were liquidated in a chapter 7 process, creditors would receive lower recoveries because the Debtors' Estates would necessarily bear additional costs associated with transitioning to chapter 7, retaining a chapter 7 trustee, counsel, and advisors, and administering a chapter 7 process. The Debtors believe that Confirmation of the Plan will avoid the lengthy delay and significant cost of liquidation under chapter 7 of the Bankruptcy Code.

If Confirmation or effectiveness of the Plan does not occur, the Plan shall act as a motion seeking a dismissal of the Chapter 11 Cases in accordance with the Bankruptcy Code.

The Debtors urge Holders of Claims and Interests in Class 3 (Term Loan Claims), Class 4 (General Unsecured Claims), Class 7 (Section 510(b) Claims), and Class 8 (Akorn Interests) to vote to accept the Plan.

Article II.
QUESTIONS AND ANSWERS REGARDING THIS DISCLOSURE STATEMENT

A. *What is Chapter 11?*

Chapter 11 is the principal business restructuring chapter of the Bankruptcy Code. In addition to permitting debtor rehabilitation, chapter 11 promotes equality of treatment for creditors and similarly situated equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code.

The commencement of a chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the date the chapter 11 case is commenced. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

A bankruptcy court's confirmation of a chapter 11 plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of the debtor, and any other entity as may be ordered by the bankruptcy court. Subject to certain limited exceptions, the order issued by a bankruptcy court confirming a plan provides for the treatment of the debtor's liabilities in accordance with the terms of the confirmed plan.

B. *Why are the Debtors sending me this Disclosure Statement?*

The Debtors are seeking to obtain Bankruptcy Court approval of the Plan. Before soliciting acceptances of the Plan, section 1125 of the Bankruptcy Code requires the Debtors to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding acceptance of the Plan. The Plan provides for the wind-down and dissolution of the Debtors' Estates and for the making of distributions to Holders of Claims and Interests, and this Disclosure Statement is being submitted to provide information about the transactions contemplated under the Plan and related information concerning the Debtors, all in accordance with the requirements of the Bankruptcy Code.

C. *Am I entitled to vote on the Plan?*

Your ability to vote on, and your distribution under, the Plan, if any, depends on what type of Claim or Interest you hold (if any). Each category of Holders of Claims or Interests in Article III of the Plan pursuant to section 1122(a) of the Bankruptcy Code, is referred to as a "Class." Each Class's respective voting status is set forth below:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 3	Term Loan Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote
Class 5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / (Deemed to Reject)
Class 6	Intercompany Interests	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 7	Section 510(b) Claims	Impaired	Entitled to Vote
Class 8	Akorn Interests	Impaired	Entitled to Vote

D. *What will I receive from the Debtors if the Plan is Consummated?*

The following table provides a summary of the anticipated recovery to Holders of Allowed Claims and Interests under the Plan. Any estimates of Claims in this Disclosure Statement may vary from the final amounts Allowed by the Bankruptcy Court. Your ability to receive distributions under the Plan depends upon the ability of the Debtors to obtain Confirmation and meet the conditions necessary to consummate the Plan.

SUMMARY OF EXPECTED RECOVERIES[5]				
Class	**Claim / Equity Interest**	**Treatment of Claim / Equity Interest**	**Projected Amount of Claims[6]**	**Projected Recovery**
1	Other Priority Claims	Except to the extent that a Holder of an Allowed Priority Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Priority Claim, each Holder of an Allowed Other Priority	$[●]2 million	100%

5 The Plan contemplates distributions being made pursuant to a waterfall priority scheme in accordance with the Bankruptcy Code. Thus, the recoveries for each class listed in this chart depend entirely on the extent to which classes senior to them are satisfied.

6 These amounts reflect estimates as of the date hereof and may ultimately be higher or lower depending on, among other things, timely Filed Proofs of Claim.

SUMMARY OF EXPECTED RECOVERIES[5]				
Class	**Claim / Equity Interest**	**Treatment of Claim / Equity Interest**	**Projected Amount of Claims[6]**	**Projected Recovery**
		Claim shall receive payment in full in Cash or other treatment rendering such Claim Unimpaired, in each case on the Effective Date.		
2	Other Secured Claims	Except to the extent that a Holder of an Allowed Other Secured Claim agrees to less favorable treatment, in full and final satisfaction, compromise, settlement, and release of and in exchange for each Allowed Other Secured Claim, each Holder of an Allowed Other Secured Claim shall receive, at the election of the Debtors, in consultation with the Required Consenting Term Loan Lenders, and in each case, on the Effective Date: (i) payment in full in Cash of such Allowed Other Secured Claim; (ii) the Collateral securing such Allowed Other Secured Claim; (iii) Reinstatement of such Allowed Other Secured Claim, notwithstanding any contractual provision or applicable non-bankruptcy Law that entitles the holder of such claim to demand or to receive payment prior to the stated maturity of such Allowed Other Secured Claim from and after the occurrence of default; or (iv) such other treatment rendering such Allowed Other Secured Claim Unimpaired.	$~~[●]~~0	100%

SUMMARY OF EXPECTED RECOVERIES[5]				
Class	**Claim / Equity Interest**	**Treatment of Claim / Equity Interest**	**Projected Amount of Claims[6]**	**Projected Recovery**
3	Term Loan Claims	In full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of an Allowed Term Loan Claim shall receive on the Effective Date either: (i) In the event the Sale Transaction is not a Term Loan Credit Bid Transaction, its Pro Rata share of the Distributable Proceeds pursuant to the Waterfall Recovery; or (ii) In the event the Sale Transaction is a Term Loan Credit Bid Transaction, on account of the Allowed Term Loan Claims *less* the Term Loan Credit Bid Amount, its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery. (iii) (iv) For the avoidance of doubt, in the event the Sale Transaction is a Term Loan Credit Bid Transaction, the Term Loan Lenders shall be entitled to immediate possession of the Purchased Assets as and solely to the extent set forth in the Sale Order, with no further order of the Bankruptcy Court required. (v)	$~~861,686,192~~**854,694,317.57**	100%

SUMMARY OF EXPECTED RECOVERIES[5]				
Class	**Claim / Equity Interest**	**Treatment of Claim / Equity Interest**	**Projected Amount of Claims[6]**	**Projected Recovery**
4	General Unsecured Claims	In full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Claim (unless the applicable Holder agrees to a less favorable treatment), each Holder of an Allowed General Unsecured Claim that is not assumed by the Purchaser shall receive its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery. **At this time, it is expected that Class 4's share of the Distributable Proceeds will be $0.** For the avoidance of doubt, all General Unsecured Claims that are assumed by the Purchaser pursuant to the Sale Transaction Documentation shall be satisfied by the Purchaser in full in Cash following the Effective Date in the ordinary course of business; *provided* that any Allowed General Unsecured Claim that has been expressly assumed by the Purchaser under the Sale Transaction shall not be an obligation of the Debtors as of or after the Effective Date.	$~~[●]~~**12–42 million[7]**	~~[●]~~**0%[8]**
5	Intercompany	In full and final satisfaction	~~$[●]~~**N/A**	100% or 0%

[7] General Unsecured Claims estimate based on balance sheet, including accrued liabilities, net of amounts paid or estimated to be paid pursuant to "first day" orders. This number reflects a range, with the high-end number assuming the CVRs are ultimately determined to be Class 4 Claims and the low-end number assuming the CVRs are Class 7 Section 510(b) Claims. This number also excludes contingent, unliquidated, and disputed Claims, the value of which is unknown at this time.

[8] Applies to General Unsecured Claims that are not assumed by the Purchaser pursuant to the Sale Transaction.

SUMMARY OF EXPECTED RECOVERIES[5]				
Class	**Claim / Equity Interest**	**Treatment of Claim / Equity Interest**	**Projected Amount of Claims[6]**	**Projected Recovery**
	Claims	of each Allowed Intercompany Claim, each Allowed Intercompany Claim, unless otherwise provided for under the Plan and subject to the Description of Transaction Steps, will either be Reinstated, distributed, contributed, set off, settled, cancelled and released or otherwise addressed at the option of the Debtors, in consultation with the Required Consenting Term Loan Lenders; provided, that no distributions shall be made on account of any such Intercompany Claims.		
6	Intercompany Interests	In full and final satisfaction of each Allowed Intercompany Interest, subject to the Description of Transaction Steps, each Intercompany Interest shall be Reinstated solely to maintain the Debtors' corporate structure.	N/A	100%
7	Section 510(b) Claims	On the Effective Date, in full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Claim, each Holder of an Allowed Class 7 Section 510(b) Claim shall receive its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery; *provided that* for purposes of receiving the treatment provided herein, each Holder of an Allowed Section	~~$[●]~~**Undetermined[9]**	~~[●]~~**0**%

[9] At this time, this includes Claims that are contingent, unliquidated, and disputed.

SUMMARY OF EXPECTED RECOVERIES[5]				
Class	**Claim / Equity Interest**	**Treatment of Claim / Equity Interest**	**Projected Amount of Claims[6]**	**Projected Recovery**
		510(b) Claim shall be treated as if such Holder held a number of Allowed Class 8 Akorn Interests equal in value to the amount of its Allowed Section 510(b) Claim. **At this time, it is expected that Class 7's share of the Distributable Proceeds will be $0.**		
8	Akorn Interests	On the Effective Date, in full and final satisfaction, compromise, settlement, **and** release~~, and discharge~~ of its Interests, each Holder of Allowed Class 8 Akorn Interests shall receive its Pro Rata share of the Distributable Proceeds, if any, pursuant to the Waterfall Recovery. **At this time, it is expected that Class 8's share of the Distributable Proceeds will be $0.**	N/A	~~[●]~~**0**%

E. *What will I receive from the Debtors if I hold an Allowed Administrative Claim or an Allowed Priority Tax Claim?*

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, Priority Tax Claims, and DIP Facility Claims have not been classified and thus are excluded from the Classes of Claims set forth in Article III of the Plan. Administrative Claims, DIP Facility Claims, and Priority Tax Claims will be satisfied as set forth in Article II of the Plan as described below.

1. *Administrative Claims.*

Except with respect to Professional Fee Claims and DIP Facility Claims, or as otherwise set forth in the Plan, subject to the provisions of sections 327, 330(a), and 331 of the Bankruptcy Code, and except to the extent that a Holder of an Allowed Administrative Claim and, as applicable, the Debtors or the Plan Administrator, agree to less favorable treatment or such Holder has been paid by any applicable Debtor prior to the Effective Date, the Debtors or the Plan Administrator shall, in consultation with the Required Consenting Term Loan Lenders, pay

each Holder of an Allowed Administrative Claim the full unpaid amount of such Allowed Administrative Claim in Cash, which payment shall be made (x) in the ordinary course of business, or (y) on the later of (i) the Effective Date and (ii) the date on which such Administrative Claim becomes an Allowed Claim or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Administrative Claim is due or as soon as reasonably practicable thereafter) with a Cash distribution; *provided* that any Allowed Administrative Claim that has been expressly assumed by the Purchaser under the Sale Transaction Documentation shall not be an obligation of the Debtors as of or after the Effective Date.

2. *Priority Tax Claims.*

Except to the extent that a Holder of an Allowed Priority Tax Claim and, as applicable, the Debtors or the Plan Administrator, agree to a less favorable treatment, in full and final satisfaction, settlement, and release of and in exchange for each Allowed Priority Tax Claim, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code, each Holder of such Allowed Priority Tax Claim shall receive, at the option of the Debtors or the Plan Administrator, as applicable, in consultation with the Required Consenting Term Loan Lenders, either (i) the full unpaid amount of such Allowed Priority Tax Claim in Cash on the later of the Effective Date and the date on which such Priority Tax Claim becomes an Allowed Claim or as soon as reasonably practicable thereafter (or, if not then due, when such Allowed Priority Tax Claim is due or as soon as reasonably practicable thereafter), or (ii) equal annual installment payments in Cash, of a total value equal to the Allowed amount of such Priority Tax Claim, over a period ending not later than five (5) years after the Petition Date; *provided* that any Allowed Priority Tax Claim that has been expressly assumed by the Purchaser under the Sale Transaction Documentation shall not be an obligation of the Debtors. In the event an Allowed Priority Tax Claim is also a Secured Tax Claim, such Claim shall, to the extent it is Allowed, be treated as an Other Secured Claim if such Claim is not otherwise paid in full. On the Effective Date, any Liens securing any Allowed Priority Tax Claims shall be deemed released, terminated, and extinguished, in each case without further notice to or order of the Bankruptcy Court, act, or action under applicable law, regulation, order or rule, or the vote, consent, authorization, or approval of any Person.

3. *DIP Facility Claims.*

All DIP Facility Claims shall be deemed Allowed as of the Effective Date in an amount equal to the full amount due and owing under the DIP Credit Agreement, including, for the avoidance of doubt, (i) the principal amount outstanding under the DIP Facility on such date, (ii) all interest accrued and unpaid thereon through and including the date of payment, and (iii) all accrued and unpaid fees, expenses and noncontingent indemnification obligations payable under the DIP Facility and the Final DIP Order. On the Effective Date, in full and final satisfaction, settlement, **and** release~~, and discharge~~ of and in exchange for each Allowed DIP Facility Claim, each DIP Facility Claim shall be paid in full in Cash, except to the extent such DIP Facility Claims were credit bid pursuant to the terms of the Sale Transaction Documentation. All Liens and security interests granted by the Debtors to secure the obligations under the DIP Facility shall be of no further force or effect. For the avoidance of doubt, the DIP Facility Claims shall not be subject to any avoidance, reduction, setoff, recoupment, recharacterization, subordination (equitable or contractual or otherwise), counter-claim, defense, disallowance, impairment, objection, or any challenges under applicable law or regulation.

F. *If the Plan provides that I get a distribution, do I get it upon Confirmation or when the Plan becomes effective, and what is meant by "Confirmation," "Effective Date," and "Consummation?"*

"Confirmation" of the Plan refers to approval of the Plan by the Bankruptcy Court. Confirmation of the Plan does not guarantee that you will receive the distribution indicated under the Plan. After Confirmation of the Plan by the Bankruptcy Court, there are conditions that must be satisfied or waived so that the Plan may become effective. Initial distributions to Holders of Allowed Claims and Interests will only be made on the date the Plan becomes effective—the "Effective Date"—or as soon as reasonably practicable thereafter, as specified in the Plan. "Consummation" means the occurrence of the Effective Date. ¶

G. *Does the Plan provide for subordination of any Claims?*¶

The Plan contemplates a single Class of Claims, Class 7 (Section 510(b) Claims), containing any Claim against any of the Debtors that is subject to mandatory subordination pursuant to section 510(b) of the Bankruptcy Code. The Fresenius Litigation Claims and any Shareholder Litigation Claims not settled pursuant to the Shareholder Settlement are Section 510(b) Claims.¶

Section 510(b) of the Bankruptcy Code provides that claims arising from securities transactions are mandatorily subordinated to the underlying securities (unless the security is common stock, in which case the claim is *pari passu* with common stock), and the United States Court of Appeals for the Third Circuit has adopted a broad reading of the phrase "arising from" a securities transaction to include claims that have a nexus or causal link to the underlying securities transaction, noting that the claims need not allege illegality in the securities transaction itself.[10] In deciding whether section 510(b) applies to claims, courts in Delaware have focused on risk allocation and return expectations.¶

Both the Shareholder Litigation Claims not settled pursuant to the Shareholder Settlement and the Fresenius Litigation Claims arise from or relate to an agreement to purchase Akorn stock, and the claimants thereunder in each case bargained for the risk and return profile of a shareholder (rather than a creditor).¶

The Debtors will further demonstrate the legal basis for subordination of the Fresenius Litigation Claims at or prior to Confirmation.¶

H. *I am a participant in the Shareholder Settlement and expect to receive my pro rata share of contingent value rights ("CVRs") as a result. Are my CVRs considered Class 4 General Unsecured Claims or Class 7 Section 510(b) Claims?*¶

The Shareholder Settlement reflects a holistic resolution of claims, causes of action, and other matters arising out of or relating to the Shareholder Litigation. Pursuant to the Shareholder Settlement, the CVRs issued pursuant to its terms entitle Holders thereof to

[10] *See In re Telegroup, Inc.*, 281 F.3d 133, 138 (3d Cir. 2002); *see also In re Int'l Wireless Commc'ns Holdings, Inc.*, 257 B.R. 739 (Bankr. D. Del. 2001), *aff'd*, 279 B.R. 463 (D. Del. 2002), *aff'd*, 68 F. App'x 275 (3d Cir. 2003).

their *pro rata* share of a $30 million general unsecured claim against Akorn. The Debtors are aware that certain stakeholders believe such general unsecured claim is subject to mandatory subordination pursuant to section 510(b) of the Bankruptcy Code and expect the issue to be addressed in connection with Confirmation. All parties' rights are reserved with respect thereto and Holders of CVRs should consider the possibility that any Claims on account thereof may be subordinated when determining whether to accept or reject the Plan.¶

I. *Is the Shareholder Settlement an executory contract?¶*

The Debtors are aware that certain stakeholders believe the Shareholder Settlement is an executory contract that may be assumed or rejected by the Debtors. Section 365(a) of the Bankruptcy Code authorizes a trustee or debtor-in-possession to assume or reject an executory contract, and "[a] settlement agreement is an executory contract when "both parties have unperformed obligations that would constitute a material breach if not performed."[11] The time for determining "whether there are material unperformed obligations on both sides is when the bankruptcy petition is filed."[12] A condition is not always the same as a duty to perform, and a failure of a condition may not equate to a breach of duty.[13] Therefore, if a party's remaining obligations under a contract are conditions and not duties, then the contract is not executory.[14] For the Shareholder Settlement to be an executory contract that is subject to assumption or rejection pursuant to section 365 of the Bankruptcy Code, all parties to the Settlement Agreement must have had material unperformed obligations as of the Petition Date. The Debtors' analysis of whether or not the Shareholder Settlement constitutes an executory contract subject to assumption or rejection remains ongoing at this time and expect this issue to be resolved in connection with Confirmation. All parties' rights are reserved on this issue.

J. ~~G.~~ *What are the sources of cash and other consideration required to fund the Plan?*

The following sources shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims and subject to the terms provided in the Plan: Cash on hand, borrowings under the DIP Facility, the Distributable Proceeds, if any, the Wind-Down Amount, the Debtors' rights under the Sale Transaction Documentation, payments made directly by the Purchaser on account of any Assumed Liabilities under the Sale Transaction Documentation, payments of Cure Costs made by the Purchaser pursuant to sections 365 or 1123 of the Bankruptcy Code, the return of any utility deposits as set forth in the Utilities Orders, and all Causes of Action not previously settled, released, or exculpated under the Plan, if any, shall be used to fund the distributions to Holders of Allowed

[11] *In re Columbia Gas Sys., Inc.*, 50 F.3d at 239–40.

[12] *Id.* (citing *Collingwood Grain, Inc. v. Coast Trading Co. (In re Coast Trading Co.)*, 744 F.2d 686, 692 (9th Cir. 1984)).

[13] *See In re Columbia Gas Sys., Inc.*, 50 F.3d at 241 ("This distinction between a condition and a duty (or promise) is important here. The Restatement makes clear that while 'a contracting party's failure to fulfill a condition excuses performance by the other party whose performance is so conditioned, it is not, without an independent promise to perform the condition, a breach of contract subjecting the nonfulfilling party to liability for damages.'") (quoting *Merritt Hill Vineyards, Inc. v. Windy Heights Vineyard, Inc.*, 460 N.E.2d 1077, 1081–82 (1984) (citing Restatement (Second) of Contracts § 225)).

[14] *Id.*

Claims against the Debtors in accordance with the treatment of such Claims and subject to the terms provided in the Plan. Unless otherwise agreed in writing by the Debtors and the Purchaser, distributions required by the Plan on account of Allowed Claims that are Assumed Liabilities shall be the sole responsibility of the Purchaser to the extent such Claim is Allowed against the Debtors. **The Debtors do not anticipate any distribution to Class 4, Class 7, or Class 8 at this time.¶**

K. ***Are there anticipated Cash proceeds of the Sale Transaction that will be available for distribution to general unsecured creditors?¶***

If the Stalking Horse Bid is the Successful Bid (as defined in the Bidding Procedures), the Wind-Down Amount (i.e., $35.015 million) represents the only anticipated Cash proceeds of the Sale Transaction. As set forth on the Wind-Down budget attached as Exhibit B hereto, the Debtors anticipate that, after giving effect to the Wind-Down, none of the Wind-Down Amount will be available for distribution to Holders of Class 4 General Unsecured Claims, Class 7 Section 510(b) Claims, and Class 8 Akorn Interests. To the extent there is a Cash overbid of the Stalking Horse Bid that is selected as the Successful Bid, there may be incremental Cash that is available for distribution to Holders of Class 4 General Unsecured Claims, Class 7 Section 510(b) Claims, and Class 8 Akorn Interests in accordance with their legal priorities.¶

L. ***I received a notice of contract assumption. Am I entitled to vote on the Plan?¶***

The Bidding Procedures Order provides for the distribution of notices of contract assumption in connection with the Sale Transaction (each, a "Contract Assumption Notice"). Service of a Contract Assumption Notice does not constitute an admission that such contract is an executory contract or that the cure payment stated therein constitutes a claim against the Debtors or a right against the Stalking Horse Bidder (or other Successful Bidder, as defined in the Bidding Procedures). Further, the inclusion of a contract on a Contract Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned: by agreement with the Committee, the Stalking Horse Bidder (or other Successful Bidder) has until noon prevailing Eastern Time two Business Days prior to the Confirmation hearing to designate contracts for inclusion or exclusion among the contracts that are to be assumed and assigned to the Purchaser in connection with the Sale Transaction.¶

Under the Plan, any Claims arising out of or relating to an executory contract are Class 4 General Unsecured Claims, and the Debtors intend to solicit votes to accept or reject the Plan from Holders thereof. If your contract is ultimately rejected, any Claim you hold in connection therewith or in relation thereto will be included in Class 4 General Unsecured Claims for purposes of distribution under the Plan. If your contract is ultimately assumed, any Claim you hold in connection therewith or in relation thereto will be deemed Unimpaired and will not be included in any Class of Claims entitled to distribution under the Plan. You should take into account the possibility that your contract may be assumed, assumed and assigned, or rejected in considering whether to vote to accept or reject the Plan.¶

M. ***How will Distributable Proceeds be allocated Pro Rata between Class 7 Section 510(b) Claims, which are denominated in dollars, and Class 8 Akorn Interests, which are denominated in shares?¶***

Class 8 Akorn Interests will be assigned a value in the aggregate equal to the amount of Distributable Proceeds (if any) that remain after payment of all classes senior to Classes 7 and 8. Dividing that value by the number of shares of Akorn Interests issued and outstanding results in the per-share price that will be used to convert the amount of a Class 7 Section 510(b) Claim to a hypothetical number of Akorn Interests for purposes of the Pro Rata allocation of distributions among Holders in Classes 7 and 8.[15]

N. ~~H.~~ *Who supports the Plan?*

The Plan is supported by the Debtors and certain parties in interest that have executed the Restructuring Support Agreement, including Holders of approximately 80 percent in principal amount of Term Loan Claims. **¶**

The Committee presently does not support the Plan. The Committee is conducting an investigation into the extent, priority, and validity of the Term Lenders' liens and whether the estate has claims against third parties, including insiders. Until that investigation is complete, the Committee is not prepared to support a Plan that provides broad releases to such parties but does not make a distribution to all unsecured creditors. The Committee has and will continue to work with the Debtors and the Term Lenders to resolve these and other issues in hopes of coming to agreement on terms of a Plan the Committee will support.

O. ~~I.~~ *Will there be releases and exculpation granted to parties in interest as part of the Plan?*

Yes, the Plan proposes to release the Released Parties and to exculpate the Exculpated Parties as set forth in Article VIII of the Plan.~~6~~**16** The **Debtors believe that the** Debtors' releases, third-party releases, and exculpation provisions included in the Plan are an integral part of the Debtors' overall restructuring efforts. In addition to the releases the Released Parties and the exculpation of the Exculpated Parties, there is an injunction against bringing claims and causes of action from which the Released Parties were released or the Exculpated Parties exculpated.

Under the Plan, "Released Parties" means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Consenting Term Loan Lenders; (c) the

15 By way of example, if $1,000 of Distributable Proceeds remains for distribution after payment of all Claims senior to Class 8 Akorn Interests, and there are 1,000 shares of Class 8 Akorn Interests issued and outstanding, the residual value per share is $1. If there are $500 of Allowed Class 7 Section 510(b) Claims, those Claims convert to 500 hypothetical common Akorn shares ($500/$1 per share), for a total of 1,500 (1,000 + 500) shares for purposes of the Pro Rata allocation of distributions under the formula in Article III.B.7 of the Plan. The $1,000 of Distributable Proceeds would be allocated 2/3 (1,000 shares/1,500 total shares) to Class 8 and 1/3 (500 shares/1,500 total shares) to Class 7, each for further Pro Rata distribution to individual Holders in those Classes.

~~6~~**16** Notwithstanding anything to the contrary in the Plan, no Person or Entity shall be exculpated from any liability resulting from any act or omission constituting actual fraud, willful misconduct, or gross negligence.

Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f) all Releasing Parties; (g) the Acquired Entities; and (h) with respect to each Entity in clause (a) through (g), each such Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such (unless any such Entity or related party has opted out of being a Releasing Party, in which case such Entity or related party, as applicable, shall not be a Released Party).

"Releasing Parties," under the Plan, means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Consenting Term Loan Lenders; (c) the Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f) the Acquired Entities; (g) all Holders of Claims or Interests that are presumed to accept the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan; (h) all Holders of Claims or Interests who vote to accept the Plan; (i) all Holders of Claims or Interests that (x) abstain from voting on the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan, (y) vote to reject the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan, or (z) are deemed to reject the Plan ***and*** who ~~do not~~ opt ~~out of~~**into** the releases in the Plan; (j) with respect to each Entity in clause (a) through (i), each such Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such ~~(unless any such Entity or related party has opted out of being a Releasing Party, in which case such Entity or related party, as applicable, shall not be a Releasing Party)~~.

Importantly, as of the Effective Date, except as otherwise provided in the Plan, each Releasing Party is deemed to have released and discharged each Debtor and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, or the Plan, the Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between any Debtor and any Released Party, and any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud, or gross negligence.

The Debtors believe that the Plan's release, exculpation, and injunction provisions are necessary and appropriate and meet the requisite legal standard promulgated by the United States Court of Appeals for the Third Circuit. ¶

Moreover, the Debtors will present evidence at the Confirmation Hearing to demonstrate the basis for and propriety of the release and exculpation provisions. The release, exculpation, and injunction provisions that are contained in the Plan are reproduced in Article VI.R of this Disclosure Statement, entitled "Release, Injunction, and Related Provisions."¶

P. *Are There Other Views Regarding Sources of Recoveries For General Unsecured Claims and the Confirmability of the Plan?*¶

1. *Additional Sources of Recoveries for General Unsecured Claims.*¶

Various stakeholders in these Chapter 11 Cases, including Fresenius as well as other holders of prepetition litigation claims (collectively, the "Objecting Creditors"), believe that other sources of recoveries for General Unsecured Claims may exist and that the Plan should be modified to facilitate the pursuit of such additional value. ¶

The Objecting Creditors believe that the Debtors should promptly reject the Shareholder Settlement now that the Debtors are in bankruptcy. The Objecting Creditors contend that rejecting the Shareholder Settlement will free up the Debtors' $27.5 million in cash D&O proceeds for the benefit of all Holders of General Unsecured Claims. The Objecting Creditors believe that assuming the Shareholder Settlement—a prepetition executory contract that allocates the full value of the Debtors' D&O insurance to a subset of prepetition litigation creditors—is not in the best interests of the Debtors' estates and creditors.¶

The Objecting Creditors believe that viable estate causes of action may exist here. Vice Chancellor Laster of the Delaware Court of Chancery found in the Chancery Opinion (as defined below) that Akorn engaged in significant prepetition misconduct, including action by certain executives to deceive Fresenius and its primary regulator, the FDA.[17]¶

The Objecting Creditors believe that Vice Chancellor Laster's findings of prepetition misconduct require an immediate independent investigation by the Creditors Committee or other appropriate estate representative (the "Independent Investigation") of potential valuable estate causes of action against officers, directors and other non-debtor third parties. The Objecting Creditors believe the results of any such investigation should be released prior to the Voting Deadline so that Holders of General Unsecured Claims have adequate information to decide whether to Vote to Accept or Reject the Plan. ¶

The Objecting Creditors are mindful of the Debtors' desire to achieve a value-maximizing going-concern sale. The Objecting Creditors believe an Independent Investigation should not meaningfully delay the Debtors' proposed sale or confirmation timetable. To the contrary, they believe estate causes of action can easily be preserved through the mechanism of a litigation trust pursuant to which such claims will be

[17] *See Objection of Fresenius Kabi AG to the Debtors' Disclosure Statement Motion* [Docket No. 240].

prosecuted, if at all, after the Sale closes and the Plan is confirmed. Including a litigation trust structure in the Plan does not impose "any risk, expense or delay" in these cases given that the Plan can be confirmed, and the Sale consummated, without any actual litigation being filed. The Objecting Creditors also believe that the potential recovery from such estate causes of action far outweighs any such hypothetical "risk" or "delay." ¶

The Debtors disagree that an Independent Investigation is required under the circumstances or that meaningful recoverable value exists. As discussed in Article VI.R.2 hereof, the Debtors were the subject of prepetition shareholder derivative claims brought against the Debtors' directors and officers on the Debtors' behalf related to, among other things, the findings made in the Fresenius Opinion. The factual allegations underlying these claims were extensively litigated, and the claims asserted on the Debtors' behalf were subject to numerous and substantial legal defenses.[18] The litigation subsequently culminated in the Derivative Settlement (as defined below). The Derivative Settlement was approved by a court of competent jurisdiction in January 2020, is binding and enforceable on the Debtors, and released and precluded the pursuit of further claims based on the same underlying facts and circumstances, whether by or on behalf of the Debtors. The Debtors therefore do not believe that they have remaining material causes of action against their directors and officers (or other Released Parties) that would justify the risk, expense, and delay in pursuing such causes of action.¶

As stated earlier, the Objecting Creditors believe that the Debtors should promptly reject the prepetition executory Shareholder Settlement and make the cash D&O insurance proceeds (which are all such proceeds that the Debtors have) available to *all* Holders of General Unsecured Claims. In addition, the Objecting Creditors believe that absent an Independent Investigation and litigation trust structure, other sources of recovery in these chapter 11 cases such as potentially valuable estate causes of action are inexplicably released or transferred to the Purchaser. The Objecting Creditors believe that the Plan's elevation of prepetition shareholder claims (now the beneficiaries of the Shareholder Settlement) to and above General Unsecured Claims in this manner violates the absolute priority rule of Section 1129(b) of the Bankruptcy Code and renders the Plan patently unconfirmable. As discussed more fully in this Article II, to the extent certain stakeholders have differing views on the merits of the Shareholder Settlement, those concerns may be addressed at the appropriate time. The Debtors disagree with the Objecting Creditors that the Plan is patently unconfirmable for the reasons set forth in the *Debtors' Omnibus Reply to Objections to the Debtors' Motion for Entry of an Order (I) Approving the Adequacy of the Disclosure Statement, (II) Approving the Solicitation and Notice Procedures with Respect to Confirmation of the Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates, (III) Approving the Forms of Ballots and Notices in Connection Therewith, and (IV) Scheduling Certain Dates with Respect Thereto*, filed at Docket No. 261.¶

The Objecting Creditors also believe that valuable avoidance actions may exist based on, among other things, the approximately $13.8 million in prepetition payments that

[18] Prior to the parties' agreement upon the Derivative Settlement, the Louisiana court had in fact dismissed the claims asserted against present and former directors of the Debtors as a matter of law, based on the Louisiana Business Corporation Act, which, because Akorn is a Louisiana corporation, is the controlling statute establishing the legal standards for such claims.

the Debtors made to their executives. The Independent Investigation should also examine the merits of such nontrade avoidance actions to determine if they may provide additional value for General Unsecured Claims. The Debtors disagree. The Debtors' executives—and all employees—have provided and continue to provide valuable services to the Debtors and their estates in exchange for reasonable, market-based compensation (whether paid pre- or postpetition). To the extent any such claims even exist, the Debtors do not believe the value of such claims justifies the risk, expense, and delay in pursuing such causes of action.¶

In sum, the Objecting Creditors believe that a value maximizing plan is one that includes a litigation trust structure, transfers the estate causes of action into the trust, and eliminates releases and exculpation provisions that impair these assets. Such plans are commonplace, and are particularly appropriate in a liquidating bankruptcy case where General Unsecured Claims will not receive any recoveries from the secured lenders' credit bid for the Debtors' operating assets. ¶

The Objecting Creditors believe Holders of General Unsecured Claims should vote to reject the Plan until such time as the Plan is modified to include a litigation trust structure, and an Independent Investigation of estate causes of action is complete.¶

The Debtors disagree and believe the Plan appropriately provides for the distribution of value from the Sale to Holders of Claims and Interests in accordance with their legal entitlements. The Debtors encourage all Holders of Claims and Interests to vote to accept the Plan.¶

2. *Improper Classification and Impermissible Releases*¶

Fresenius also believes that the Plan improperly classifies (a) the Fresenius Litigation Claims as Section 510(b) Claims instead of as General Unsecured Claims, and (b) the claims of settled Shareholder Litigation Claims and the CVR Bankruptcy Claim as General Unsecured Claims instead of Section 510(b) Claims. Fresenius believes that the Plan's classification scheme renders the Plan unconfirmable.¶

The Debtors explain that the Plan classifies the Fresenius Litigation Claims as Section 510(b) Claims because they "arise from or relate to an agreement to Purchase Akorn stock," and Fresenius accordingly "bargained for the risk and return profile of a shareholder (rather than a creditor)." The Fresenius Litigation Claims, however, are not based on lost equity value stemming from the rescission of a securities transaction, or the purchase or sale of such securities, as section 510(b) of the Bankruptcy Code requires. To the contrary, the Fresenius Litigation Claims represent over $74 million in plain vanilla reliance damages for investment banking, financing, integration and antitrust clearance expenses that Fresenius incurred in connection with the court-ordered termination of the Merger Agreement and for which Akorn is liable. These claims have nothing to do with the value of Akorn's equity, or the "risk and return profile of a shareholder." The Debtors disagree and will be prepared to demonstrate that at or prior to Confirmation.¶

Conversely, the Shareholder Litigation Claims, as well as the CVR Bankruptcy Claim, are based on damages that the Akorn shareholders allegedly suffered *as*

shareholders **because the Debtors, their officers and their directors allegedly "knew or recklessly disregarded widespread institutional data integrity problems at Akorn's manufacturing and research and development facilities while making or causing Akorn to make misleading statements and omissions of material fact concerning Akorn's data integrity at its facilities." The Shareholder Litigation Claims, and the Shareholder Settlement, are solely about this conduct that allegedly caused "non-insider shareholders to lose over $1.07 billion and $613 million in value, respectively." The complained-of losses are by their nature damages arising from the "bargained for…risk and return profile of a shareholder" which must be subordinated pursuant to section 510(b) of the Bankruptcy Code. The Objecting Creditors believe that the Shareholder Litigation Claims, whether settled or not, must be subordinated. As noted in Article II. H hereof, the Shareholder Settlement, including the CVRs, represented a holistic resolution of claims, causes of action, and other matters arising out of or relating to the Shareholder Litigation. To the extent stakeholders have different views on the merits of the Shareholder Settlement, those may be addressed at the appropriate time.¶**

In addition, the Objecting Creditors believe that the Releases and Exculpations in the Plan are impermissible under Delaware law and also render the Plan unconfirmable. Both the debtor releases (the "Debtor Releases") and the releases by creditors and shareholders (the "Stakeholder Releases") are excessively broad, release virtually all claims against the Debtors' former and current officers and directors and other third parties, and include derivative claims that could be asserted on behalf of the Debtors' estates (including estate causes of action). The Objecting Creditors believe that the Stakeholder Releases lack the hallmarks necessary for approval articulated by the Third Circuit Court of Appeals: fairness, necessity to the reorganization, and a specific factual predicate in support thereof. The Debtor Releases are similarly too broad, and fail to satisfy any of the standards that courts consider in the limited circumstances in which claims against non-debtor third parties are released.[19] The Objecting Creditors believe that neither the Debtor Releases nor the Stakeholder Releases are supported by any consideration.¶

The Objecting Creditors do not believe that the prosecution of the estate causes of action released under the Debtor Release would be "costly and time-consuming" or that such claims may not provide a "concomitant benefit" to the estates, particularly given Vice Chancellor Laster's findings of widespread misconduct by Akorn and the Debtors' prepetition settlement of the Shareholder Litigation Claims for an estimated value, at the time, of up to $155.4 million. Similarly, on information and belief, the Objecting Creditors understand that the Debtors no longer employ most of the individuals that Vice Chancellor Laster found were implicated in Akorn's prepetition bad acts. Accordingly, the Objecting Creditors do not believe that releasing these former officers, directors and other third parties is "fair, reasonable and a sound exercise of the Debtors' business judgment." As set forth in Article VI.R.2 hereof, the Debtors disagree and will be prepared to address the releases at the appropriate time in connection with Confirmation.¶

[19] Fresenius also believes that the transfer of Estate Causes of Action to the Purchaser under the Stalking Horse AP for no discernible consideration is not justified. Fresenius reserves its right to object to any proposed sale on this basis at the appropriate time.

For these and other reasons, the Objecting Creditors, including Fresenius, believe that Holders of Claims and Interests should vote to reject the Plan unless its release provisions are modified as indicated above, and that additional potentially valuable sources of recoveries for General Unsecured Claims exist and should be pursued.¶

The Debtors disagree. They believe the releases and other provisions of the Plan are appropriate and that Holders of Claims and Interests should vote to accept the Plan.

Q. ~~J.~~ *What is the deadline to vote on the Plan?*

The Voting Deadline is [**August ~~15~~14], 2020, at 5:00 p.m., prevailing Eastern Time**.

R. ~~K.~~ *How do I vote for or against the Plan?*

Detailed instructions regarding how to vote on the Plan are contained on the Ballots distributed to Holders of Claims and Interests that are entitled to vote on the Plan. For your vote to be counted, you must submit your Ballot in accordance with the instructions provided in Article VII.F.2 of this Disclosure Statement. **BALLOTS SENT BY FACSIMILE TRANSMISSION ARE NOT PERMITTED AND WILL NOT BE COUNTED.**

S. ~~L.~~ *Why is the Bankruptcy Court holding a Confirmation Hearing, and when is the Confirmation Hearing set to occur?*

Section 1128 of the Bankruptcy Code requires the Bankruptcy Court to hold a hearing on confirmation of the Plan and recognizes that any party in interest may object to confirmation of the Plan.

The Bankruptcy Court has scheduled the Confirmation Hearing for **[●], 2020, at [●] [a.m./p.m.], prevailing Eastern Time**. The Confirmation Hearing may be adjourned from time to time without further notice.

The Debtors will publish the notice of the Confirmation Hearing, which will contain the deadline for objections to the Plan and the date and time of the Confirmation Hearing, in *The New York Times* (National edition) and *PM360* to provide notification to those persons who may not receive notice by mail. The Debtors may also publish the notice of the Confirmation Hearing in such trade or other publications as the Debtors may choose.

T. ~~M.~~ *What is the purpose of the Confirmation Hearing?*

At the Confirmation Hearing, the Bankruptcy Court will determine whether ~~*the Disclosure Statement* contains adequate information under section 1125(a) of the Bankruptcy Code and~~ the Plan should be confirmed in light of both the affirmative requirements of the Bankruptcy Code and objections, if any, that are timely filed and subject to satisfaction or waiver of each condition precedent in Article IX of the Plan. For a more detailed discussion of the Confirmation Hearing, *see* Article VII of this Disclosure Statement.

The confirmation of a chapter 11 plan by a bankruptcy court binds the debtor, any issuer of securities under the chapter 11 plan, any person acquiring property under the chapter 11 plan,

any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the bankruptcy court in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a chapter 11 plan discharges a debtor from any debt that arose prior to the effective date of the plan and provides for the treatment of such debt in accordance with the terms of the confirmed chapter 11 plan.

The deadline by which all objections to the Plan must be filed with the Bankruptcy Court and served so as to be actually received by the appropriate notice parties is [**August ~~15~~14], 2020, at 4:00 p.m., prevailing Eastern Time**.

U. ~~N.~~ *Who do I contact if I have additional questions with respect to this Disclosure Statement or the Plan?*

If you have any questions regarding this Disclosure Statement or the Plan, please contact the Debtors' Notice and Claims Agent, Kurtzman Carson Consultants LLC:

By Hand Delivery or Overnight Mail at:

Akorn Ballot Processing Center

c/o Kurtzman Carson Consultants LLC

222 N Pacific Coast Highway, Suite 300

El Segundo, CA 90245

By electronic mail at:

AkornInfo@kccllc.com

By telephone (U.S. and Canada) at:

(877) 725-7539

By telephone (International) at:

(424) 236-7247

Copies of the Plan, this Disclosure Statement, and any other publicly filed documents in the Chapter 11 Cases are available upon written request to the Debtors' Notice and Claims Agent at the address above or by downloading the exhibits and documents from the website of the Debtors' Notice and Claims Agent at https://www.kccllc.net/akorn (free of charge) or the Bankruptcy Court's website at https://ecf.deb.uscourts.gov (for a fee).

V. ~~O.~~ *Do the Debtors recommend voting in favor of the Plan?*

Yes. The Debtors believe the Plan provides for a greater distribution to the Debtors' creditors than would otherwise result from any other available alternative. The Debtors believe the Plan, which provides for the wind-down and dissolution of the Debtors' Estates and for distributions to Holders of Claims and Interests, is in the best interests of all Holders of Claims and Interests, and that other alternatives fail to realize or recognize the value inherent under the Plan.

Article III.
BUSINESS DESCRIPTION AND BACKGROUND TO THE CHAPTER 11 CASES

A. *Akorn's Corporate History.*

Akorn was founded in 1971 in Abita Springs, Louisiana. In 1997, Akorn relocated its corporate headquarters to the Chicago, Illinois area; today, Akorn maintains its principal corporate offices in Lake Forest, Illinois. The Debtors have historically evaluated and, in some instances, executed opportunities to expand through the acquisition of products and companies in areas that the Debtors believed offered attractive opportunities for growth.

B. *Business Operations.*

1. *Research and Development Expertise in Alternative Dosage Forms.*

The Debtors' R&D efforts are primarily focused on the development of generic prescription products that are in "alternative dosage forms," *i.e.*, dosage forms other than oral solid dose. These products typically have fewer competitors in mature markets, are more difficult to develop and manufacture, and can carry higher profitability over time than oral solid dose products. The alternative dosage forms that the Debtors focus on are primarily those for which the Debtors have manufacturing capability: ophthalmics, injectables, oral liquids, otics, topicals, inhalants, and nasal sprays.

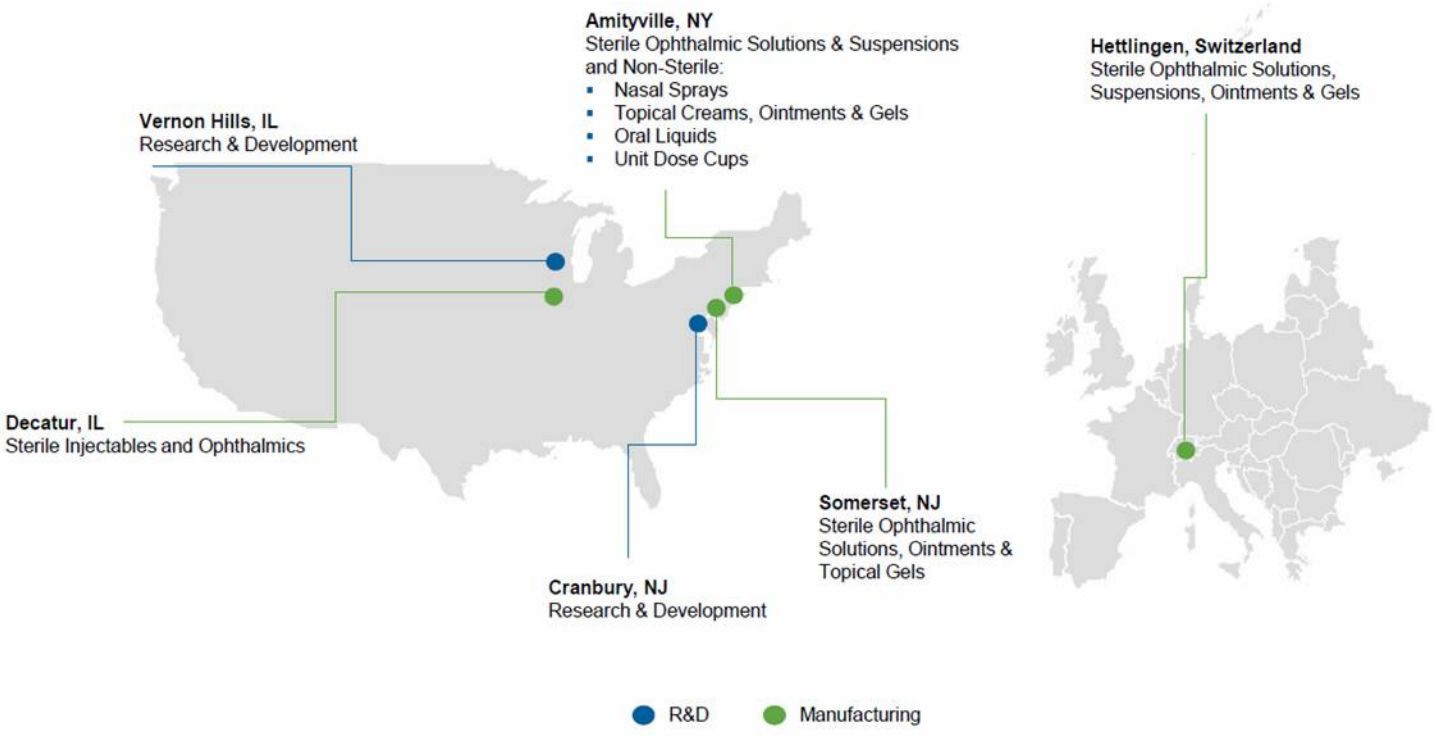
2. *Alternative Dosage Form Manufacturing Expertise.*

The Debtors' manufacturing network specializes in alternative dosage form products. Through their manufacturing facilities, the Debtors manufacture a diverse assortment of sterile and non-sterile pharmaceutical products, including oral liquids, otics, nasal sprays, liquid injectables, lyophilized injectables, topical gels, creams and ointments, and ophthalmic solutions and ointments. The Debtors represent one of only a limited number of scaled manufacturers for injectables and ophthalmics. Akorn's four manufacturing facilities, which are U.S. Food and Drug Administration ("FDA") approved,[~~7~~20] specialize in different of the Debtors' products:

- the Decatur, Illinois facility specializes in sterile injectables and ophthalmics;

[~~7~~20] Akorn's Paonta Sahib, Himachal Pradesh, India manufacturing facility is not FDA approved. The Paonta Sahib facility is a sterile injectable facility with separate areas dedicated to general injectable products, carbapene m injectable products, cephalosporin injectable products and hormonal injectable products. Akorn is exploring strategic alternatives for exiting the Paonta Sahib, Himachal Pradesh, India manufacturing facility.

- the Somerset, New Jersey facility specializes in sterile ophthalmic solutions, ointments, and topical gels;
- the Amityville, New York facility specializes in sterile ophthalmic solutions and suspensions and non-sterile nasal sprays, topical creams, ointments, and gels, oral liquids, and unit dose oral liquid products; and
- the Hettlingen, Switzerland facility specializes in sterile ophthalmic solutions, suspensions, ointments, and gels.[821]



3. *Product Portfolio and Sales and Marketing Infrastructure.*

The Debtors market a diverse portfolio of generic prescription pharmaceutical products, branded prescription pharmaceutical products, over-the-counter ("OTC") brands, various private-label OTC pharmaceutical products, and a number of prescription animal health products. For the Debtors' human prescription products, the Debtors' diverse portfolio of alternative dosage forms sets the Debtors apart from their larger competitors and allows them to provide a single source of such products to the Debtors' customers. The Debtors' OTC and animal health products are largely complementary to their human prescription products, which allows them to further leverage their manufacturing and marketing expertise.

The Debtors' flagship OTC brand is TheraTears® Therapy for Your Eyes®, a family of therapeutic eye care products that includes dry eye therapy lubricating eye drops, eyelid and

[821] On January 4 and June 13, 2019, respectively, Akorn received warning letters from the FDA regarding the Decatur Facility and the Somerset Facility and has worked diligently over the last year to address the issues raised in those warning letters and bring the facilities substantially into compliance.

eyelash cleanser, and eye nutrition supplements. The Debtors also market several specialty OTC products including Zostrix®, MagOx®, Maginex®, Multi-betic®, and Diabetic Tussin®.

The Debtors' portfolio of branded and generic companion animal prescription pharmaceutical products include Anased® and VetaKet® veterinary sedatives, Tolazine® and Yobine® sedative reversing agents, and Butorphic® pain reliever.

The Debtors maintain a targeted sales and marketing infrastructure to promote their branded, generic, OTC, and animal health products. They leverage this sales and marketing infrastructure to promote their branded portfolio and sell their multisource generic products directly into physician offices, hospital systems, and group purchasing organizations ("GPOs").

The Debtors rely on their sales and marketing teams to help maintain and, where possible, increase market share for the Debtors' products. The Debtors' sales organization is structured as follows:

- field sales teams focused on branded ophthalmology products;
- field sales teams focused on institutional markets;
- inside sales team focused on customers in smaller markets; and
- national accounts sales team focused on wholesalers, distributors, retail pharmacy chains and GPOs.

Field sales representatives promote ophthalmic products directly to glaucoma specialists, retinal surgeons, and ophthalmologists and other pharmaceutical products directly to local hospitals in order to support compliance and pull-through against existing contracts. The inside sales team augments the Debtors' outside sales teams to sell products in markets where field sales would not be cost effective. The national accounts sales team seeks to establish and maintain contracts with wholesalers, distributors, retail pharmacy chains, and GPOs. The Debtors utilize a sales force of approximately seventy field and inside sales representatives to promote Akorn's product portfolio. To support their sales efforts, the Debtors also have a customer service team and a marketing department focused on promoting and raising awareness about the Debtors' product offerings.

4. *The Debtors' Employees.*

As of the Petition Date, Akorn employed approximately 2,180 employees worldwide, and the Debtors employed approximately 1,680 individuals in the United States, including approximately 1,676 full-time and four part-time employees, and retained approximately seventy contractors and temporary workers to fulfill certain duties on a short- and long-term bases. The Debtors' employment relationships with full-time and part-time employees are not subject to collective bargaining agreements.

The Debtors' performance and operations are highly dependent on the continued service of the Debtors' key R&D personnel, other technical employees, managers, and sales personnel, and the Debtors' ability to continue to attract and retain such personnel. Competition for such

personnel is intense, particularly for highly motivated and experienced R&D and other technical personnel. The Debtors face increasing competition for such personnel from companies with greater financial resources.¶

(a) *Retention Programs for Akorn's Executive Officers and All Other U.S. Salaried Exempt Employees for 2020.*¶

As a result of Akorn's ongoing exploration of strategic alternatives, on February 4, 2020, the compensation committee of the board of directors (the "Board") of Akorn recommended, and the Board approved, retention programs for Akorn's executive officers and all other U.S. salaried exempt employees for 2020. The 2020 retention program for Akorn's executive officers (the "Participants") provides a prepaid retention payment (the "Retention Bonus") to each Participant, subject to the terms of a letter agreement (the "Letter Agreement"). Pursuant to the Letter Agreement, a portion of or all of the Retention Bonus is subject to repayment by the Participant in certain circumstances, including if certain metrics are not satisfied or employment is terminated for certain reasons by December 31, 2020. The amount of Retention Bonuses paid as of the Petition Date was approximately $13.8 million, all of which was prepaid. The retention programs for Akorn's executive officers and other U.S. salaried exempt employees replace the traditional incentive compensation programs for 2020.

5. *The Debtors' Competitors.*

Sourcing, marketing, and manufacturing pharmaceutical products and consumer health products is highly competitive, with many established manufacturers, suppliers, and distributors actively engaged in all phases of the business. With respect to pharmaceutical products, the Debtors compete principally on the quality of their products and services, reliability of their supply, their breadth of portfolio, their depth of customer relationships, and price. Within the consumer health segment, the Debtors' relatively small product portfolio means the Debtors primarily compete on product offering, price, and service. Many of the Debtors' competitors have substantially greater financial and other resources, including greater sales volume, larger sales forces, and greater manufacturing capacity.

6. *The Debtors' Customers.*

A high percentage of the Debtors' direct sales are attributable to three large wholesale drug distributors: AmerisourceBergen Corporation; Cardinal Health, Inc.; and McKesson Corporation. On a combined basis, these three wholesale drug distributors accounted for approximately 82.6% of Akorn's gross sales and approximately 60.3% of net revenue in the year ended December 31, 2019.

7. *The Debtors' Suppliers.*

The Debtors require raw materials and components to manufacture and package pharmaceutical products. The principal components of the Debtors' products are active and inactive pharmaceutical ingredients and certain packaging materials. Many of these materials are available from only a single source and, in the case of many of the Debtors' products, only one

supplier of raw materials has been identified and qualified. Because FDA approval of drugs requires manufacturers to specify their proposed suppliers of active ingredients and certain packaging materials in their applications, FDA approval of any new supplier would be required if such active ingredients or such packaging materials were no longer available from the specified supplier. The qualification of a new supplier could delay the Debtors' development and marketing efforts and otherwise disrupt the Debtors' postpetition operations and restructuring efforts. If for any reason the Debtors are unable to obtain sufficient quantities of any of the raw materials or components required to produce and package their products, the Debtors may not be able to manufacture their products as planned. In addition, certain of the pharmaceutical products that the Debtors market are manufactured by third parties that serve as the Debtors' only supplier of those products. Any delays or failure of a contract manufacturing partner to supply finished goods in a timely manner or in adequate volume could impede the Debtors' marketing of those products. Further, if supply is disrupted, the Debtors may be forced to incur failure to supply penalties, as the Debtors have done in the past. Any of the aforementioned risk factors may have a deleterious effect on the Debtors' business, financial condition, and restructuring efforts.

In addition, the COVID-19 pandemic has disrupted global supply chains and introduced additional uncertainty to the Debtors' ability to find substitute suppliers of active and inactive pharmaceutical ingredients and packaging materials.

8. *The Debtors' Regulatory Environment.*

The Debtors are subject to extensive regulation by government agencies, including the FDA, the Drug Enforcement Administration ("DEA"), the Federal Trade Commission ("FTC"), and other federal, state, and local agencies. The development, testing, manufacturing, processing, quality, safety, efficacy, packaging, labeling, recordkeeping, distribution, storage, and advertising of the Debtors' products, and disposal of waste products arising from such activities, are subject to regulation by FDA, DEA, FTC, the Consumer Product Safety Commission, the Occupational Safety and Health Administration, and the Environmental Protection Agency. In addition to federal regulators, similar state and local agencies have local jurisdiction over these activities. Noncompliance with applicable United States and/or local regulatory requirements can result in fines, injunctions, penalties, mandatory recalls or seizures, suspensions of production, recommendations by FDA against governmental contracts, and, in some cases, criminal prosecution. The Debtors are also subject to oversight from federal and state governmental benefit programs, healthcare fraud and abuse laws, and international regulations in jurisdictions in which the Debtors manufacture or sell their pharmaceutical products.

(a) *FDA Inspection and Approval.*

The Federal Food, Drug and Cosmetic Act (the "FDC Act"), the Controlled Substance Act, and other federal statutes and regulations govern or influence the development, testing, manufacture, labeling, storage, and promotion of products that the Debtors manufacture and market. The FDA inspects drug manufacturers and storage facilities to determine compliance with its current Good Manufacturing Practices ("cGMP") regulations. Noncompliance with the cGMP regulations can result in fines, recall and seizure of products, total or partial suspension of production, refusal to approve New Drug Applications ("NDAs") and abbreviated New Drug

Applications ("ANDAs"), and, in some instances, criminal prosecution. cGMPs address pharmaceutical manufacturing and product development, including the integrity of manufacturing and testing data, and require having strong quality management systems, obtaining appropriate quality materials, establishing robust operating procedures, detecting and investigating product quality deviations, and maintaining reliable testing laboratories, among other things.

The FDA monitors cGMP compliance through routine inspections of manufacturing and development facilities. As part of its oversight, the FDA inspects Akorn's manufacturing sites every one to two years. At the conclusion of inspections, the FDA holds a close-out meeting and shares its observations. At these meetings, the FDA may make no observations or only oral observations, or it may document objectionable observations in a "Form 483," which "does not constitute a final Agency determination."[9~~22~~] Pharmaceutical companies also are required to regularly self-assess compliance with cGMP. Akorn's internal Global Quality Compliance ("GQC") organization regularly conducts cGMP facility audits at its manufacturing facilities and its R&D facilities.

Once the facility responds to the Form 483 observations, the FDA makes a formal determination to classify the facility as "voluntary action indicated" ("VAI"), indicating the facility's proposed corrective action plan is adequate to address FDA's observations, "official action indicated" ("OAI"), indicating the corrective action plan is inadequate, or, if no Form 483 was issued, "no action indicated" ("NAI"), indicating no action is necessary. OAI status often results in a formal FDA "warning letter," which may mean that no new products will be approved from the facility until OAI status is resolved.

Prior to 2018, Akorn had a history of generally satisfactory FDA inspections at its operational facilities. In 2018, Akorn's facilities in Decatur and Somerset were inspected by the FDA and received OAI status. Akorn's facility in Amityville was inspected by the FDA in 2019 and received VAI status. Akorn's facility in Hettlingen was inspected by the FDA in February 2020 and received VAI status. Other recent regulatory inspections at certain of Akorn's other facilities concluded with satisfactory outcomes. As of the Petition Date, FDA compliance-related activities have reached essentially full completion at Akorn's Decatur facility and expect FDA compliance-related activities to be substantially completed in 2020.

9. *The Sale of Non-Debtor Akorn India Private Limited.*

(a) *The Akorn India Private Limited Transaction.*

Non-Debtor Akorn India Private Limited ("AIPL") is a private limited company in the pharmaceutical industry with a facility for manufacturing sterile injectable products **in Paonta Sahib, Himachal Pradesh**. Akorn Inc. and ~~Akorn~~**WorldAkorn Pharma** Mauritius are the legal and beneficial owners of 100% of the equity interests (the "AIPL Interests") in AIPL. Prior to the commencement of the Chapter 11 Cases, the Debtors determined that the AIPL operations will not be a part of Akorn's core, go-forward business strategy. Accordingly, Akorn Inc. and

[9~~22~~] Form 483 Frequently Asked Questions, FDA (July 2, 2019), https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/inspection-references/fda-form-483-frequently-asked-questions.

~~Akorn~~**WorldAkorn Pharma** Mauritius (the "AIPL Sellers") determined to conduct a marketing process for the AIPL Interests to identify and ultimately consummate a sale to a purchaser.

(b) *The Akorn India Private Limited Marketing Process* ***and Share Purchase Agreement***.

In October of 2019, the AIPL Sellers initiated an extensive marketing process with respect to their AIPL Interests. The AIPL Sellers worked with PricewaterhouseCoopers Corporate Finance LLC ("PwC") to identify several potential purchasers. In the succeeding months, additional purchasers engaged in discussions with PwC and executed non-disclosure agreements and completed site visits. ~~The marketing process for the AIPL Interests is remains ongoing as of the date hereof.~~¶

On June 17, 2020, Akorn, Inc. entered into a Share Purchase Agreement (the "AIPL SPA") by and among the AIPL Sellers, AIPL, and Biological E. Limited (the "AIPL Purchaser"). Pursuant to the AIPL SPA, the AIPL Sellers have agreed to sell to the AIPL Purchaser 100% of the share capital of AIPL for $10 million in cash, subject to withholding taxes, if any, and adjustment for certain net working capital items, as specified in the AIPL SPA. The sale of the AIPL interests is subject to the approval of the Bankruptcy Court.¶

The AIPL Purchaser's obligation to consummate the purchase is subject to the fulfilment of certain conditions precedent by the AIPL Sellers and AIPL, including the Akorn, Inc. obtaining an approval order from the Bankruptcy Court.¶

On June [30], 2020, the Debtors Filed the *Debtors' Motion for Entry of an Order (I) Authorizing the Sale of Certain Equity Interests in Non-Debtor Akorn India Private Limited Pursuant to 11 U.S.C. § 363 Of the Bankruptcy Code, (II) Authorizing the Retention and Employment of PricewaterhouseCoopers Corporate Finance LLC Effective as of the Petition Date, and (III) Granting Related Relief* [Docket No. [●]].

C. *Prepetition Capital Structure.*

As of the Petition Date, the Debtors' funded indebtedness consisted exclusively of the Term Loans. In April 2014, to finance certain of its acquisitions, Akorn, Inc., as "Borrower," and certain of the Debtors, as "Guarantors," (the Borrower and the Guarantors together, the "Akorn Loan Parties") entered into the Term Loan Credit Agreement with the Term Loan Lenders as lenders and with the Term Loan Agent as administrative agent. As of the Petition Date, the outstanding principal, interest, and other obligations under the Term Loan Credit Agreement was approximately $861.7 million. The Term Loans are scheduled to mature on April 16, 2021.

As discussed herein, on February 12, 2020, the Debtors and their Term Loan Lenders entered into an amended Standstill Agreement (as defined below) that, among other things, further extended the terms of the standstill and established certain milestones related to the Debtors' sale process and chapter 11 filing.

As of the Petition Date, Akorn had approximately 133.4 million shares of common stock, no par value per share, issued and outstanding. Prior to the Petition Date, Akorn's common stock traded on NASDAQ under the ticker "AKRX."

Article IV.
EVENTS LEADING UP TO THE CHAPTER 11 CASES

A. *The Fresenius Merger Agreement and Related Litigation.*

1. *The Fresenius Merger Agreement.*

On April 24, 2017, Akorn entered into an Agreement and Plan of Merger (the "Merger Agreement" and the transaction contemplated thereby, the "Merger") with Fresenius, a German stock corporation, Quercus Acquisition, Inc., a Louisiana corporation and wholly-owned subsidiary of Fresenius ("Merger Sub"), and, solely for purposes of Article VIII thereof, Fresenius SE & Co. KGaA, a German partnership limited by shares (together with Fresenius and Merger Sub, the "Fresenius Parties"). The Merger, if consummated, would have delivered consideration of $34 per share to Akorn's common shareholders, which at the time represented a 35% premium over the unaffected market price of Akorn common shares.

The Merger Agreement contained customary representations and warranties and operating covenants, including a representation and warranty that Akorn was in compliance with regulatory obligations (except to the extent that any non-compliance would not arise to the level of a "material adverse effect") and an operating covenant requiring Akorn to use commercially reasonable efforts to operate in the ordinary course.

Fresenius had the right to terminate the Merger Agreement if Akorn experienced a "material adverse effect" on its business, breached its representations and warranties and such breaches resulted or could reasonably be expected to result in a "material adverse effect," or failed to comply with its covenants in all material respects.

On July 19, 2017, Akorn's shareholders voted to approve the Merger Agreement.

2. *Decline in Akorn's Financial Performance.*

From 2012 through 2016, Akorn grew consistently year over year when measured by revenue, EBITDA, EBIT, and EPS.[~~10~~23] Beginning in 2017, Akorn began to experience a steep and sustained drop-off in financial performance driven by a variety of factors, including, among other things: consolidation of customer buying power leading to price reductions; the FDA's expedition of its review and approval process for generic drugs, leading to increased competition and resultant additional price and volume erosion; and legislative attempts to reduce drug prices.

These dynamics contributed to a downturn across the generics pharmaceutical industry as a whole. In Akorn's case, the impact was particularly severe due to a steep decline in sales of three of Akorn's largest products—ephedrine, lidocaine ointment, and clobetasol—resulting from new entrants in the markets for each of these products beginning in 2017.

[~~10~~23] "Earnings before interest, taxes, depreciation and amortization," "earnings before interest and taxes," and "earnings per share," respectively.

On July 31, 2017, Akorn publicly announced net revenue for the quarter ended June 30, 2017 was $199 million, representing a 29.1% year-over-year decline. These results were attributed to, among other things, customer consortiums accelerating price erosion across the industry, limited bid/RFP opportunities and increasing competitive responses, and new competitive entrants into higher value products.

Akorn's financial performance continued to decline in the third quarter of 2017. On November 1, 2017, Akorn reported net revenue of $202.4 million for the quarter ended September 30, 2017, representing a year-over-year decline of 28.7%. Akorn's operating income came in at only $9 million, representing a year-over-year decline of 89%. Akorn reported a loss of $0.02 per share, a year-over-year decline of 105%.

3. *The Anonymous Letters and Investigations.*

On November 16, 2017, Fresenius informed Akorn that Fresenius had received two anonymous letters alleging data integrity and regulatory deficiencies at Akorn facilities. Over the next several months, Akorn granted Fresenius broad access to its facilities, documents, employees, and equipment. Akorn also briefed Fresenius on the findings of its own investigation undertaken following the receipt of the anonymous letters (the "Akorn Investigation"), including an incident that it had uncovered involving the submission of likely false data to the FDA in connection with an ANDA.

On February 26, 2018, Fresenius announced in a press release that it was investigating Akorn's data integrity compliance and that "[t]he consummation of the transaction may be affected if the closing conditions under the merger agreement are not met." Akorn released a statement disclosing its own investigation and stating that its "investigation has not found any facts that would result in a material impact on Akorn's operations and Akorn does not believe this investigation should affect the closing of the transaction with Fresenius." Following these announcements, Akorn's share price declined 38% from $30.28 to $18.65.

Akorn informed the FDA in March 2018 of its findings concerning the instance of likely data falsification and withdrew the underlying ANDA. Akorn also retained a third-party inspection and certification organization, NSF International ("NSF"), to conduct a thorough review of Akorn's data integrity practices and FDA submissions. Over the course of this review, NSF found certain data integrity deficiencies at Akorn's facilities and corporate offices. Since completion of NSF's review, Akorn has been working to remediate these deficiencies.

4. *Fresenius Purports to Terminate the Merger Agreement; Litigation Ensues.*

On April 22, 2018, Fresenius gave notice to Akorn that it was terminating the Merger Agreement.

On April 23, 2018, Akorn filed a verified complaint in the Delaware Chancery Court seeking to force the Fresenius Parties to perform their contractual obligations under the Merger Agreement and consummate the Merger.[~~11~~24] The complaint alleged, among other things, that (a) Fresenius anticipatorily breached its obligations under the Merger Agreement by repudiating its

[~~11~~24] *Akorn, Inc. v. Fresenius Kabi AG*, C.A. No. 2018-0300-JTL (Del Ch.).

obligation to close the Merger, (b) Fresenius knowingly and intentionally breached its obligations under the Merger Agreement by working to slow the antitrust approval process and by engaging in a series of actions designed to hamper and ultimately block the Merger, and (c) Akorn had performed its obligations under the Merger Agreement and was ready, willing, and able to close the Merger. The complaint sought a declaration that Fresenius's termination was invalid, an order enjoining Fresenius from terminating the Merger Agreement, and an order compelling Fresenius to specifically perform its obligations under the Merger Agreement and to use reasonable best efforts to consummate the Merger. On April 30, 2018, the Fresenius Parties filed a verified counterclaim alleging that, due primarily to purported data integrity deficiencies discovered during the investigations, Akorn had breached representations, warranties, and covenants in the Merger Agreement and that Akorn had allegedly experienced a "material adverse effect." The verified counterclaim sought damages and a declaration that Fresenius's purported termination of the Merger Agreement was valid and that Fresenius was not obligated to consummate the Merger.

Following expedited discovery, the Delaware Chancery Court held a five-day trial in July 2018. At the conclusion of the trial, the Delaware Chancery Court ordered post-trial briefing, which was completed on August 20, 2018, and a post-trial hearing, which was held on August 23, 2018.

On October 1, 2018, the Delaware Chancery Court issued a 246-page post-trial opinion (the "Chancery Opinion")[~~12~~25] denying Akorn's claims for relief and concluding that Fresenius had validly terminated the Merger Agreement. The Delaware Chancery Court concluded that Akorn had experienced a "material adverse effect" due to its financial performance following the signing of the Merger Agreement, that Akorn had breached representations and warranties in the Merger Agreement and that those breaches would reasonably be expected to give rise to a "material adverse effect," that Akorn had materially breached a covenant in the Merger Agreement, and that Fresenius was materially in compliance with its own contractual obligations. On October 17, 2018, the Delaware Chancery Court entered partial final judgment against Akorn on its claims and in favor of the Fresenius Parties on their claims for declaratory judgment. The Delaware Chancery Court also entered an order holding proceedings on the Fresenius Parties' damages claims in abeyance pending the resolution of any appeal from the partial final judgment.

On October 18, 2018, Akorn filed a notice of appeal from the partial final judgment and a motion seeking expedited treatment of Akorn's appeal. On October 23, 2018, the Delaware Supreme Court granted Akorn's motion for expedited treatment and set a hearing on Akorn's appeal for December 5, 2018.

On December 7, 2018, the Delaware Supreme Court affirmed the Delaware Chancery Court's ruling denying Akorn's claims for declaratory and injunctive relief and granting the Fresenius Parties' counterclaim for a declaration that the termination was valid. On December 27, 2018, the Delaware Supreme Court issued a mandate returning the case to the Delaware Chancery Court for consideration of all remaining issues, including the Fresenius Parties' damages claims.

[~~12~~25] *Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347 (Del. Ch. Oct. 1, 2018).

On August 16, 2019, the Fresenius Parties filed a motion for summary judgment seeking damages of approximately $123 million, plus statutory interest, which claim was ultimately reduced to approximately $117 million, plus statutory interest. On September 30, 2019, Akorn filed a combined cross-motion for summary judgment and opposition to the Fresenius Parties' motion. Briefing on the motions for summary judgment was completed on December 9, 2019.

On April 22, 2020, the Delaware Chancery Court heard oral argument on the cross-motions for summary judgment. At the conclusion of the hearing, the Delaware Chancery Court denied the Fresenius Parties' request for approximately $43 million in alleged damages attributable to the Fresenius Parties' litigation fees and expenses, and reserved judgment on the remaining components of the Fresenius Parties' damages claim, which total approximately $74 million, plus interest. To date, no ruling has been issued on the remaining components of the Fresenius Parties' damages claim.

B. *Akorn Securities Class Action and Opt-Out Litigation.*

In addition to Fresenius's claims for damages, Akorn faces several private actions brought by purported shareholders in the wake of the Fresenius litigation alleging that Akorn and its management misstated or omitted material information about its data integrity controls and compliance with FDA regulations in the Akorn's statements to shareholders. As discussed more fully below, Akorn has obtained final approval of a class settlement that resolves all of the claims brought by shareholders who acquired Akorn common stock from November 3, 2016 through January 8, 2019 (the "Class Members"). However, four groups of "opt-out" litigants who requested exclusion from the class settlement commenced separate actions in the Illinois District Court against Akorn and certain other named defendants, including current and former Akorn officers and directors, alleging violations of federal securities laws. As of the Petition Date, those four actions remained unresolved.

On March 8, 2018, less than two weeks after Fresenius disclosed its investigation into Akorn's data integrity compliance, a purported Akorn shareholder filed a putative class action complaint captioned *Joshi Living Trust v. Akorn, Inc., et al.* in the Illinois District Court alleging violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934. The complaint named as defendants Akorn, then-Chief Executive Officer Rajat Rai, Chief Financial Officer Duane Portwood, and Chief Accounting Officer Randall Pollard, and sought, among other things, an award of damages resulting from alleged false statements and omissions concerning Akorn's data integrity compliance. Akorn and the other named defendants dispute these claims.

On May 31, 2018, the Illinois District Court issued an order in that class action matter appointing Gabelli & Co. Investment Advisors, Inc. and Gabelli Funds, LLC as lead plaintiffs (the "Lead Plaintiffs") pursuant to the Private Securities Litigation Reform Act, approving their selection of lead counsel and liaison counsel, and amending the case caption to *In re Akorn, Inc. Data Integrity Securities Litigation* (the "Shareholder Litigation"). Several later-filed securities lawsuits were consolidated into the Shareholder Litigation.

On September 5, 2018, the Lead Plaintiffs filed an amended complaint naming additional defendants, asserting additional claims, and alleging that, during a class period from November 3, 2016 to April 20, 2018, the defendants knew or recklessly disregarded widespread institutional

data integrity problems at Akorn's manufacturing and research and development facilities while making or causing Akorn to make contrary misleading statements and omissions of material fact concerning Akorn's data integrity at its facilities. The amended complaint alleged that corrective information was provided to the market on two separate dates, causing non-insider shareholders to lose over $1.07 billion and $613 million in value, respectively.

On October 29, 2018, the parties filed a stipulation and joint motion for dismissal of certain claims and defendants, which was granted on October 30, 2018. On December 19, 2018, the remaining defendants filed an answer to the amended complaint, disputing the plaintiffs' remaining allegations. On April 22, 2019, the Lead Plaintiffs filed a second amended complaint extending the class period through January 8, 2019.

On May 3, 2019, Akorn and the Lead Plaintiffs commenced mediation. Following several months of extensive arm's-length negotiations, the parties reached a nonbinding agreement in principle to settle the Shareholder Litigation on July 25, 2019, and executed a definitive stipulation of settlement on August 9, 2019. The stipulation of settlement was subject to numerous terms and conditions including, among other things, (a) the unilateral right of Akorn to terminate the definitive settlement agreement if persons who purchased a number of shares exceeding an agreed-upon threshold (the "Termination Threshold") opted out of and elected not to participate in or be bound by the proposed settlement and (b) final approval by the court.

Pursuant to the terms of the settlement, which was granted final approval by the Illinois District Court on March 13, 2020 (the "Shareholder Settlement"), all Class Members that did not timely submit notices of exclusion released all claims arising from or relating to the facts and circumstances alleged in the Shareholder Litigation in exchange for a combination of (a) up to $30 million in insurance proceeds from Akorn's directors and officers liability insurance policies ("D&O Insurance"), (b) the issuance by Akorn of approximately 6.5 million shares of Akorn's common stock and any additional shares of Akorn common stock that are released as a result of expiration of out of the money options through December 31, 2024, and (c) the issuance by Akorn of ~~contingent value rights ("~~CVRs~~")~~ with a five-year term, subject to an extension of up to two years under certain circumstances. Under the terms of the Shareholder Settlement, holders of the CVR would be entitled to receive an annual cash payment from Akorn of 33.3% of "Excess EBITDA" (*i.e.*, EBITDA in excess of the amount required meet a 3.0x net leverage ratio, assuming a $100 million minimum cash cushion, before any such CVR payment is triggered). To the extent any such annual payments would be triggered under the CVRs, they would be capped at an aggregate $12 million per year and $60 million in the aggregate during the term of the CVRs.

Upon certain change of control transactions during the term of the CVRs, if the Term Loan Lenders and holders of Akorn's other debt are repaid in full, the CVRs would entitle holders thereof to a cash payment in the aggregate amount of $30 million (the "CVR Change of Control Payment"). In the event of a voluntary or involuntary bankruptcy filing during the term of the CVRs, the CVR agreement would provide that holders of the CVRs would receive in the aggregate a $30 million unsecured claim (which unsecured claim would be contractually subordinated to any deficiency claim of the Term Loan Lenders and holders of Akorn's other secured debt in any such bankruptcy case) (the "CVR Bankruptcy Claim"). The $60 million aggregate cap on annual payments would not apply to the CVR Change of Control Payment or

the CVR Bankruptcy Claim, if any. No further amounts would be payable under the CVRs following such a change of control transaction or bankruptcy event.

Between October 21 and November 12, 2019, Akorn received requests for exclusion totaling approximately $250 million in recognized losses, as calculated in accordance with the Shareholder Settlement plan of allocation, on behalf of six entities or groups of affiliated entities (the "Opt-Outs") who purchased a number of shares substantially exceeding the Termination Threshold. Five of those Opt-Outs either filed or had previously filed lawsuits in the Illinois District Court against certain defendants in the Shareholder Litigation, including Akorn (the "Opt-Out Cases"). The complaints in the Opt-Out Cases variously alleged violations of sections 10(b), 18, and 20(a) of the Securities Exchange Act of 1934 and common law fraud.

Throughout November, 2019, Akorn and counsel for the Lead Plaintiffs were in contact with counsel for the Opt-Outs in an effort to persuade them to withdraw their requests for exclusion and participate in the Shareholder Settlement.

Ultimately, two of the six entities, including the plaintiff in one of the Opt-Out Cases, that originally submitted requests for exclusion withdrew their requests and participated in the Shareholder Settlement. The remaining Opt-Outs did not withdraw their requests for exclusion, and those entities have continued to pursue the claims asserted in four Opt-Out Cases, captioned *Twin Master Fund, Ltd., et al. v. Akorn, Inc., et al.*, C.A. No. 19-cv-3648 (N.D. Ill.) (the "*Twin* Action"), *Manikay Master Fund, LP, et al. v. Akorn, Inc., et al.*, C.A. No. 19-cv-4651 (N.D. Ill.) (the "*Manikay* Action"), *Magnetar Constellation Fund II-PRA LP, et al. v. Akorn, Inc., et al.*, C.A. No. 19-cv-8418 (N.D. Ill.) (the "*Magnetar* Action"), and *AQR Funds – AQR Multi-Strategy Alternative Fund, et al. v. Akorn, Inc., et al.*, C.A. No. 20-cv-0434 (N.D. Ill.) (the "*AQR* Fund"). The Opt-Out Cases are stayed as against Akorn by virtue of the filing of the Chapter 11 Cases. On or around the Petition Date, Akorn filed a motion seeking to stay the Opt-Out Cases as against the non-Debtor defendants in the Opt-Out Cases.

In accordance with the terms of the Shareholder Settlement, between April 1, 2020 and April 7, 2020, a total of $27.5 million in insurance proceeds from Akorn's applicable directors & officers insurance policies was deposited into a cash escrow account, and a total of 6,713,905 shares of Akorn common stock and a total of 6,713,905 CVRs were issued into separate securities escrow accounts. The Settlement Shares and the CVRs were issued pursuant to the exemption from registration provided by section 3(a)(10) of the Securities Act of 1933, as amended.[~~13~~26] As of the Petition Date, Akorn believes it has substantially complied with its obligations under the Shareholder Settlement.[~~14~~27]¶

C. *Other Prepetition Litigation*¶

Akorn was a nominal defendant in purported derivative claims brought on Akorn's behalf against certain current and former directors and officers of Akorn. These include *Kogut v. Akorn, Inc., et al.*, No. 646,174 (La. Dist. Ct.) (the "*Kogut* Action"), *Booth Family*

[~~13~~26] Once the settlement consideration is issued into escrow, the Lead Plaintiffs are responsible for distributing it to members of the settlement class.

[~~14~~27] The Debtors expect to file a motion seeking authorization for the Debtors and other parties to perform any remaining postpetition obligations under the settlement out of an abundance of caution.

Trust v. Kapoor, et al., No. 2019CH12793 (Ill. Cir. Ct.), ***Pulchinski v. Abramowitz, et al.***, No. 2019CH11186 (Ill. Cir. Ct.), and ***In re Akorn, Inc. Shareholder Derivative Litigation***, No. 18-cv-07374 (N.D. Ill.). The derivative suits variously alleged breaches of fiduciary duties by certain present and former officers and directors of Akorn related to, among other matters, Akorn's compliance with FDA regulations and requirements regarding data integrity, based on substantially the same facts and circumstances underlying the Delaware Chancery Court's determination that Akorn had experienced a "material adverse effect" that permitted Fresenius to terminate the Merger Agreement.¶

On December 12, 2019, Akorn and the other parties to the ***Kogut*** Action in Louisiana state court in the Parish of East Baton Rouge (the "Louisiana State Court") entered into a stipulation and agreement of settlement providing for the dismissal of the action and the release of all claims asserted derivatively therein on behalf of Akorn (the "Derivative Settlement"). The Louisiana State Court entered final judgment approving the settlement on January 22, 2020. Pursuant to the Louisiana State Court's final judgment, Akorn, and every Akorn shareholder claiming by, through, in the right of, derivatively, or on behalf of Akorn, or otherwise pursuant to the internal affairs doctrine under the law of the State of Louisiana, released Akorn's past and present directors, officers, agents, advisors (including financial and legal advisors), affiliates, predecessors, successors and parents, from any and all claims that have been or might have been asserted by plaintiff in the ***Kogut*** Action and/or any Akorn shareholder derivatively, or otherwise pursuant to the internal affairs doctrine under the law of the State of Louisiana, based upon or related to the facts, transactions, events, occurrences, acts, disclosures, statements, omissions, or failures to act which were alleged in the ***Kogut*** Action, including those allegations set forth in the ***Kogut*** plaintiff's second amended and restated complaint that were based on the Delaware Chancery Court's findings of fact in connection with the Fresenius litigation regarding, among other things, data integrity and FDA compliance. Following the Louisiana State Court's entry of a final judgment and the release set forth therein, the ***Kogut*** Action and each of the remaining derivative suits was dismissed with prejudice.¶

On December 5, 2017, Provepharm, Inc. sued Akorn in the United States District Court for the Eastern District of New York. ***Provepharm, Inc. v. Akorn, Inc.***, Case No. 17-cv-7087 (E.D.N.Y.) (Judge S. Feuerstein). Brought under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a), and analogous New York law, the suit alleges that Akorn engaged in unfair competition, deceptive trade practice, and false advertising with regards to its methylene blue injection drug product, which it marketed in competition with Provepharm's FDA-approved and USP-compliant methylene blue product, ProvayBlue®. Provepharm seeks its own lost profits damages of $20–25 million and disgorgement of $37 million of the profits Akorn realized as a result of its alleged violation of the Lanham Act, for a total recovery of $57–62 million (along with prejudgment interest and costs, and subject to enhancement at the discretion of the court pursuant to 15 U.S.C. § 1117(a)). ¶

Akorn disputes the allegations in the complaint and filed its own counterclaim against Provepharm alleging that Provepharm violated the antitrust laws in allegedly getting Akorn out of the methylene blue market. Akorn is seeking in excess of $30 million due to Provepharm's alleged monopolistic behavior, which amount may be further

increased if treble damages are also awarded. Provepharm disputes the allegations in the counterclaim.¶

The parties have completed both fact and expert discovery, and, in March 2020, filed cross summary judgment motions with the court. Additionally, the parties filed briefing relating to *Daubert* motions on the parties respective expert witnesses in March of 2020. All of those motions remained pending upon Akorn's petitioning for bankruptcy relief.¶

Debtors Akorn, Inc., Hi-Tech Pharmacal Co., Inc., Akorn Sales, Inc., and VersaPharm, Inc. are named defendants in the consolidated multidistrict litigation pending in the Eastern District of Pennsylvania and captioned *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, Case No. 2:16-md-02724-CMR (E.D. Pa.) (the "MDL"). The litigation consolidates various complaints brought by putative classes, direct action plaintiffs, and state plaintiffs relating to the alleged price fixing of generic pharmaceuticals. To date, there has been motion to dismiss briefing with respect to the drug-specific complaints as well as on the early overarching conspiracy complaints in the MDL. The court denied those motions to dismiss. At this time, it is too early to determine the scope and quantum of potential liability (if any) the Debtor defendants may have in connection with the allegations raised in the MDL.

D. ~~C.~~ *Negotiations with the Ad Hoc Group.*

On November 7, 2018, Akorn received a letter from the legal representatives of the Ad Hoc Group asserting that the Delaware Chancery Court's finding that Akorn had suffered a "material adverse effect" and had failed to operate in the ordinary course of business may have significant implications under the Term Loan Credit Agreement. The letter further stated that the Ad Hoc Group wanted to engage in a dialogue with Akorn. Following the Delaware Supreme Court's affirmance of the Delaware Chancery Court's judgment, the legal representatives of the Ad Hoc Group sent a second letter, reiterating the Ad Hoc Group's desire to start a dialogue and stating that the Ad Hoc Group now represented a sufficient number of Term Loan Lenders to declare a default and accelerate Akorn's debt obligations under the Term Loan Credit Agreement.

Akorn and the Ad Hoc Group subsequently began discussions regarding the Term Loan Credit Agreement. After months of hard-fought, arm's-length negotiations, on May 6, 2019, the Akorn Loan Parties entered into the Standstill Agreement and First Amendment with respect to the Term Loan Credit Agreement with the Ad Hoc Group, certain other Term Loan Lenders (together with the Ad Hoc Group, the "Standstill Lenders"), and the Term Loan Agent (together with the Akorn Loan Parties and the Standstill Lenders, the "Standstill Parties"). On December 15, 2019, the Akorn Loan Parties and certain of the Standstill Lenders entered into a First Amendment to Standstill Agreement and Second Amendment to Credit Agreement that, among other things, extended the date of expiry of the Standstill Period (as defined in the Standstill Agreement) from December 13, 2019 to and including February 7, 2020.

In exchange for the agreement of the Standstill Lenders to standstill during the Standstill Period, the Standstill Agreement required the Debtors to abide by certain milestones and

covenants and to negotiate in good faith with the Ad Hoc Group regarding a comprehensive amendment of the Term Loan Credit Agreement.

With the initial Standstill Agreement in place, beginning in August 2019, the Debtors, with the assistance of PJT, Partners, LP ("PJT"), who was hired as financial advisor in January 2019, launched a financing process through which they solicited debt and equity-linked financings to either (i) fully refinance the existing Term Loan or (ii) pay down the Debtors' existing Term Loan to effectuate a refinancing. The Debtors, with the assistance of PJT, contacted thirty-two prospective investors, of which twenty-two entered into confidentiality agreements with the Debtors and received a copy of the Debtors' investor presentation and access to a virtual data room containing certain information about the Debtors' business. Several parties submitted nonbinding indications of interest involving new debt and/or equity-linked investments, and the Debtors selected bidders to advance to the second round. The parties had several meetings with management and conducted substantial due diligence. After conducting due diligence, the Debtors received second-round nonbinding indications of interest for junior capital only. No investors were willing to refinance the capital structure in its entirety, despite the Debtors having significantly less net debt in Q3 2019 than today. Further, given feedback from the remaining junior capital investors regarding the importance of resolving outstanding litigation as part of consummating a transaction, it became clear these investors would not be able to provide binding junior financing proposals on an out-of-court basis.

Akorn and its advisors ultimately determined that these financing proposals were not actionable and a further extension of the Standstill Agreement was needed. In October and November of 2019, Akorn and the Ad Hoc Group entered into discussions concerning an extension of the Standstill Agreement to afford Akorn time to resolve the then-pending Shareholder Litigation settlement and complete its refinancing process. Unfortunately, Akorn and the Ad Hoc Group were unable to reach terms on either an extension to the Standstill Agreement or a Comprehensive Amendment at that time.

The failure to enter into a Comprehensive Amendment on or prior to November 15, 2019, resulted in payment by Akorn of a one-time in-kind fee in an amount equal to 0.625% of the Term Loans outstanding on such date and required the Akorn Loan Parties to pledge for the benefit of the Term Loan Lenders all unpledged equity interests in foreign subsidiaries.

Moreover, under the Standstill Agreement, the failure to enter into a Comprehensive Amendment or otherwise address the Term Loans on or prior to expiry of the Standstill Period (*i.e.*, February 7, 2020) would have constituted an immediate event of default under the Term Loan Credit Agreement. On February 12, 2020, and without the Term Loan Lenders having declared an event of default, Akorn and the Standstill Parties reached agreement on a further extension of the Standstill Period for Akorn to continue its prepetition marketing process, with the goal of filing the Chapter 11 Cases with a stalking horse bid in hand. Unfortunately, as discussed further herein, the Debtors did not secure any binding bids sufficient to fully pay the Term Loans.

E. ~~D.~~ *Akorn's Current Operational and Financial Position.*

Since April 2017, Akorn's market capitalization has declined by more than 99%—from roughly $4 billion following announcement of the Merger Agreement to less than $37 million as of the Petition Date. Akorn has not made an annual profit in two years and generated $310 million in negative EBITDA in 2018.

During the worst of this downturn, Akorn was party to the Merger Agreement, which imposed restrictive operating covenants that prevented the Debtors from taking strategic actions to shore up their business. For example, Akorn was precluded from engaging in acquisitions, which had previously been a key driver of growth. Akorn suffered a further loss when Fresenius successfully terminated the Merger Agreement, depriving Akorn shareholders of the Merger consideration of $34 per share, and the Delaware Chancery Court issued a public ruling criticizing Akorn's FDA regulatory compliance.

The Standstill Agreement with the Term Loan Lenders provided Akorn with much-needed time to improve their regulatory status and turn around their business. Since entering the Standstill Agreement, Akorn has increased net revenue and adjusted EBITDA. From the first quarter to the second quarter of 2019, Akorn increased its net revenue from $166 million to $178 million; in the third and fourth quarters, Akorn achieved net revenue of $176 million and $162 million, representing increases of $11 million and $9 million, or 6% and 5.8%, respectively, from the prior year quarters. Akorn also increased adjusted EBITDA in three consecutive quarters of 2019: after suffering a loss of $20 million in the fourth quarter of 2018, Akorn has achieved adjusted EBITDA of $23 million, $36 million, and $37 million for the first three quarters of 2019, respectively. In the fourth quarter of 2019, the Debtors achieved adjusted EBITDA of $28 million. In the first quarter of 2020, the Debtors achieved adjusted EBITDA of $59 million.

The Debtors' business stabilization has been driven by executing operational improvement, quality systems, and compliance initiatives focused on measuring and driving improvement in key performance metrics. Through these initiatives, the Debtors have improved product availability, lowered backorders, and reduced failure to supply penalties. As a result of their ongoing operational turnaround, the Debtors are poised to achieve significant growth.

While the Debtors' underlying business is sound today and improving with each passing quarter, the Debtors continue to face significant nonoperational headwinds, including, first and foremost, the Debtors' significant lingering litigation overhang as a result of the Opt-Out Cases and the Fresenius litigation, which have deterred new financing sources from investing in and/or acquiring the Debtors' business outside of the chapter 11 context.

F. ~~E.~~ *Akorn's Prepetition Marketing Process.*

Beginning in December 2019, the Debtors, with the assistance of PJT, contacted seventy-two potentially interested parties (including both strategic purchasers from the pharmaceutical industry and financial purchasers) regarding a potential going-concern transaction of the Debtors' business, of which thirty-seven entered into confidentiality agreements with the Debtors. All of the equity sponsor parties who completed significant diligence in the financing

process were invited to participate in the sale process. Parties who executed a confidentiality agreement received a copy of the Debtors' investor presentation and access to a virtual data room containing approximately fifty documents with certain key information about the Debtors' business. In addition, parties were offered phone calls with management.

PJT instructed bidders to submit preliminary indications of interest by January 30, 2020, which were to include: (i) the identity and description of the bidder, (ii) the purchase price for the Debtors' business to be paid in cash, (iii) descriptions of the material assumptions informing the proposed purchase price, (iv) a description of due diligence information required to make a definitive proposal, (v) a transaction structure and proposed source of funds, (vi) prospective plans for the Debtors' business following consummation of a transaction, (vii) any conditions precedent required to be satisfied to consummate a transaction, (viii) estimates of time required to execute and close a transaction, (ix) the bidder's contact information and a list of any external advisors retained to assist in due diligence, and (x) any other matters material to a proposal.

Several parties submitted nonbinding indications of interest that contemplated a going-concern sale of the Debtors' business. Based on the overall quality of the bid, value, and certainty of execution, the Debtors selected seven bidders to advance to the second round of the process. These parties were invited to participate in the second round of bidding with access to further diligence, including site visits and discussions with the Debtors' management team. Additionally, these bidders received access to a second round virtual data room containing additional critical information about the Debtors' business. During the second round, the Debtors and PJT held in-person management meetings, responded to over 500 diligence inquiries, conducted numerous follow-up calls, and hosted site visits at the Debtors' manufacturing sites.

On February 28, 2020, the Debtors uploaded a form of asset purchase agreement to the virtual data room, and PJT instructed bidders to submit updated indications of interest by March 9, 2020 including, in addition to substantially the same information as required in the first round, (i) confirmation that due diligence had been substantially completed and (ii) a markup of the asset purchase agreement.

Based on the overall quality of the bid, value, and certainty of execution of the updated indications of interest, the Debtors ultimately selected two bidders to advance to the final round of the sale process. In total, final bidders received access to over 2,600 documents that were uploaded to the data room and conducted numerous follow-up diligence calls with management and its advisors at AlixPartners LLP, Kirkland & Ellis LLP, PJT, and Grant Thornton LLP.

On the March 27, 2020 deadline for binding bids, however, the Debtors received no bids at a level sufficient to pay the aggregate outstanding amount of the Term Loans in full. The Debtors swiftly pivoted to negotiating the terms of a comprehensive restructuring transaction with the Ad Hoc Group.

Subsequently, the Term Loan Lenders notified the Debtors of their intention to credit bid the outstanding amount of the Term Loans and act as the "stalking horse" bidder in an in-court sale process. After several rounds of negotiation and given the lack of interest from third parties to bid at a level sufficient to pay the aggregate outstanding amount of the Term Loans in full, the

Debtors and the Term Loan Lenders agreed on an asset purchase agreement (including all exhibits and schedules related thereto, the "Stalking Horse APA").

The Debtors filed these Chapter 11 Cases to take the next step in marketing a going-concern sale of their business—specifically, a value-maximizing, in-Court sale process that will publicly "market test" the value of their business—to address the Debtors' capital structure needs and litigation liabilities in a single forum. To that end, prior to the Petition Date, the Debtors and certain of their Term Loan Lenders entered into the Restructuring Support Agreement, which solidifies their support for the Sale Transaction (whether to the Term Loan Lenders or a third party) and provides for the orderly wind-down of the Debtors' estates and sufficient capital to fund the Debtors' operations until consummation of the Sale Transaction. In addition, certain of the Restructuring Support Agreement parties have agreed to fund the costs of these Chapter 11 Cases via $30 million of DIP financing, which will send a clear signal to the market that the Debtors' operations can and will continue on a business-as-usual basis while they continue their marketing process.

To that end, the Debtors filed a motion **[Docket No. 18]** requesting Court approval of the Bidding Procedures, with an auction (if any) to be scheduled for **9:00 a.m. (prevailing Eastern Time) on** August 10, 2020. In light of their fulsome pre and postpetition marketing process, the Debtors remain confident that sufficient interest exists to maximize the value of their business and expect to move expeditiously to select ~~a winning bidder~~**the Successful Bidder (as defined in the Bidding Procedures)** and consummate the contemplated ~~sale of their assets~~**Sale Transaction. On June 15, 2020, the Bankruptcy Court entered the Bidding Procedures Order [Docket No. 181] approving the Debtors' proposed Bidding Procedures**.

Article V.
ADMINISTRATION OF THE CHAPTER 11 CASES

A. *First **and Second** Day ~~Pleadings~~**Relief** and Other Case Matters.*

On the Petition Date, the Debtors Filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Bankruptcy Court, various first day motions, and an application to employ Kurtzman Carson Consultants LLC ("KCC") as Notice and Claims Agent (collectively, the "First Day Pleadings") with the Bankruptcy Court. On May 22, 2020, the Bankruptcy Court entered orders granting the First Day Pleadings on an interim or final basis, as applicable. On ~~[●],~~**June 11,** 2020, **June 12, 2020, and June 15, 2020, as applicable,** the Bankruptcy Court granted ~~certain of~~ the relief requested in the First Day Pleadings on a final basis.

1. *Administrative Motions.*

To facilitate a smooth and efficient administration of the Chapter 11 Cases, the Debtors Filed First Day Pleadings seeking orders authorizing the joint administration of the Debtors' Chapter 11 Cases and establishing certain notice and administrative procedures.

2. *Operational Relief.*

The Debtors Filed certain motions and applications requesting various types of "first day" and "second day" relief. The relief granted enabled the Debtors to preserve value and efficiently administer the Chapter 11 Cases, including, among other things, orders authorizing the Debtors to:

- continue using their existing cash management system, honor certain prepetition obligations related thereto, maintain existing business forms, and continue to perform intercompany transactions;
- pay certain prepetition taxes and fees;
- obtain postpetition financing and use cash collateral with the consent of certain Term Loan Lenders;
- fulfill and honor all customer obligations the Debtors deemed appropriate in the ordinary course of business and continue, renew, replace, implement new, and/or terminate any customer practices and incur customer obligations as the Debtors deem appropriate;
- pay their obligations under insurance policies entered into prepetition, continue paying brokerage fees, renew, supplement, modify, and purchase insurance coverage in the ordinary course of business, maintain the customs surety bonds, honor the terms of the financing agreements and pay premiums thereunder ;
- pay prepetition employee wages, salaries, other compensation, and reimbursable employee expenses in the ordinary course of business, and continue certain employee benefits programs;
- make payment on account of prepetition Claims of certain critical domestic and foreign vendors, lienholders, and 503(b)(9) claimants; and
- determine adequate assurance of payment for future utility services, establish procedures for utilities to request adequate assurance, pursuant to which the utility companies were prohibited from altering, refusing, or discontinuing utility services except in certain circumstances, and require utility providers to return deposits for utility services no longer in use.¶

The First Day Motions and all orders for relief granted in the Debtors' Chapter 11 Cases, can be viewed free of charge at https://www.kccllc.net/akorn.¶

The Debtors also filed several other motions subsequent to the Petition Date to further facilitate the smooth and efficient administration of these Chapter 11 Cases and ease administrative burdens, including a motion to retain professionals utilized in the ordinary course of business that seeks to establish procedures for the retention and compensation of certain professionals utilized by the Debtors in the ordinary course operation of their businesses [Docket No. 133]. In addition, the Debtors filed a number of

retention applications seeking to retain certain professionals postpetition pursuant to sections 327 and 328 of the Bankruptcy Code, including: Kirkland & Ellis LLP as legal counsel [Docket No. 127]; Richards, Layton & Finger, P.A. as co-counsel [Docket No. 128]; AlixPartners, LLP as financial advisor [Docket No. 129]; KCC as administrative advisor [Docket No. 130]; PJT as investment banker [Docket No. 131]; Grant Thornton LLP as tax and advisory consultant [Docket No. 132]. The foregoing professionals, among others, are each, in part, responsible for the administration of the Chapter 11 Cases. The postpetition compensation of all of the Debtors' professionals retained pursuant to sections 327 and 328 of the Bankruptcy Code is subject to the approval of the Court. On June 23, 2020, the Court entered orders granting the retention applications and other second day motions.

3. *Automatic Stay.*

The Filing of the Debtors' bankruptcy petitions on the Petition Date triggered the immediate imposition of the automatic stay under section 362 of the Bankruptcy Code, which, with limited exceptions, stayed all collection efforts and actions against the Debtors' and their Estates, the enforcement of Liens, Claims, encumbrances, and interests against property of the Debtors, and both the commencement and continuation of prepetition litigation against the Debtors. With certain limited exceptions and/or modifications as permitted by order of the Bankruptcy Court, the automatic stay remains in effect until the Effective Date of the Plan. On May 22, 2020, the Bankruptcy Court entered an order granting the Debtors' request for an order restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* provisions of the Bankruptcy Code and approving the form and manner of notice thereof [Docket No. 72].¶

B. *Appointment of Unsecured Creditors' Committee.*¶

On June 3, 2020, the U.S. Trustee appointed an official committee of unsecured creditors (the "Committee") [Docket No. 125]. The five-member Committee is currently composed of the following members: McKesson Corporation; Douglas Pharmaceuticals America Ltd.; Walgreen Co.; Rising Pharma Holdings, Inc.; and Gabelli Funds, LLC. The Committee has selected Jenner & Block LLP as its legal counsel, Saul Ewing Arnstein & Lehr as its co-counsel, and Huron Consulting Group as its financial advisor.¶

C. *Request for the Appointment of an Equity Committee.*¶

By letter dated June 19, 2020, certain shareholders requested that the U.S. Trustee appoint an official committee of equity security holders [Docket No. 193]. On June 24, 2020, the Debtors and the Ad Hoc Group each submitted letters to the U.S. Trustee in opposition to the request for an equity committee. [The U.S. Trustee has not made a determination at this time.]

D. ~~B.~~ *Summary of Claims Process, Bar Date and Claims Filed.*

On May 22, 2020, the Debtors Filed a motion [Docket No. 95] seeking entry of an order granting an extension of time through and including June 30, 2020, to File their schedules of assets and liabilities, schedules of current income and expenditures, schedules of executory

contracts and unexpired leases, and statements of financial affairs (collectively, the "Schedules and Statements") and their initial reports of financial information with respect to entities in which the Debtors hold a controlling or substantial interest as set forth in Federal Rule of Bankruptcy Procedure 2015.3 (the "2015.3 Reports"). On ~~[●],~~**June 23,** 2020, the Bankruptcy Court entered an order approving this extension motion [Docket No. ~~[●]~~**215**]. On [~~●~~**June 30**], 2020, the Debtors Filed their Schedules and Statements and Rule 2015.3 Reports [Docket Nos. [●]–[●]].¶

On June 3, 2020, the Debtors Filed a motion [Docket No. 134] seeking entry of an order (i) setting bar dates for filing Proofs of Claim, including claims arising under section 503(b)(9) of the bankruptcy code, (ii) setting a bar date for the filing of Proofs of Claim by governmental units, (iii) establishing amended schedules bar date and rejection damages bar date, (iv) approving the form of and manner for filing proofs of claim, and (v) approving notice of bar dates. On June 23, 2020, the Bankruptcy Court entered an order [Docket No. 214] (the "Bar Date Order") approving this motion, establishing procedures and setting deadlines for filing Proofs of Claim against the Debtors, and approving the form and manner of the bar date notice (the "Bar Date Notice"). Pursuant to the Bar Date Order and the Bar Date Notice, the last date for certain persons and entities to file Proofs of Claim in the Debtors' Chapter 11 Cases is 5:00 p.m., prevailing Eastern Time, on the date that is thirty (30) days after service of the Bar Date Notice (the "Claims Bar Date"); and the last date for governmental units to file Proofs of Claim in the Debtors' Chapter 11 Cases is November 16, 2020, at 5:00 p.m., prevailing Eastern Time (the "Governmental Bar Date"). In accordance with the Bar Date Order, the Debtors will cause the Bar Date notice to be published in *The New York Times* (national edition) and *PM360*. The Debtors will cause the Bar Date notice to be served on all Holders of Claims appearing in the Debtors' Schedules of Assets and Liabilities.

E. ~~C.~~ *Exclusivity.*

Section 1121(b) of the Bankruptcy Code establishes an initial period of 120 days after the Bankruptcy Court enters an order for relief under chapter 11 of the Bankruptcy Code, during which only the debtor may file a chapter 11 plan. If the debtor files a chapter 11 plan within such 120-day period, section 1121(c)(3) of the Bankruptcy Code extends the exclusivity period by an additional sixty (60) days to permit the debtor to seek acceptances of such plan. Section 1121(d) of the Bankruptcy Code also permits the Bankruptcy Court to extend these exclusivity periods "for cause." Absent further order of the Bankruptcy Court, the Debtors' exclusivity period to File a chapter 11 plan will expire on September 17, 2020, which is 120 days after the Debtors petitioned for relief under chapter 11 of the Bankruptcy Code.

F. ~~D.~~ *The Sale Motion and Sale Process.*

On the Petition Date, the Debtors Filed a motion [Docket No. 18] (the "Sale Motion") seeking authority to conduct a postpetition process to market test the transaction contemplated by the Ad Hoc Group's bid, and to consummate the sale to the Ad Hoc Group or a successful topping bidder. More specifically, **through the Sale Motion,** the Debtors ~~are seeking~~**sought**: (i) authorization and approval of the Bidding Procedures in connection with the sale of substantially all of the Debtors' assets; (ii) establishment of certain dates and deadlines, including the bid

deadline and the date of the auction, and the scheduling of a hearing to approve the sale of substantially all of the Debtors' assets to the Stalking Horse Bidder **(as defined below)** or otherwise Successful Bidder ~~(as defined in the Bidding Procedures)~~ (the "Sale Hearing"); (iii) approval of the form and manner of notice of the Sale Hearing; and (iv) approval of procedures for the assumption and assignment of executory contracts and leases, including notice of proposed cure amounts. **On June 15, 2020, the Bankruptcy Court entered the Bidding Procedures Order, thereby granting the relief requested in the Sale Motion.**

The Bidding Procedures Order contemplates the following dates and deadlines in connection with the Sale Transaction.

Event	Date
Bid Deadline	August 3, 2020
Auction	August 10, 2020
Contract Objection Deadline	August ~~15,~~**14,** 2020 **at 5:00 p.m. (ET)**
Sale Objection Deadline	August ~~15,~~**14,** 2020 **at 5:00 p.m. (ET)**
Sale Hearing	August 20, 2020 **at 1:00 p.m. (ET)**

The Sale Transaction shall be consummated in accordance with the terms and conditions set forth in the Sale Transaction Documentation, the Bidding Procedures Order, and the Sale Order. Generally, the Sale Transaction contemplates that:

(a) on the Sale Closing (as defined in the Restructuring Support Agreement), the Debtors shall consummate the Sale Transaction by, among other things, transferring the Transferred Assets to the Purchaser free and clear of all Liens, Claims, Interests, charges, and other encumbrances (other than the Assumed Liabilities) pursuant to sections 363 and 365 of the Bankruptcy Code and the Sale Order;

(b) the Purchaser shall assume certain obligations owed by the Debtors to their customers and trade vendors. Following such assumption by the Purchaser, the Purchaser shall satisfy such obligations in Cash, and for the avoidance of doubt, any obligations that were assumed by the Purchaser shall cease to be Claims against the Debtors following such assumption;

(c) Distributable Proceeds will be used to make payments or distributions pursuant to the Plan**. At this time, no Distributable Proceeds are expected to be available for Holders of Claims or Interests in Class 4, Class 7, or Class 8**; and

(d) on the Effective Date, the Debtors shall pay all Cure Costs that are required to be paid (if any) pursuant to and in accordance with sections 365 or 1123 of the Bankruptcy Code with respect to any Executory Contracts or Unexpired Leases that are assumed by the Debtors pursuant to the Plan. For the avoidance of doubt, the Debtors shall have no

obligations to pay any Cure Costs for any contract or lease that was assumed by the Purchaser pursuant to the Sale Order.¶

1. *The Stalking Horse APA and the Stalking Horse Bidder.*¶

The Stalking Horse APA contemplates the sale of substantially all of the Debtors' assets to an entity created and controlled by the Term Loan Agent (as directed by the required Term Loan Lenders) (such entity, the "Stalking Horse Bidder") for a purchase price (the "Purchase Price") comprising (a) the assumption of the Assumed Liabilities (as defined in the Stalking Horse APA), (b) the credit bid of all of the Term Loan Claims, and (c) an amount in Cash equal to the Wind-Down Amount (i.e., $35.015 million). More specifically, the Stalking Horse APA provides that the Stalking Horse Bidder shall acquire all of the Debtors' right, title, and interest in and to all of their properties, rights, interests, and other assets as of Closing (as defined in the Stalking Horse APA) of every kind and nature, whether tangible or intangible (including goodwill), real, personal, or mixed, known or unknown, accrued, absolute, contingent or otherwise, wherever located and whether or not to be reflected on a balance sheet prepared in accordance with GAAP or specifically referred to in the Stalking Horse APA (other than the Excluded Assets specifically noted in the Stalking Horse APA, the "Acquired Assets"), including:[28]¶

- **customer and vendor contracts;¶**
- **real estate leases and owned real property;¶**
- **intellectual property;¶**
- **Cash and Cash equivalents;¶**
- **trade and non-trade accounts receivable and notes receivable;¶**
- **certain tax attributes and refunds;¶**
- **regulatory permits and licenses;¶**
- **employee benefit plans;¶**
- **certain causes of action (including Avoidance Actions);¶**
- **prepaid expenses, deposits, and credits;¶**
- **inventory, equipment, and machinery;¶**
- **equity of certain non-Debtor foreign subsidiaries of the Debtors;¶**

[28] This summary is provided for the convenience of the parties receiving this Disclosure Statement and is qualified in its entirety by reference to the Stalking Horse APA, a copy of which is attached as Exhibit 1 to Exhibit B to the *Debtors' Motion Seeking Entry of an Order (A) Authorizing and Approving Bidding Procedures, (B) Scheduling an Auction and a Sale Hearing, (C) Approving the Form and Manner of Notice Thereof, (D) Establishing Notice and Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief* [Docket No. 18].

- insurance benefits;¶
- bank accounts; and¶
- documents and files.¶

Assets not being sold under the Stalking Horse APA (the "Excluded Assets") comprise, among other things, certain specified agreements belonging to the Debtors, certain documents (including documents that are subject to attorney-client privilege and certain confidentiality agreements), all current and former director and officer insurance policies (and all rights and benefits of any nature of the Debtors with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries under such insurance policies), and any claims and causes of action related to the Excluded Assets or Excluded Liabilities (as defined in the Stalking Horse APA).¶

As set forth in the Bidding Procedures, as of the date of entry of the Bidding Procedures Order, the expected minimum Cash overbid amount (i.e., the minimum amount a bidder would have to bid in Cash to be deemed a Successful Bidder over the Stalking Horse Bidder) is approximately $1.006 billion.[29] ¶

2. *Acquired Causes of Action*¶

The causes of action (including Avoidance Actions) that are Acquired Assets under the Stalking Horse APA are part of the holistic transaction contemplated by the Stalking Horse Bid. The Stalking Horse Bidder required that these Avoidance Actions be included in the Acquired Assets to prevent third parties with no connection to the Debtors or their business from pursuing claims against the Debtors' business partners and employees, and, if the Stalking Horse Bidder is the Successful Bidder, the Sale Order shall provide that, notwithstanding anything to the contrary in the Stalking Horse APA, upon closing of the Sale Transaction and assumption of any of the acquired Avoidance Actions, the Stalking Horse Bidder shall be deemed to have waived any right to pursue any such acquired Avoidance Actions against any counterparty to an Assigned Contract and/or relating to an Assumed Liability (as such terms are defined in the Stalking Horse APA).¶

[29] This number excludes estimated Assumed Liabilities and otherwise is subject to upward or downward adjustments based on, among other things, changes to the value of any considerations included in the Stalking Horse Bid and incremental cash that may be required from a Qualified Bidder (as defined in the Bidding Procedures) due to, among other things, additional regulatory approvals, cash taxes, and other expenses. Additional information about the buildup for this number is available upon request from the Debtors' advisors.

3. *The Term Loan Lenders' Prepetition Ownership of Interests in the Debtors.*¶

Other than as set forth in the *Verified Statement of the Ad Hoc Term Lender Group Pursuant to Bankruptcy Rule 2019* [Docket No. 58] (the "Verified Rule 2019 Statement"),[30] the Debtors are not aware of any prepetition ownership of interests in the Debtors by any of the Term Loan Lenders.

Article VI.
SUMMARY OF THE PLAN

THIS ARTICLE VI IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE KEY TERMS, STRUCTURE, CLASSIFICATION, TREATMENT, AND IMPLEMENTATION OF THE PLAN, AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE ENTIRE PLAN AND EXHIBITS THERETO. ALTHOUGH THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT INCLUDE SUMMARIES OF THE PROVISIONS CONTAINED IN THE PLAN AND IN DOCUMENTS REFERRED TO THEREIN, THIS DISCLOSURE STATEMENT DOES NOT PURPORT TO BE A PRECISE OR COMPLETE STATEMENT OF ALL SUCH TERMS AND PROVISIONS, AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DISCUSSION OF THE PLAN. INSTEAD, REFERENCE IS MADE TO THE PLAN AND ALL SUCH DOCUMENTS FOR THE FULL AND COMPLETE STATEMENTS OF SUCH TERMS AND PROVISIONS. THE PLAN ITSELF (INCLUDING ATTACHMENTS) WILL CONTROL THE TREATMENT OF CREDITORS AND EQUITY SECURITY HOLDERS UNDER THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES BETWEEN THIS ARTICLE VI AND THE PLAN (INCLUDING ATTACHMENTS), THE PLAN SHALL GOVERN.

The Plan provides for the wind-down and dissolution of the Debtors' Estates and for distributions to Holders of Claims and Interests. The key terms of the Plan are as follows:

A. *General Settlement of Claims.*

Except as otherwise expressly provided herein, pursuant to section 1123 of the Bankruptcy Code ~~and Bankruptcy Rule 9019,~~ and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Interests, Causes of Action, and controversies released, settled, compromised, ~~discharged,~~ or otherwise resolved pursuant to the Plan. The Plan shall be deemed a motion, proposed by the Debtors, to approve the good-faith compromise and settlement of all such Claims, Interests, Causes of Action, and controversies ~~pursuant to Bankruptcy Rule 9019,~~ and the entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of such compromise and settlement under section 1123 of the Bankruptcy Code ~~and Bankruptcy Rule 9019,~~ as well as a finding by the Bankruptcy Court that such settlement and compromise is fair, equitable, reasonable, and in the best interests of the Debtors and their Estates. Distributions made to Holders of Allowed Claims in any Class are intended to be final.

[30] As set forth in the Verified Rule 2019 Statement, as of May 22, 2020, Stonehill Capital Management (on behalf of funds and accounts managed or advised by it) held 4,395,639 common Akorn shares, Canyon Capital Advisors LLC (on behalf of funds and accounts managed or advised by it) held 4,997,800 common Akorn shares, and Rubric Capital Management LP (on behalf of funds and accounts managed or advised by it) held 4,470,111 common Akorn shares.

B. *Sources of Plan Consideration.*

Cash on hand, borrowings under the DIP Facility, the Distributable Proceeds, if any, the Wind-Down Amount, the Debtors' rights under the Sale Transaction Documentation, payments made directly by the Purchaser on account of any Assumed Liabilities under the Sale Transaction Documentation, payments of Cure Costs made by the Purchaser pursuant to sections 365 or 1123 of the Bankruptcy Code, the return of any utility deposits as set forth in the Utility Orders, and all Causes of Action not previously settled, released, or exculpated under the Plan, if any, shall be used to fund the distributions to Holders of Allowed Claims against the Debtors in accordance with the treatment of such Claims and subject to the terms provided herein. Unless otherwise agreed in writing by the Debtors and the Purchaser, distributions required by the Plan on account of Allowed Claims that are Assumed Liabilities shall be the sole responsibility of the Purchaser to the extent such Claim is Allowed against the Debtors. **At this time, the Debtors anticipate that no Distributable Proceeds will be available for Holders of Claims or Interests in Class 4, Class 7, or Class 8.**

C. *Restructuring Transactions.*

Upon the entry of the Confirmation Order, the Debtors, the Plan Administrator, and the Purchaser are authorized, without further order of the Bankruptcy Court, subject to the terms of the Restructuring Support Agreement, to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Restructuring Transactions under or in connection with the Plan that are consistent with and pursuant to the terms and conditions of the Plan and the Restructuring Support Agreement, including: (a) the execution and delivery of all appropriate agreements or other documents of merger, consolidation, sale, restructuring, conversion, disposition, transfer, dissolution, or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the requirements of applicable law; (b) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan; (c) rejection, assumption, or assumption and assignment, as applicable, of Executory Contracts and Unexpired Leases; (d) the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, or dissolution pursuant to applicable state Law; and (e) any transaction described in the Description of Transactions Steps, if applicable.

The Confirmation Order shall and shall be deemed to, pursuant to sections 363 and 1123 of the Bankruptcy Code, authorize, among other things, all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan, including the Restructuring Transactions.

1. *The Purchaser Assumed Claims.*

The Sale Transaction Documentation provides that as part of the Sale Transaction, the Purchaser assumed certain obligations owed by the Debtors to their customers and trade vendors. Following such assumption by the Purchaser, the Purchaser is required to satisfy such obligations in Cash, and for the avoidance of doubt, any obligations that were assumed by the Purchaser ceased to be Claims against the Debtors following such assumption.

2. *Payment of Cure Costs and Other Amounts.*

On the Effective Date, the Debtors shall pay all Cure Costs that are required to be paid (if any) pursuant to and in accordance with sections 365 or 1123 of the Bankruptcy Code with respect to any Executory Contracts or Unexpired Leases that are assumed by the Debtors pursuant to the Plan. For the avoidance of doubt, the Debtors shall have no obligations to pay any Cure Costs for any contract or lease that was assumed by the Purchaser pursuant to the Sale Order. **Notwithstanding the Stalking Horse Bidder's ability under the Stalking Horse APA to re designate contracts as Assigned Contracts or Excluded Contracts (each as defined therein) until one Business Day prior to closing of the Sale Transaction, the Stalking Horse Bidder has agreed to make a final determination with respect to which contracts will be Assigned Contracts no later than noon prevailing Easter Time on the date that is two Business Days prior to the Confirmation hearing (the "Assigned Contracts Designation Deadline"). Additionally, the Stalking Horse Bidder will use commercially reasonable efforts to provide the Committee with a complete and final list of Assigned Contracts no later than 5:00 p.m. prevailing Eastern Time on August 3, 2020; provided that the Stalking Horse Bidder shall retain the right to amend such list, on reasonable notice to the Committee, up to and including the Assigned Contracts Designation Deadline.**

D. *Vesting of Assets.*

Except as otherwise provided in the Plan, the Sale Transaction Documentation, or any agreement, instrument, or other document incorporated herein or therein, on the Effective Date the Retained Assets shall vest in the Debtors for the purpose of liquidating the Estates, free and clear of all Liens, Claims, charges, and other encumbrances. For the avoidance of doubt, all Transferred Causes of Action have been or will be transferred to the Purchaser in connection with the Sale Transaction and shall vest in the Purchaser as of the effective date thereof, and all Retained Causes of Action shall vest in the Debtors on the Effective Date for prosecution, settlement, or other action as determined by the Plan Administrator.

On and after the Effective Date, except as otherwise provided in the Plan, the Plan Administrator may operate the Debtors' businesses and use, acquire, or dispose of property and, as applicable, compromise or settle any Claims, Interests, or Causes of Action without supervision or approval by the Bankruptcy Court and free of any restrictions of the Bankruptcy Code or Bankruptcy Rules.

E. *Plan Administrator.*

The Plan Administrator shall act for the Debtors in the same fiduciary capacity as applicable to a board of managers and officers, subject to the provisions hereof (and all certificates of formation, membership agreements, and related documents are deemed amended by the Plan to permit and authorize the same). On the Effective Date, the authority, power, and incumbency of the persons acting as managers and officers of the Debtors shall be deemed to have resigned, solely in their capacities as such, and a representative of the Plan Administrator shall be appointed as the sole manager and sole officer of the Debtors and shall succeed to the powers of the Debtors' managers and officers. From and after the Effective Date, the Plan Administrator shall be the sole representative of, and shall act for, the Debtors. For the

avoidance of doubt, the foregoing shall not limit the authority of the Debtors or the Plan Administrator, as applicable, to continue the employment any former manager or officer.

The powers of the Plan Administrator shall include any and all powers and authority to implement the Plan and to make distributions thereunder and wind down the businesses and affairs of the Debtors, including: (i) liquidating, receiving, holding, investing, supervising, and protecting the assets of the Debtors remaining after consummation of the Sale Transaction; (ii) taking all steps to execute all instruments and documents necessary to effectuate the distributions to be made under the Plan; (iii) making distributions as contemplated under the Plan; (iv) establishing and maintaining bank accounts in the name of the Debtors; (v) subject to the terms set forth herein, employing, retaining, terminating, or replacing professionals to represent it with respect to its responsibilities or otherwise effectuating the Plan to the extent necessary; (vi) paying all reasonable fees, expenses, debts, charges, and liabilities of the Debtors; (vii) administering and paying taxes of the Debtors, including filing tax returns; (viii) representing the interests of the Debtors before any taxing authority in all matters, including any action, suit, proceeding or audit; and (ix) exercising such other powers as may be vested in it pursuant to order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deems to be necessary and proper to carry out the provisions of the Plan.

The Plan Administrator may resign at any time upon thirty (30) days' written notice delivered to the Bankruptcy Court; *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor and all responsibilities of the predecessor Plan Administrator relating to the Debtors shall be terminated.

1. *Appointment of the Plan Administrator.*

The Plan Administrator shall be appointed by the Debtors, in consultation with the Purchaser. The Plan Administrator shall retain and have all the rights, powers, and duties necessary to carry out its responsibilities under the Plan, and as otherwise provided in the Confirmation Order.

2. *Retention of Professionals.*

The Plan Administrator shall have the right to retain the services of attorneys, accountants, and other professionals that, in the discretion of the Plan Administrator, are necessary to assist the Plan Administrator in the performance of his or her duties. The reasonable fees and expenses of such professionals shall be paid by the Debtors, upon the monthly submission of statements to the Plan Administrator. The payment of the reasonable fees and expenses of the Plan Administrator's retained professionals shall be made in the ordinary course of business and shall not be subject to the approval of the Bankruptcy Court.

3. *Compensation of the Plan Administrator.*

The Plan Administrator's compensation, on a post-Effective Date basis, shall be as described in the Plan Supplement.

F. *Wind-Down.*

On and after the Effective Date, the Plan Administrator will be authorized to implement the Plan and any applicable orders of the Bankruptcy Court, and the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve the Debtors' Estates.

As soon as practicable after the Effective Date, the Plan Administrator shall: (i) cause the Debtors to comply with, and abide by, the terms of the Plan and any other documents contemplated thereby; (ii) take any actions necessary to wind down the Debtors' Estates; and (iii) take such other actions as the Plan Administrator may determine to be necessary or desirable to carry out the purposes of the Plan. From and after the Effective Date, except as set forth herein, the Debtors (x) for all purposes shall be deemed to have withdrawn their business operations from any state in which the Debtors were previously conducting, or are registered or licensed to conduct, their business operations, and shall not be required to file any document, pay any sum, or take any other action in order to effectuate such withdrawal, and (y) shall not be liable in any manner to any taxing authority for franchise, business, license, or similar taxes accruing on or after the Effective Date.

The Filing of the final monthly operating report (for the month in which the Effective Date occurs) and all subsequent quarterly operating reports shall be the responsibility of the Plan Administrator.

G. *Wind-Down Amount.*

On or prior to the Effective Date, the Debtors shall retain the Wind-Down Amount in accordance with the terms of the Sale Transaction Documentation. The Wind-Down Amount shall be used by the Plan Administrator solely to satisfy the distributions set forth herein, the expenses of the Debtors and the Plan Administrator as set forth in the Plan; *provided* that all costs and expenses associated with the winding down of the Debtors and the storage of records and documents shall constitute expenses of the Debtors and shall be paid from the Wind-Down Amount. In no event shall the Plan Administrator be required or permitted to use its personal funds or assets for such purposes.

H. *Plan Administrator Exculpation, Indemnification, Insurance, and Liability Limitation.*

The Plan Administrator and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and indemnified, except for actual fraud, willful misconduct, or gross negligence, in all respects by the Debtors. The Plan Administrator may obtain, at the expense of the Debtors, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors.

For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors.

I. *Tax Returns.*

After the Effective Date, the Plan Administrator shall complete and file all final or otherwise required federal, state, and local tax returns for each of the Debtors, and, pursuant to section 505(b) of the Bankruptcy Code, may request an expedited determination of any unpaid tax liability of such Debtor or its Estate for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

J. *Cancellation of Notes, Instruments, Certificates, and Other Documents.*

On the Effective Date, except as otherwise specifically provided for in the Plan or to the extent otherwise assumed by the Purchaser: (i) the obligations of any Debtor under any certificate, share, note, bond, indenture, purchase right, or other instrument or document, directly or indirectly evidencing or creating any indebtedness or obligation of giving rise to any Claim shall be cancelled and deemed surrendered as to the Debtors, and the Debtors shall not have any continuing obligations thereunder; and (ii) the obligations of the Debtors pursuant, relating, or pertaining to any agreements, indentures, certificates of designation, bylaws, or certificates or articles of incorporation or similar documents governing the shares, certificates, notes, bonds, indenture, purchase rights, options, warrants, or other instruments or documents evidencing or creating any indebtedness or obligation of the Debtors shall be fully released, settled, and compromised; *provided*, *however*, that notwithstanding anything to the contrary contained herein, any indenture or agreement that governs the rights of the DIP Agent and the Term Loan Agent shall continue in effect to allow the DIP Agent or the Term Loan Agent, as applicable, to (A) enforce its rights, Claims, and interests (and those of any predecessor or successor thereto) vis-à-vis any parties other than the Debtors, (B) receive distributions under the Plan and to distribute them to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, in accordance with the terms of such agreements, (C) enforce its rights to payment of fees, expenses, and indemnification obligations as against any money or property distributable to Holders of Allowed DIP Facility Claims and Term Loan Claims, as applicable, including any rights to priority of payment and/or to exercise charging liens, and (D) appear and be heard in the Chapter 11 Cases or in any proceeding in the Bankruptcy Court, including to enforce any obligation owed to the DIP Agent, the Term Loan Agent, or Holders of DIP Facility Claims and Term Loan Claims under the Plan, as applicable.

K. *Corporate Action.*

Upon the Effective Date, by virtue of the solicitation of votes in favor of the Plan and entry of the Confirmation Order, all actions contemplated by the Plan (including any action to be undertaken by the Debtors or the Plan Administrator, as applicable) shall be deemed authorized, approved, and, to the extent taken prior to the Effective Date, ratified without any requirement for further action by Holders of Claims or Interests, the Debtors, the Plan Administrator, or any other Entity or Person. All matters provided for in the Plan involving the corporate structure of the Debtors shall be deemed to have occurred and shall be in effect, without any requirement of further action by the Debtors or the Debtors' Estates.

Upon the Effective Date or as soon as reasonably practicable thereafter, after making all distributions provided for under the Plan, the Debtors shall be deemed to have been dissolved

and terminated, except as necessary to satisfy their obligations under the Plan. The directors, managers, and officers of the Debtors shall be authorized to execute, deliver, File, or record such contracts, instruments, and other agreements or documents and take such other actions as they may deem necessary or appropriate to implement the provisions of Article IV.K of the Plan.

The authorizations and approvals contemplated by Article IV.K of the Plan shall be effective notwithstanding any requirements under applicable nonbankruptcy Law.

L. *Dissolution of the Board of the Debtors.*

As of the Effective Date, the existing boards of directors or managers, as applicable, of the Debtors shall be dissolved without any further action required on the part of the Debtors or the Debtors' officers, directors, managers, shareholders, or members, and any remaining officers, directors, managers, or managing members of any Debtor shall be dismissed without any further action required on the part of any such Debtor, the equity holders of the Debtors, the officers, directors, or managers, as applicable, of the Debtors, or the members of any Debtor.

As of the Effective Date, the Plan Administrator shall act as the sole officer, director, and manager, as applicable, of the Debtors with respect to their affairs other than matters substantially related to the transactions described in Article IV.C.1 of the Plan. Subject in all respects to the terms of the Plan, the Plan Administrator shall have the power and authority to take any action necessary to wind down and dissolve any of the Debtors, and shall: (i) file a certificate of dissolution for any of the Debtors, together with all other necessary corporate and company documents, to effect the dissolution of the Debtors under the applicable Laws of the applicable state(s) of formation; and (ii) complete and file all final or otherwise required federal, state, and local tax returns and shall pay taxes required to be paid for any of the Debtors, and pursuant to section 505(b) of the Bankruptcy Code, request an expedited determination of any unpaid tax liability of any of the Debtors or their Estates for any tax incurred during the administration of such Debtor's Chapter 11 Case, as determined under applicable tax laws.

The filing by the Plan Administrator of any of the Debtors' certificates of dissolution shall be authorized and approved in all respects without further action under applicable law, regulation, order, or rule, including any action by the stockholders, members, board of directors, or board of managers of any of the Debtors or any of their affiliates.

M. *Release of Liens.*

Except as otherwise expressly provided herein, on the Effective Date, all Liens on any property of any Debtors shall automatically terminate, all property subject to such Liens shall be automatically released, and all guarantees of any Debtors shall automatically be ~~discharged and~~ released.

N. *Effectuating Documents; Further Transactions.*

The Debtors and the officers and members thereof are authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan and the Restructuring

Support Agreement, without the need for any approvals, authorizations, notice, or consents, except for those expressly required pursuant to the Plan.

O. *Exemption from Certain Taxes and Fees.*

To the maximum extent provided by section 1146(a) of the Bankruptcy Code, any post-Confirmation transfer from any Entity pursuant to, in contemplation of, or in connection with the Plan, the Sale Transaction, or the Sale Transaction Documentation or pursuant to: (i) the issuance, distribution, transfer, or exchange of any debt, equity security, or other interest in the Debtors; or (ii) the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including any deeds, bills of sale, assignments, or other instruments of transfer executed in connection with any transaction arising out of, contemplated by, or in any way related to the Plan, shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, Uniform Commercial Code filing or recording fee, or other similar tax or governmental assessment, in each case to the extent permitted by applicable bankruptcy law, and the appropriate state or local government officials or agents shall forego collection of any such tax or governmental assessment and accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

P. *Causes of Action.*

Pursuant to the Sale Transaction Documentation, the Debtors assigned and transferred to the Purchaser all of the Transferred Causes of Action pursuant to the Sale Transaction Documentation in connection with the Sale Transaction. For the avoidance of doubt, the Debtors or the Plan Administrator, as applicable, will retain the right to enforce the terms of the Sale Transaction Documentation. Any Retained Causes of Action shall remain with the Debtors and shall vest with the Plan Administrator as of the Effective Date.

No Entity may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any such Cause of Action against them as any indication that the Debtors will not pursue any and all available Causes of Actions against them. No preclusion doctrine, including the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation.

Q. *Closing the Chapter 11 Cases.*

For the avoidance of doubt, upon the occurrence of the Effective Date, the Debtors or Plan Administrator, as applicable, shall be permitted to ~~close~~**file a motion for entry of an order closing** all of the Chapter 11 Cases of the Debtors except for the Chapter 11 Case of Akorn, and any other Debtor identified in the Description of Transaction Steps, and all contested matters relating to each of the Debtors, including objections to Claims, shall be administered and heard in the Chapter 11 Case of Akorn, irrespective of whether such Claim(s) were filed against a Debtor whose Chapter 11 Case was closed.

When all Disputed Claims have become Allowed or disallowed and all remaining Cash has been distributed in accordance with the Plan, the Debtors or Plan Administrator, as applicable, shall seek authority from the Bankruptcy Court to close any remaining Chapter 11 Cases of the Debtors in accordance with the Bankruptcy Code and the Bankruptcy Rules.

R. *Release, Injunction, and Related Provisions.*

The Plan contains certain releases, as described in Article II.~~I~~O of this Disclosure Statement, entitled "Will there be releases and exculpation granted to parties in interest as part of the Plan?"

Importantly, all Holders of Claims and Interests that are not in voting Classes (*i.e.*, are presumed to accept or deemed to reject the Plan) and that ~~do not~~ opt ~~out~~into to the inclusion of such Holder as a Releasing Party under the provisions contained in Article VIII.F of the Plan, will be deemed to have released and discharged each Debtor and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, or the Plan, the Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between any Debtor and any Released Party, and any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence. By opting ~~out~~into of the releases set forth in Article VIII.F of the Plan you will ~~forgo~~gain the benefit of obtaining the releases set forth in Article VIII.E and F of the Plan if you would otherwise be a Released Party thereunder. The releases are an integral element of the Plan.

It is the Debtors' position that the consideration for the third-party releases set forth in Article VIII of the Plan and the mechanism by which Holders of Claims and Interests who are impaired under the Plan to consent to such releases meet the requirements for third party releases and are consistent with recent Chapter 11 Cases. First, the consideration for the third party releases is the mutual releases provided by Released

Parties to all other Released Parties. For example, public investors or shareholders who consent to the third party releases would be released from any potential claims or causes of action that arose in connection with the events leading up to the Debtors' Chapter 11 Cases. The Debtors do not currently believe that the claims being released against or by investors or shareholders have any value. Second, all impaired Holders of Claims and Interests, irrespective of whether they are entitled to vote on the Plan, will receive a Solicitation Package which will include materials allowing such holders to affirmatively consent to the third party releases by choosing ~~not~~ to opt ~~out~~in via a form that can either be mailed, emailed, or hand-delivered to the Debtors' Notice and Claims Agent. In addition, the Debtors believe the third party release is entirely consensual under the established case law in the United States Bankruptcy Court for the District of Delaware. *See, e.g.*, *In re Indianapolis Downs, LLC*, 486 B.R. 286, 304–06 (Bankr. D. Del. 2013). The Debtors will be prepared to meet their burden to establish the basis for the releases, exculpations, and injunctions for each of the Released Parties and each Exculpated Party as part of Confirmation of the Plan.

The release, exculpation, **and** injunction~~, and discharge~~ provisions that are contained in Article VIII of the Plan are reproduced in pertinent part below.

1. *Release of Liens.*

Except as otherwise specifically provided in the Plan or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released, settled, and compromised, ~~and discharged,~~ and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns without any further approval or order of the Bankruptcy Court and without any action or Filing being required to be made by the Debtors. In addition, the Term Loan Agent and the DIP Agent shall be authorized to execute and deliver all documents reasonably requested by the Debtors or the Plan Administrator to evidence the release of such mortgages, deeds of trust, Liens, pledges, and other security interests and shall authorize the Debtors to file UCC-3 termination statements (to the extent applicable) with respect thereto.

2. *Releases by the Debtors.*

Pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, on and after the Effective Date, each Released Party is deemed released and discharged by the Debtors, their Estates, the Plan Administrator, and the Acquired Entities from any and all Causes of Action, including any derivative claims asserted on behalf of the Debtors, that the Debtors, or their Estates, or the Plan Administrator, or the Acquired Entities would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in a Debtor, or that any Holder of any Claim or Interest could have asserted on behalf of the Debtors or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' capital structure, the assertion or enforcement of rights and

remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction Documentation, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between and Debtor and any Released Party, and any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence. Notwithstanding the inclusion of any Released Parties as a potential party to any Transferred Causes of Action or Retained Causes of Action, such parties shall remain Released Parties.

Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the releases contained in the Plan do not (i) release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) affect the rights of Holders of Allowed Claims and Interests to receive distributions under the Plan, or (iii) release any Claims or Causes of Action against any non-Released Party.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval~~, pursuant to Bankruptcy Rule 9019,~~ of the releases herein, which includes by reference each of the related provisions and definitions contained herein, *and further*, shall constitute the Bankruptcy Court's finding that the releases herein are: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the releases herein; (iii) in the best interests of the Debtors and all Holders of Claims and Interests; (iv) fair, equitable and reasonable; (v) given and made after reasonable investigation by the Debtors and after notice and opportunity for hearing; and (vi) a bar to any of the Debtors asserting any claim released by the releases herein against any of the Released Parties.¶

The Debtor Release of the Released Parties is a sound exercise of the Debtors' business judgment. First, as described herein, prior to the Petition Date the Debtors and certain of their current and former directors and officers were involved in extensive direct and derivative litigation stemming from the facts and circumstances of the terminated merger with Fresenius (as defined below). The Derivative Settlement reached in the Kogut

Action was approved by a court of competent jurisdiction, is binding and enforceable on the Debtors, and is *res judicata* to the pursuit of further claims based on the same facts and circumstances by or on behalf of the Debtors.¶

Second, prosecution of the Claims and Causes of Action released under the Debtor Release would be costly and time-consuming without providing a concomitant benefit to the Debtors' Estates. Simply put, as of this time, the Debtors do not believe that they have material causes of action against any of the Released Parties that would justify the risk, expense, and delay of pursuing any such causes of action. Importantly, the Debtor Release provides finality and avoids significant delay, and therefore the inclusion of the Debtor Release is worthwhile and inures to the benefit of all the Debtors' stakeholders.¶

Third, the Plan, including the Debtor Release, was vigorously negotiated prepetition and postpetition by sophisticated entities that were represented by able counsel and financial advisors, including the Consenting Term Loan Lenders, and includes the settlement of any and all Causes of Action and controversies released, settled, compromised, or otherwise resolved pursuant to the Plan. The release provisions were a necessary element of consideration that these parties required before entering into the Restructuring Support Agreement and agreeing to support the Plan.¶

Fourth, the Debtors' directors and officers contributed substantially to these Chapter 11 Cases. While continuing to serve in their operational capacities postpetition, the Debtors' directors and officers simultaneously undertook the considerable burden of guiding the Debtors through the restructuring, working with the Debtors' professionals to make and implement difficult financial and operational initiatives, and participated in the negotiation and formulation of the Stalking Horse APA, the Restructuring Support Agreement, the Plan, the DIP Loan Documents, and other critical documents in these Chapter 11 Cases. In light of these substantial contributions and other considerations, the Debtors believe the Debtor Release of the Debtors' directors and officers is fair, reasonable, and a sound exercise of the Debtors' business judgment.¶

Moreover, the Debtors will present evidence at the Confirmation Hearing to demonstrate the basis for and propriety of the release and exculpation provisions.

3. *Releases by Holders of Claims and Interests.*

As of the Effective Date, except as otherwise provided herein, each Releasing Party is deemed to have released and discharged each Debtor and Released Party from any and all Causes of Action, whether known or unknown, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among a Debtor and another Debtor, the Standstill Agreement, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement, the Plan, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release, or other agreement or document (including

providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, or the Plan, the Chapter 11 Cases, the DIP Loan Documents, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon the business or contractual arrangements between any Debtor and any Released Party, and any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date relating to any of the foregoing, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes willful misconduct, fraud or gross negligence.

Notwithstanding anything to the contrary in the foregoing or any other provision of the Plan, the releases contained in the Plan do not (i) release any post-Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) affect the rights of Holders of Allowed Claims and Interests to receive distributions under the Plan, or (iii) release any Claims or Causes of Action against any non-Released Party.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval~~,~~ ~~pursuant to Bankruptcy Rule 9019,~~ of the releases of Holders of Claims and Interests, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the release herein is: (i) in exchange for the good and valuable consideration provided by the Released Parties; (ii) a good faith settlement and compromise of the claims released by the Releasing Parties; (iii) in the best interests of the Debtors and all Holders of Claims and Interests; (iv) fair, equitable and reasonable; (v) given and made after notice and opportunity for hearing; and (vi) a bar to any of the Releasing Parties asserting any Claim released by the release herein against any of the Released Parties.

4. *Exculpation.*

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement and related prepetition transactions, the Disclosure Statement, the Plan, the DIP Loan Documents, the Sale Transaction, or any Restructuring Transaction, contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection

with the Restructuring Support Agreement, the DIP Loan Documents, the Disclosure Statement or the Plan, the Sale Transaction, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that constitutes willful misconduct, actual fraud, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon Consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable Laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan. Notwithstanding anything to the contrary herein, nothing in this Article VIII.G shall release or exculpate any Exculpated Party for any act or omission arising before the Petition Date or after the Effective Date.

5. *Injunction.*

Except as otherwise expressly provided in the Plan or for distributions required to be paid or delivered pursuant to the Plan or the Confirmation Order, all Entities that have held, hold, or may hold Claims or Interests that have been released pursuant to the Plan ~~shall be discharged pursuant to the Plan~~, or are subject to Exculpation pursuant to the Plan, are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Released Parties, or the Exculpated Parties (to the extent of the Exculpation provided pursuant to the Plan with respect to the Exculpated Parties): (i) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (ii) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (iii) creating, perfecting, or enforcing any Lien or encumbrance of any kind against such Entities or the property or the Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (iv) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document Filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable Law or otherwise; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Notwithstanding anything to the contrary in the Plan, the Plan Supplement, or the Confirmation Order, the automatic stay pursuant to section 362 of the Bankruptcy Code shall remain in full force and effect with respect to the Debtors until the closing of these Chapter 11 Cases.

6. *The Definitions of "Released Parties" and "Releasing Parties."*

Under the Plan, "Released Parties" means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Consenting Term Loan Lenders; (c) the Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f) the Purchaser; (g) all Releasing Parties; (h) the Acquired Entities; and (i) with respect to each Entity in clause (a) through (h), each such Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such (unless any such Entity or related party has opted out of being a Releasing Party, in which case such Entity or related party, as applicable, shall not be a Released Party).

Under the Plan, "Releasing Parties" means, collectively, and in each case, in their respective capacities as such: (a) the Debtors; (b) the Consenting Term Loan Lenders; (c) the Term Loan Agent; (d) the DIP Lenders; (e) the DIP Agent; (f) the Purchaser; (g) the Acquired Entities; (h) all Holders of Claims or Interests that are presumed to accept the Plan *and* who ~~do not~~ opt ~~out~~into of the releases in the Plan; (i) all Holders of Claims or Interests who vote to accept the Plan; (j) all Holders of Claims or Interests that (x) abstain from voting on the Plan *and* who ~~do not~~ opt ~~out of~~into the releases in the Plan, (y) vote to reject the Plan *and* who ~~do not~~ opt ~~out of~~into the releases in the Plan, or (z) are deemed to reject the Plan *and* who ~~do not~~ opt ~~out of~~into the releases in the Plan; (k) with respect to each Entity in clause (a) through (j), each such Entity's current and former subsidiaries, officers, directors, managers, principals, members, employees, agents, advisory board members, financial advisors, partners, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, each in their capacity as such (unless any such Entity or related party has opted out of being a Releasing Party, in which case such Entity or related party, as applicable, shall not be a Releasing Party).

7. ~~*Discharge*~~*Satisfaction of Claims and Termination of Interests.*

~~Pursuant to section 1141(d) of the Bankruptcy Code, and except~~Except as otherwise specifically provided in the Plan or in a contract, instrument, or other agreement or document executed pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction~~, discharge,~~ and release, effective as of the Effective Date, of Claims (including any Intercompany Claims resolved or compromised after the Effective Date by the Plan Administrator), Interests, and Causes of Action of any nature whatsoever, including any interest accrued on Claims or Interests from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtors or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim based upon such debt or right is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Interest based upon such debt, right, or Interest is Allowed pursuant to section 502 of the

Bankruptcy Code; or (iii) the Holder of such a Claim or Interest has voted to accept the Plan. Any default or "event of default" by the Debtors or their Affiliates with respect to any Claim or Interest that existed immediately before or on account of the filing of the Chapter 11 Cases shall be deemed cured (and no longer continuing) as of the Effective Date with respect to a Claim that is Unimpaired by the Plan. ~~The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.~~

S. *Applicability of Insurance Policies.*

Notwithstanding anything to the contrary in the Plan or Confirmation Order, Confirmation and Consummation of the Plan shall not limit or affect the rights of any third-party beneficiary or other covered party of any of the Debtor's insurance policies with respect to such policies (including the D&O Policies), nor shall anything contained herein (i) constitute or be deemed a waiver by such insurers of any rights or defenses, including coverage defenses, held by such insurers under any insurance policy, applicable law, equity, or otherwise, or (ii) establish, determine, or otherwise imply any liability or obligation, including any coverage obligation, of any insurer.

Article VII.
VOTING AND CONFIRMATION

On [●], 2020, the Bankruptcy Court entered an order approving the adequacy of this Disclosure Statement and the solicitation procedures and deadlines contemplated herein.

A. *Classes Entitled to Vote on the Plan.*

The following Classes are the only Classes entitled to vote to accept or reject the Plan (the "Voting Classes"):

Class	Claim	Status	Voting Rights
Class 3	Term Loan Claims	Impaired	Entitled to Vote
Class 4	General Unsecured Claims	Impaired	Entitled to Vote
Class 7	Section 510(b) Claims	Impaired	Entitled to Vote
Class 8	Akorn Interests	Impaired	Entitled to Vote

If your Claim or Interest is not included in the Voting Classes, you are not entitled to vote and you will not receive a Solicitation Package (as defined herein) or a Ballot. If your Claim is included in the Voting Classes, you should read your Ballot and carefully follow the instructions set forth therein. Please use only the Ballot that accompanies this Disclosure Statement or the Ballot that the Debtors, or the Notice and Claims Agent on behalf of the Debtors, otherwise provide to you.

B. *Votes Required for Acceptance by a Class.*

The Bankruptcy Code requires, as a condition to confirmation of a plan, except as described herein, that each class of claims or interests impaired under a plan accept the plan. A

class that is not "impaired" under a plan is deemed to have accepted the plan and, solicitation of acceptances with respect to such class is not required. Each Class of Claims or Interests entitled to vote on the Plan will have accepted the Plan if: (a) the Holders of at least two-thirds in dollar amount of the Claims *actually* voting in each Class vote to accept the Plan; and (b) the Holders of more than one-half in number of the Allowed Claims *actually* voting in each Class vote to accept the Plan. Each Class of Interests entitled to vote on the Plan will have accepted the Plan if the Holders of at least two-thirds in the amount of the Allowed Interests *actually* voting in each Class vote to accept the Plan.

C. *Certain Factors to Be Considered Prior to Voting.*

There are a variety of factors that all Holders of Claims and Interests entitled to vote on the Plan should consider prior to voting to accept or reject the Plan. These factors may impact recoveries under the Plan, including that:

- the financial information contained in this Disclosure Statement has not been audited and is based on an analysis of data available at the time of the preparation of the Plan and this Disclosure Statement;

- although the Debtors believe that the Plan complies with all applicable provisions of the Bankruptcy Code, the Debtors can neither assure such compliance nor that the Bankruptcy Court will confirm the Plan;

- the Debtors may request Confirmation without the acceptance of all Impaired Classes entitled to vote in accordance with section 1129(b) of the Bankruptcy Code; and

- any delays of either Confirmation or Consummation could result in, among other things, increased Administrative Claims or Professional Fee Claims.

While these factors could affect distributions available to Holders of Allowed Claims or Interests under the Plan, the occurrence or impact of such factors will not necessarily affect the validity of the vote of Holders within the Voting Classes or necessarily require a resolicitation of the votes of Holders of Claims and Interests in such Voting Classes.

For a further discussion of risk factors, please refer to Article VIII hereof, entitled "Certain Risk Factors to be Considered Before Voting."

D. *Classes Not Entitled to Vote on the Plan.*

Under the Bankruptcy Code, holders of claims and interests are not entitled to vote if their contractual rights are unimpaired by the proposed plan, in which case they are conclusively presumed to accept the proposed plan, or if they will receive no property under the plan, in which case they are deemed to reject the proposed plan. Accordingly, the following Classes of Claims and Interests are not entitled to vote to accept or reject the Plan:

Class	Claim or Interest	Status	Voting Rights
Class 1	Other Priority Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 2	Other Secured Claims	Unimpaired	Not Entitled to Vote (Presumed to Accept)
Class 5	Intercompany Claims	Unimpaired / Impaired	Not Entitled to Vote (Presumed to Accept) / (Deemed to Reject)
Class 6	Intercompany Interests	Unimpaired	Not Entitled to Vote (Presumed to Accept)

E. *Solicitation Procedures.*

1. *Notice and Claims Agent.*

The Debtors have retained KCC to act, among other things, as the Notice and Claims Agent in connection with the solicitation of votes to accept or reject the Plan.

2. *Solicitation Package.*

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

To accommodate the Claims Bar Date, the record date to determine which Claims in Class 4 are entitled to vote on the Plan (the "GUC Voting Record Date" and together with the "Non-GUC Voting Record Date," the "Voting Record Date") shall be the same date as the Claims Bar Date, which is expected to be on or around August [8], 2020. For administrative purposes, because the Solicitation Deadline will precede the Claims Bar Date, the Debtors will use July [1], 2020, as the administrative record date for purposes of determining which Holders of Filed or scheduled Claims in Class 4 are entitled to receive a Solicitation Package (as defined below).¶

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

Holders of Claims and Interests who are entitled to vote to accept or reject the Plan as of ~~**[July 1], 2020** (~~the ~~"~~**applicable** Voting Record Date~~"),~~ will receive appropriate solicitation materials (the "Solicitation Package"), which will include, in part, the following:

- the appropriate Ballot(s) and applicable voting instructions, or appropriate notices and applicable release forms for those parties who are not entitled to vote on the Plan, together with a pre-addressed, postage prepaid return envelope; and
- this Disclosure Statement, including the Plan attached as an exhibit thereto.

3. *Distribution of the Solicitation Package and Plan Supplement.*

The Debtors will cause the Notice and Claims Agent to **first** distribute the Solicitation Packages to Holders of Claims and Interests in the Voting Classes ~~on or before [●], 2020~~ **beginning no later than [●], 2020 (five days after entry of the Disclosure Statement Order). Supplemental Solicitation Packages will be distributed in accordance with the solicitation procedures approved by the Bankruptcy Court to Holders of Claims in the Voting Classes who (a) timely file a Proof of Claim in accordance with the Bar Date Order and (b) did not already receive a Solicitation Package.**

The Solicitation Package (except for the Ballots) may also be obtained: (a) from KCC by (i) visiting the website maintained in these Chapter 11 Cases at https://www.kccllc.net/akorn or (ii) writing to Akorn Ballot Processing Center, c/o KCC, 222 North Pacific Coast Highway, Suite 300, El Segundo, California 90245; or (b) for a fee via PACER at https://ecf.deb.uscourts.gov.

At least ~~five~~**seven** days prior to the Voting Deadline (or such later date as may be approved by the Bankruptcy Court), the Debtors intend to file the Plan Supplement. If the Plan Supplement is updated or otherwise modified, such modified or updated documents will be made available at https://www.kccllc.net/akorn. The Debtors will not serve paper or CD-ROM copies of the Plan Supplement; however, parties may obtain a copy of the Plan Supplement (a) free of charge upon request to KCC (the notice and claims agent retained in these Chapter 11 Cases) by calling (877) 725-7539 (U.S. and Canada) or (424) 236-7247 (International); (b) by visiting the website maintained in these Chapter 11 Cases at https://www.kccllc.net/akorn; or (c) for a fee via PACER at https://ecf.deb.uscourts.gov.

As described above, certain Holders of Claims and Interests may not be entitled to vote because they are Unimpaired or are otherwise presumed to accept the Plan under section 1126(f) of the Bankruptcy Code. In addition, certain Holders of Claims and Interests may be Impaired but are receiving no distribution under the Plan, and are therefore deemed to reject the Plan and are not entitled to vote. Such Holders will receive only notice of the Confirmation Hearing and a Nonvoting Status Notice. The Debtors are only distributing a Solicitation Package, including this Disclosure Statement and a Ballot to be used for voting to accept or reject the Plan, to the Holders of Claims and Interests entitled to vote to accept or reject the Plan as of the Voting Record Date.

F. *Voting Procedures.*

If, as of the Voting Record Date, you are a Holder of a Claim or Interest in Class 3, Class 4, Class 7, or Class 8—the Voting Classes—you may vote to accept or reject the Plan in accordance with the Solicitation Procedures by completing the Ballot and returning it in the envelope provided. If your Claim or Interest is not included in the Voting Classes you are not entitled to vote and you will not receive a Solicitation Package. Except as otherwise set forth herein, the Voting Record Date and all of the Debtors' solicitation and voting procedures shall apply to all of the Debtors' creditors and other parties in interest.

1. *Voting Deadline.*

The Voting Deadline is [**August ~~15~~14], 2020, at 5:00 p.m., prevailing Eastern Time**. To be counted as a vote to accept or reject the Plan, a Ballot must be properly executed, completed, and delivered, whether by first class mail, overnight delivery, or personal delivery, so that the Ballot is **actually received** by the Notice and Claims Agent no later than the Voting Deadline.

2. *Voting Instructions.*

As described above, the Debtors have retained KCC to serve as the Notice and Claims Agent for purposes of the Plan. KCC is available to answer questions, provide additional copies

of all materials, oversee the voting process, and process and tabulate Ballots for each Class entitled to vote to accept or reject the Plan.

BALLOTS
To be counted, all Ballots must be **actually received** by KCC by the Voting Deadline, which is [**August ~~15~~14], 2020, at 5:00 p.m., prevailing Eastern Time**, at the following address:

If by First Class Mail, Hand Delivery or Overnight Mail, Ballots must be sent to:
Akorn Ballot Processing Center c/o Kurtzman Carson Consultants LLC 222 N Pacific Coast Highway, Suite 300 El Segundo, CA 90245
If by Email, scanned Ballots must be sent to:
AkornInfo@kccllc.com

If you have any questions on the procedure for voting on the Plan, please call the Debtors' restructuring hotline maintained by KCC at:
(877) 725-7539 (U.S. and Canada) or (424) 236-7247 (International).

More detailed instructions regarding the procedures for voting on the Plan are contained in the Ballots distributed to Holders of Claims and Interests that are entitled to vote to accept or reject the Plan. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first class mail, in the return envelope provided with each Ballot; (b) overnight courier; ~~or~~ (c) hand-delivery**; or (d) the Notice and Claims Agent's online eBallot portal**, so that the Ballots are **actually received** by KCC no later than the Voting Deadline at the return address set forth in the applicable Ballot. Any Ballot that is properly executed by the Holder of a Claim entitled to vote that does not clearly indicate an acceptance or rejection of the Plan or that indicates both an acceptance and a rejection of the Plan will not be counted.

Each Holder of a Claim entitled to vote to accept or reject the Plan may cast only one Ballot for each Claim in a Voting Class held by such Holder. By signing and returning a Ballot, each Holder of a Claim entitled to vote will certify to the Bankruptcy Court and the Debtors that no other Ballots with respect to such Claim have been cast or, if any other Ballots have been cast with respect to such Claim, such earlier Ballots are superseded and revoked. It is important to follow the specific instructions provided on each Ballot, as failing to do so may result in your Ballot not being counted.

3. *Ballots Not Counted.*

No Ballot will be counted if, among other things: (a) it is illegible or contains insufficient information to permit the identification of the Holder of the Claim or Interest; (b) it was transmitted by means other than as specifically set forth in the ballots; (c) it was cast by an entity that is not entitled to vote on the Plan; (d) it was cast for a Claim listed in the Debtors' schedules as contingent, unliquidated, or disputed, and for which the applicable Claims Bar Date has passed and no Proof of Claim was timely filed; (e) it was cast for a Claim that is subject to an objection pending as of the Voting Record Date (unless temporarily allowed in accordance with the Disclosure Statement Order); (f) it was sent to the Debtors, the Debtors' agents/representatives (other than the Notice and Claims Agent), or the Debtors' financial or legal advisors instead of the Notice and Claims Agent; (g) it is unsigned; or (h) it is not clearly marked to either accept or reject the Plan or it is marked both to accept and reject the Plan. **Please refer to the Disclosure Statement Order for additional requirements with respect to voting to accept or reject the Plan**.

G. *Confirmation Objection Deadline.*

Parties must object to Confirmation of the Plan by [**August ~~15~~14], 2020, at 4:00 p.m., prevailing Eastern Time** (the "Confirmation Objection Deadline"). All objections to the Plan must be filed with the Bankruptcy Court and served on the Debtors and certain other parties in interest so that they are **actually received** on or before the Confirmation Objection Deadline.

H. *Confirmation Hearing.*

Section 1128(a) of the Bankruptcy Code requires a bankruptcy court, after notice, to conduct a hearing to consider confirmation of a chapter 11 plan. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. The Bankruptcy Court has scheduled the Confirmation Hearing for **[●], 2020, at [●] [a.m./p.m.], prevailing Eastern Time.** The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or the filing of a notice of such adjournment served in accordance with the order approving the Disclosure Statement and solicitation procedures. Any objection to the Plan must: (i) be in writing; (ii) conform to the Bankruptcy Rules and the Bankruptcy Local Rules; (iii) state the name, address, phone number, and e-mail address of the objecting party and the amount and nature of the Claim or Interest of such entity, if any; (iv) state with particularity the basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (v) be filed, contemporaneously with a proof of service, with the Bankruptcy Court and served no later than the Confirmation Objection Deadline. Unless an objection to the Plan is timely served and filed, it may not be considered by the Bankruptcy Court.

I. *Confirmation Standards.*

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. The Debtors believe that the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy

Code and that they have complied or will have complied with all of the requirements of chapter 11 of the Bankruptcy Code. Specifically, the Debtors believe that the Plan satisfies or will satisfy the applicable confirmation requirements of section 1129 of the Bankruptcy Code, including those set forth below:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors, as Plan proponents, have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or to be made under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been or will be disclosed to the Bankruptcy Court, and such payment: (i) made before the confirmation of the Plan is reasonable; or (ii) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after confirmation of the Plan.
- With respect to each Class of Claims, each Holder of an Impaired Claim has accepted the Plan or will receive or retain under the Plan on account of such Claim property of a value as of the Effective Date of the Plan that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code. With respect to Akorn Interests, Holders of such Interests will have accepted the Plan or will receive or retain under the Plan on account of such Interest property of a value as of the Effective Date of the Plan that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan will have either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of such voting Class of Claims pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim agrees to different treatment of its Claim, the Plan provides that: (i) Holders of Claims specified in section 507(a)(2) of the Bankruptcy Code will receive payment in full, in Cash; (ii) Holders of Claims specified in sections 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code will receive on account of such Claims payment in full, in Cash; and (iii) Holders of Claims specified in section 507(a)(8) of the Bankruptcy Code will receive on account of such Claim payment in full, in Cash.
- At least one Class of Impaired Claims will have accepted the Plan, determined without including any acceptance of the Plan by any "insider," as that term is defined by section 101(31) of the Bankruptcy Code, holding a Claim in that Class.

- Confirmation of the Plan is not likely to be followed by the liquidation or the need for further financial restructuring of the Debtors or any successors thereto under the Plan, unless the Plan contemplates such liquidation or restructuring.

- The Debtors have paid, or the Plan provides for the payment of, the required fees pursuant to 28 U.S.C. § 1930.

1. *Best Interests of Creditors Test—Liquidation Analysis.*

Notwithstanding acceptance of the Plan by a voting Impaired Class, to confirm the Plan, the Bankruptcy Court must independently determine that the Plan is in the best interests of each holder of a Claim or Interest in any such Impaired Class that has not voted to accept the Plan, meaning that the Plan provides each such Holder with a recovery that has a value at least equal to the value of the recovery that each such Holder would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code, beginning on what would have been the Effective Date. Accordingly, if an Impaired Class does not unanimously vote to accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides to each member of such Impaired Class a recovery on account of the Class member's Claim or Interest that has a value, as of the Effective Date, at least equal to the value of the recovery that each such Class member would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code beginning on the Effective Date.

The Debtors believe that the Plan will satisfy the best interests test because, among other things, the recoveries expected to be available to holders of Allowed Claims under the Plan will be greater than the recoveries expected to be available in a chapter 7 liquidation, as discussed more fully below.

In a typical chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets and to make distributions to creditors in accordance with the priorities established in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of their collateral. If any assets remain in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are next to be paid. After accounting for administrative expenses, unsecured creditors (including any secured creditor deficiency claims) are paid from the sale proceeds of any unencumbered assets and any remaining sale proceeds of encumbered assets in excess of any secured claims, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, interest holders receive the balance that remains, if any, after all creditors are paid.

All or substantially all of the assets of the Debtors' business will be liquidated through the Sale Transaction, and the Plan effects a liquidation of the Debtors' remaining assets. Although a chapter 7 liquidation would achieve the same goal, the Debtors believe that the Plan provides a greater recovery to holders of Allowed Term Loan Claims, Allowed General Unsecured Claims, and Allowed Akorn Interests than would a chapter 7 liquidation and a larger, more timely recovery primarily due to the expectation of materially lower realized sale proceeds in chapter 7.

A chapter 7 liquidation beginning on what would have been the Effective Date would provide less recovery for creditors than the Plan. The delay of the chapter 7 trustee becoming familiar with the assets could easily cause bids already obtained to be lost, and the chapter 7 trustee would not have the technical expertise or knowledge of the Debtors' business (or Akorn) that the Debtors had when they proposed to sell their assets pursuant to the Plan. Moreover, the distributable proceeds under a chapter 7 liquidation would be lower because of the chapter 7 trustee's fees and expenses.

Sale proceeds in chapter 7 would likely be significantly lower, particularly in light of the highly regulated nature of the Debtors' business and the time delay associated with the chapter 7 trustee's learning curve in connection therewith. In addition to the expected material reduction in sale proceeds, recoveries would be further reduced (in comparison with those provided for under the Plan) due to the expenses that would be incurred in a chapter 7 liquidation, including added expenses for wind-down costs and costs incurred by the chapter 7 trustee and any retained professionals in familiarizing themselves with the Debtors' technical assets, and these specific Chapter 11 Cases, in order to complete the administration of the Debtors' Estates. *See, e.g.*, 11 U.S.C. § 326(a) (providing for compensation of a chapter 7 trustee up to three percent of the value of the assets); 11 U.S.C. § 503(b)(2) (providing administrative expense status for compensation and expenses of a chapter 7 trustee and such trustee's professionals).

In a chapter 7 liquidation, the Debtors' Estates would continue to be obligated to pay all unpaid expenses incurred by the Debtors during the Chapter 11 Cases (such as compensation for Professionals), which may constitute Allowed Claims in any chapter 11 case. Moreover, the conversion to chapter 7 would also require entry of a new bar date for filing claims that would be more than ninety (90) days following conversion of the case to chapter 7. *See* Fed. R. Bankr. P. 1019(2); 3002(c). Thus, the number and dollar amount of Claims ultimately filed and Allowed against the Debtors could materially increase, thereby further reducing creditor recoveries relative to those available under the Plan.

In light of the foregoing, the Debtors submit that a chapter 7 liquidation would result in materially reduced sale proceeds, increased expenses, delayed distributions, and the prospect of additional claims that were not asserted in the Chapter 11 Cases. Accordingly, the Debtors believe that the Plan provides an opportunity to bring the highest return for creditors.

2. *Financial Feasibility.*

Section 1129(a)(11) of the Bankruptcy Code requires that a bankruptcy court find that confirmation is not likely to be followed by the liquidation or the need for further financial restructuring, unless the plan contemplates such liquidation or restructuring. The Plan provides for the sale of the Debtors' business. Accordingly, the Debtors believe that all Plan obligations will be satisfied without the need for further reorganization of the Debtors **because the Plan contemplates a liquidation**.

J. *Acceptance by Impaired Classes.*

The Bankruptcy Code requires that, as a condition to confirmation, and except as described in the following section, each class of claims or interests that is impaired under a plan

accept the plan. A class that is not impaired under a plan is presumed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. Pursuant to section 1124 of the Bankruptcy Code, a class is impaired unless the plan either: (i) leaves unaltered the legal, equitable, and contractual rights to which the claim or the interest entitles the holder of such claim or interest; or (ii) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code or of a kind that section 365(b)(2) expressly does not require to be cured; (B) reinstates the maturity of such claim or interest as such maturity existed before such default; (C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; (D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A) of the Bankruptcy Code, compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and (E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired creditors as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject a plan. Section 1126(d) of the Bankruptcy Code defines acceptance of a plan by a class of impaired interests as acceptance by holders of at least two-thirds in dollar amount of those interests who actually vote to accept or to reject a plan. Votes that have been "designated" under section 1126(e) of the Bankruptcy Code are not included in the calculation of acceptance by a class of creditors or interests.

Claims in Classes 1, 2, and 6 are Unimpaired under the Plan, and, as a result, the Holders of such Claims are deemed to have accepted the Plan. Holders of Claims in Class 5 will be deemed either Impaired or Unimpaired, but in any event are not receiving any distribution under the Plan.

Claims and Interests in Classes 3, 4, 7, and 8 are Impaired under the Plan, and as a result, the Holders of Claims and Interests in such Classes are entitled to vote on the Plan. Pursuant to section 1129 of the Bankruptcy Code, the Holders of Claims and Interests in the Voting Classes must accept the Plan for the Plan to be confirmed without application of the "fair and equitable test" to such Classes, and without considering whether the Plan "discriminates unfairly" with respect to such Classes, as both standards are described directly below. As stated above, Classes of Claims will have accepted the Plan if the Plan is accepted by at least two-thirds in amount and a majority in number of the Claims of each such Class (other than any Claims of creditors designated under section 1126(e) of the Bankruptcy Code) that have voted to accept or reject the Plan, and Classes of Interests will have accepted the Plan if the Plan is accepted by at least two-thirds in amount of the Interests of each such Class (other than any Interests of entities designated under section 1126(e) of the Bankruptcy Code) that have voted to accept or reject the Plan.

K. *Confirmation Without Acceptance by All Impaired Classes.*

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if impaired classes entitled to vote on the plan have not accepted it or if an impaired class is deemed to reject the plan; *provided* that the plan is accepted by at least one impaired class (without regard to the votes of insiders). Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cramdown," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

If any Impaired Class rejects the Plan, the Debtors reserve the right to seek to confirm the Plan utilizing the "cramdown" provision of section 1129(b) of the Bankruptcy Code. To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtors will request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

1. *No Unfair Discrimination.*

The test for unfair discrimination applies to classes of claims or interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent but that such treatment be "fair." In general, courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (*e.g.*, classes of the same legal character). The Debtors do not believe the Plan discriminates unfairly against any Impaired Class of Claims or Interests. The Debtors believe that the Plan and the treatment of all Classes of Claims and Interests satisfy the foregoing requirements for nonconsensual Confirmation.

2. *Fair and Equitable Test.*

The fair and equitable test applies to classes of different priority and status (*e.g.*, secured versus unsecured) and includes the general requirement that no class of claims receive more than 100 percent of the amount of the allowed claims in such class. As to each non-accepting class, the test sets different standards depending on the type of claims or interests in such class. As set forth below, the Debtors believe that the Plan satisfies the "fair and equitable" requirement because there is no Class receiving more than 100 percent of the amount of the Allowed Claims in such Class, and no Class that is junior to a dissenting Class that will receive or retain any property on account of the Claims or Interests in such junior Class.

(a) *Secured Claims.*

The condition that a plan be "fair and equitable" to a non-accepting class of secured claims may be satisfied by demonstrating that, among other things: (i) holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (ii) each holder of a secured claim in the class receives deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the

effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

(b) *Unsecured Claims.*

The condition that a plan be "fair and equitable" to a non-accepting class of unsecured claims includes the requirement that the plan provides either: (i) that each holder of a claim of such class receives or retains on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (ii) no holder of any claim or any interest that is junior to the claims of such class will receive or retain any property under the plan on account of such junior claim or junior interest.

(c) *Interests.*

The condition that a plan be "fair and equitable" to a non-accepting class of interests includes the requirements that the plan provides that either: (i) each holder of an interest in that class receives or retains under the plan on account of that interest property of a value, as of the effective date of the plan, equal to the greater of: (A) the allowed amount of any fixed liquidation preference to which such holder is entitled; (B) any fixed redemption price to which such holder is entitled; or (C) the value of such interest; or (ii) that no holder of any interest that is junior to the interests of such class will receive or retain any property under the plan on account of such junior interest.

Article VIII.
CERTAIN RISK FACTORS TO BE CONSIDERED BEFORE VOTING

Holders of Claims and Interests entitled to vote should carefully read and consider the risk factors set forth below, as well as the other information set forth in this Disclosure Statement and the documents delivered together with this Disclosure Statement, referred to or incorporated by reference in this Disclosure Statement, before voting to accept or reject the Plan. Although there are many risk factors discussed below, these factors should not be regarded as constituting the only risks present in connection with the Debtors' business or the Plan and its implementation.

A. *Risk Factors that May Affect the Recovery Available to Holders of Allowed Claims under the Plan.*

1. *Actual Amounts of Allowed Claims May Differ from Estimated Amounts of Allowed Claims, Thereby Adversely Affecting the Recovery of Some Holders of Allowed Claims.*

The estimate of Allowed Claims and recoveries for Holders of Allowed Claims set forth in this Disclosure Statement are based on various assumptions. Should one or more of the underlying assumptions ultimately prove to be incorrect, the actual Allowed amounts of Claims may significantly vary from the estimated Claims contained in this Disclosure Statement. Moreover, the Debtors cannot determine with any certainty at this time, the number or amount of Claims or Interests that will ultimately be Allowed. Such differences may materially and adversely affect, among other things, the recoveries to Holders of Allowed Claims under the Plan.

2. *Employee Attrition.*

There can be no guarantee that the Debtors will be able to retain their leadership through the pendency of these Chapter 11 Cases, which in turn could negatively affect the Debtors' business operations.

As a result of the Chapter 11 Cases, the Debtors may experience increased levels of employee attrition, and their employees likely will face considerable distraction and uncertainty. A loss of key personnel or material erosion of employee morale could adversely affect the Debtors' business and results of operations. The Debtors' ability to attract, engage, motivate, and retain key employees or take other measures intended to motivate and incent key employees to remain with them through the pendency of the Chapter 11 Cases is limited by restrictions on implementation of incentive programs under the Bankruptcy Code. The loss, incapacity, or unavailability for any reason of key members of the Debtors' senior management team could impair the Debtors' ability to execute their strategy and implement operational initiatives, which would likely have a material adverse effect on their financial condition, liquidity, and results of operations. In addition, the Debtors' financial results and ability to compete may suffer if they are unable to attract or retain qualified personnel with comparable skills and experience in the future.

3. *The Debtors May Not Be Able to Satisfy the Conditions Precedent to Consummation of the Plan.*

To the extent that the Debtors are unable to satisfy the conditions precedent to Consummation of the Plan, the Debtors may be unable to consummate the Plan and parties may terminate their support, financial or otherwise, for the Plan prior to the Confirmation or Consummation of the Plan. Any such loss of support could adversely affect the Debtors' ability to confirm and consummate the Plan.

4. *The Debtors Cannot State with Certainty What Recovery Will Be Available to Holders of Allowed Claims in the Voting Classes.*

The Debtors cannot know with certainty, at this time, the number or amount of Claims in the Voting Classes that will ultimately be Allowed and how the amount of Allowed Claims will compare to the estimates provided herein. For example, a number of Proofs of Claim may allege Claims in an unliquidated amount that will require future resolution, making the amount of any Allowed Claim based on such Proof of Claim entirely speculative as of the date of this Disclosure Statement. In addition, the Debtors are continuing to review the Proofs of Claim filed in their Chapter 11 Cases. As such, the estimated amount of Claims may materially change due to the Debtors' ongoing review. Accordingly, because certain Claims under the Plan will be paid on a *pro rata* basis, the Debtors cannot state with certainty what recoveries will be available to Holders of Allowed Claims in the Voting Classes. **At this time, the Debtors do not anticipate making any distribution to Holders of Claims or Interests in Class 4, Class 7, or Class 8.**

5. *The Debtors Cannot Guarantee Recoveries or the Timing of Such Recoveries.*

Although the Debtors have made commercially reasonable efforts to estimate Allowed Claims, including Administrative Claims, Priority Tax Claims, and Other Priority Claims, it is

possible that the actual amount of such Allowed Claims is materially higher than the Debtors' estimates. Creditor recoveries could be materially reduced or eliminated in this instance. In addition, the timing of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, the Debtors cannot guaranty the timing of any recovery on an Allowed Claim.

6. *Certain Tax Implications of the Debtors' Bankruptcy.*

Holders of Allowed Claims or Allowed Interests should carefully review Article IX of this Disclosure Statement, entitled "Material United States Federal Income Tax Consequences," to determine how the tax implications of the Plan and the Chapter 11 Cases may adversely affect the Reorganized Debtors and Holders of certain Claims or Interests.

B. *Certain Bankruptcy Law Considerations.*

Although the Debtors believe that these Chapter 11 Cases will be of short duration and will not be materially disruptive to their business, the Debtors cannot be certain that this will be the case. Although the Plan is designed to minimize the length of these Chapter 11 Cases, it is impossible to predict with certainty the amount of time that one or more of the Debtors may spend in bankruptcy or to assure parties in interest that the Plan will be confirmed.

The occurrence or nonoccurrence of any or all of the following contingencies, and any others, could affect distributions available to Holders of Allowed Claims or Allowed Interests under the Plan, but will not necessarily affect the validity of the vote of the Impaired Classes to accept or reject the Plan or necessarily require a resolicitation of the votes of Holders of Claims or Interests in such Impaired Classes.

1. *Parties in Interest May Object to the Plan's Classification of Claims.*

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of the Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims or Interests, as applicable, in each such Class. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

Furthermore, certain parties in interest, including the Debtors, reserve the right, under the Plan, to object to the amount or classification of any Claim. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim when such Claim is or may be subject to an objection or is not yet Allowed. Any Holder of a Claim that is or may be subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

2. *The Debtors May Fail to Satisfy Vote Requirements.*

In the event that votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtors intend to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtors may seek to confirm an alternative chapter 11 plan or transaction. There can be no assurance that the terms of any such alternative chapter 11 plan or transaction would be similar or as favorable to the Holders of Allowed Claims and Allowed Interests as those proposed in the Plan and the Debtors do not believe that any such transaction exists or is likely to exist that would be more beneficial to the Estates than the Plan.

3. *The Debtors May Not Be Able to Secure Confirmation of the Plan.*

The Debtors must satisfy the requirements of section 1129 of the Bankruptcy Code, which requires, among other things, a finding by the Bankruptcy Court that: (a) such plan "does not unfairly discriminate" and is "fair and equitable" with respect to any non-accepting classes; (b) confirmation of such plan is not likely to be followed by a liquidation or a need for further financial restructuring unless such liquidation or restructuring is contemplated by the plan; and (c) the value of distributions to non-accepting Holders of Claims and Interests within a particular class under such plan will not be less than the value of distributions such Holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance that the requisite acceptances to confirm the Plan will be received. If the requisite acceptances are not received, the Debtors may seek to accomplish an alternative restructuring and obtain acceptances to an alternative plan of reorganization for the Debtors that may not have the support of the Holders of Allowed Claims and Allowed Interests and/or may be required to liquidate these Estates under chapter 7 or 11 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to the Holders of Allowed Claims and Allowed Interests as those proposed in the Plan. Even if the requisite acceptances are received, and although the Debtors believe that the Plan will satisfy all requirements necessary for confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim or an Allowed Interest might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the Debtors' proposed procedures for the solicitation of Ballots from Holders of Allowed Claims or Allowed Interests, and the voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it finds that any of the statutory requirements for Confirmation have not been met, including the requirement that the terms of the Plan do not "unfairly discriminate" and are "fair and equitable" to non-accepting Classes. If the Plan is not Confirmed by the Bankruptcy Court, it is unclear whether the Debtors will be able to reorganize their business and what distributions, if any, Holders of Allowed Claims or Allowed Interests will receive with respect to their Claims or Interests.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications

could result in less favorable treatment of any non-accepting Class of Claims or Interests, as well as any Class junior to such non-accepting Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property with a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan. Changes to the Plan may also delay the confirmation of the Plan and the Debtors' emergence from bankruptcy.

4. *Failure to Consummate the Plan.*

As of the date of this Disclosure Statement, there can be no assurance that the conditions to Consummation of the Plan will be satisfied or waived. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated and the Restructuring Transactions completed.

5. *Nonconsensual Confirmation.*

In the event that any impaired class of claims or interests does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm a plan at the proponents' request if at least one impaired class (as defined under section 1124 of the Bankruptcy Code) has accepted the plan (with such acceptance being determined without including the vote of any "insider" in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan "does not discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired classes. The Debtors believe that the Plan satisfies these requirements and the Debtors may request such nonconsensual Confirmation in accordance with section 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion. In addition, the pursuit of nonconsensual Confirmation of the Plan may result in, among other things, increased expenses relating to professional compensation and the expiration of any commitment to provide support for the Plan, financially or otherwise.

6. *Liquidation under Chapter 7.*

If the Bankruptcy Court finds that it would be in the best interests of creditors and/or the debtors in a chapter 11 case, or if no chapter 11 plan can be confirmed, the Bankruptcy Court may convert a chapter 11 bankruptcy case to a case under chapter 7 of the Bankruptcy Code. In such event, a chapter 7 trustee would be appointed or elected to liquidate the Debtors' assets for distribution in accordance with the priorities established by the Bankruptcy Code. A discussion of the effects that a chapter 7 liquidation could have on the recoveries of Holders of Claims and Interests and the Debtors' liquidation analysis is set forth in Article VII.I.1 of this Disclosure Statement entitled "Best Interests of Creditors Test—Liquidation Analysis."

7. *The Debtors May Object to the Amount or Classification of a Claim.*

Except as otherwise provided in the Plan, the Debtors reserve the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement. Further, the

Committee or other parties in interest may object to the amount and/or classification of any Claim under the Plan in accordance with the Bankruptcy Code.

8. *Risk of Nonoccurrence of the Effective Date.*

Although the Debtors believe that the Effective Date may quickly occur after the Confirmation Date, there can be no assurance as to such timing or as to whether such an Effective Date will, in fact, occur.

9. *Risk of Termination of the Restructuring Support Agreement.*

The Restructuring Support Agreement contains certain provisions that give the parties the ability to terminate the Restructuring Support Agreement upon the occurrence of certain events. Termination of the Restructuring Support Agreement could result in protracted Chapter 11 Cases, which could significantly and detrimentally impact Akorn's relationships with regulators, government agencies, vendors, suppliers, employees, and customers. If the Restructuring Support Agreement is terminated, each vote or any consent given by any Consenting Term Lenders (as defined in the Restructuring Support Agreement) prior to such termination will be deemed null and void from the first instance.

10. *Contingencies Could Affect Votes of Impaired Classes to Accept or Reject the Plan.*

The distributions available to Holders of Allowed Claims or Allowed Interests under the Plan can be affected by a variety of contingencies, including, without limitation, whether the Bankruptcy Court orders certain Allowed Claims and Allowed Interests to be subordinated to other Allowed Claims and Allowed Interests. The occurrence of any and all such contingencies, which could affect distributions available to Holders of Allowed Claims or Allowed Interests under the Plan, will not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan or require any sort of revote by the Impaired Classes.

11. *The Debtors May Lack Sufficient Liquidity to Satisfy Certain Priority and Administrative Claims in Full in Cash.*

It is possible that Allowed Administrative Claims, Priority Tax Claims, DIP Facility Claims, Other Priority Claims, Professional Fee Claims, and the costs of the Wind-Down may exceed the funding available with respect to such Claims, in which case the Plan will not become effective.

12. *Releases, Injunctions, and Exculpations Provisions May Not Be Approved.*

Article VIII of the Plan provides for certain releases, injunctions, and exculpations, including a release of liens and third-party releases of claims and causes of action that may otherwise be asserted against the Debtors or Released Parties, as applicable. The Debtors believe that the releases, injunctions, and exculpations set forth in the Plan comply with the requirements for approval of such provisions under applicable law and are necessary to the success of the Debtors' reorganization because the Released Parties and Exculpated Parties have made significant contributions to the Debtors' reorganizational efforts. The Plan's release and

exculpation provisions are an inextricable component of the Plan and the significant deleveraging and financial benefits that it embodies. Nevertheless, all of the releases, injunctions, and exculpations provided in the Plan are subject to objection by parties in interest and may not be approved. If the releases are not approved, certain Released Parties may withdraw their support for the Plan.

13. *The Closing Conditions of the Sale Transaction May Not Be Satisfied.*

It is possible that the Debtors may not satisfy the closing conditions of the Sale Transaction, which would prevent the Debtors from consummating the Plan. A failure to satisfy any of the closing conditions of the Sale Transaction could prevent the Sale Transaction from being consummated, which could lead to the Chapter 11 Cases being converted to cases under chapter 7 or dismissed.

C. *Disclosure Statement Disclaimer.*

1. *The Financial Information Contained in this Disclosure Statement Has Not Been Audited.*

In preparing this Disclosure Statement, the Debtors relied on financial data derived from their books and records that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement, and while the Debtors believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to represent or warrant that the financial information contained in this Disclosure Statement and attached hereto is without inaccuracies.

2. *Information Contained in this Disclosure Statement Is Only for Soliciting Votes.*

The information contained in this Disclosure Statement is for the purposes of soliciting acceptances of the Plan and may not be relied upon for any other purpose.

3. *This Disclosure Statement Was Not Approved by the United States Securities and Exchange Commission.*

This Disclosure Statement was not filed with the United States Securities and Exchange Commission under the Securities Act or applicable state securities laws. Neither the United States Securities and Exchange Commission nor any state regulatory authority has passed upon the accuracy or adequacy of this Disclosure Statement, or the exhibits or the statements contained in this Disclosure Statement.

4. *This Disclosure Statement May Contain Forward Looking Statements.*

This Disclosure Statement may contain "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as "may," "will," "might," "expect," "believe," "anticipate," "could," "would," "estimate," "continue," "pursue," or the negative thereof or comparable terminology.

All forward looking statements are necessarily speculative, and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward looking statements. The information contained herein is an estimate only, based upon information currently available to the Debtors.

5. *No Admissions Made.*

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtors) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Allowed Claims or Allowed Interests, or any other parties in interest.

6. *Failure to Identify Litigation Claims or Projected Objections.*

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtors may seek to investigate, File, and prosecute Claims and Interests and may object to Claims or Interests after the Confirmation or Effective Date of the Plan irrespective of whether this Disclosure Statement identifies such Claims or Interests or objections to such Claims or Interests.

7. *No Waiver of Right to Object or Right to Recover Transfers and Assets.*

The vote by a Holder of a Claim or Interest for or against the Plan does not constitute a waiver or release of any claims, causes of action, or rights of the Debtors (or any entity, as the case may be) to object to that Holder's Claim or Interest, or recover any preferential, fraudulent, or other voidable transfer of assets, regardless of whether any claims or causes of action of the Debtors or their respective estates are specifically or generally identified in this Disclosure Statement.

8. *Information Was Provided by the Debtors and Was Relied Upon by the Debtors' Advisors.*

The Debtors' advisors have relied upon information provided by the Debtors in connection with the preparation of this Disclosure Statement. Although the Debtors' advisors have performed certain limited due diligence in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained in this Disclosure Statement.

9. *Potential Exists for Inaccuracies, and the Debtors Have No Duty to Update this Disclosure Statement.*

The statements contained in this Disclosure Statement are made by the Debtors as of the date of this Disclosure Statement, unless otherwise specified herein, and the delivery of this Disclosure Statement after the date hereof does not imply that there has not been a change in the information set forth in this Disclosure Statement since that date. While the Debtors have used their reasonable business judgment to ensure the accuracy of the information provided in this Disclosure Statement and the Plan, the Debtors nonetheless cannot, and do not, confirm the

current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

10. *No Representations Outside this Disclosure Statement Are Authorized.*

No representations concerning or relating to the Debtors, the Chapter 11 Cases, or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to the counsel to the Debtors.

D. *Risks Related to the Debtors' Business.*

Additional discussion of the risks associated with the Debtors' business operations and historical financial performance is set forth in Akorn's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, filed with the Securities and Exchange Commission on February 26, 2020, and on Akorn's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2020, filed with the Securities and Exchange Commission on May 11, 2020.

1. *The Debtors' Growth Depends on Their Ability to Timely and Efficiently Develop and Successfully Launch and Market New Pharmaceutical Products.*

The Debtors' strategy for growth is dependent upon their ability to develop products that can be promoted through current marketing and distribution channels and, when appropriate, the enhancement of such marketing and distribution channels. The Debtors may fail to meet their anticipated time schedule for the filing of new applications or may decide not to pursue applications that they have already submitted or had anticipated submitting. Their failure to develop new products or to receive regulatory approval of applications could have a material adverse effect on their business, financial condition, and results of operations. Even if approved, technical challenges or capacity constraints may prevent successful launch and marketing of new products. Even if successfully launched, no assurance can be given as to the actual size of the market for any product or the level of profitability and sales of the product.

2. *Business Interruptions at the Debtors' Manufacturing Facilities Can Have A Material Adverse Effect on Their Business, Financial Position, and Results of Operations.*

The Debtors manufacture drug products at four (three domestic and one international) manufacturing facilities, and they have contracted with a number of third parties to provide other manufacturing, finishing, and packaging services. They face a substantial risk to their business when any one or more of these facilities is shut down or unable to operate at full capacity as a result of business interruptions, governmental or regulatory actions, or natural or man-made catastrophic events.

3. *A Significant Portion of the Debtors' Revenues Are Generated Through the Sale of Products Manufactured by Third Parties, the Loss or Failure of Any of Which May Have A Material Adverse Effect on the Debtors' Business, Financial Position, and Results of Operations.*

Certain of the pharmaceutical products that the Debtors market, representing a significant portion of their net revenue, are manufactured by third parties that serve as their only supplier of those products. Certain delays or failure of a contract manufacturing partner to supply finished goods timely or in adequate volume have impeded the Debtors' marketing of those products. The Debtors expect this risk to become more significant as they receive approvals for new products to be manufactured through their strategic partnerships and to the extent they seek additional growth opportunities beyond the capacity and capabilities of their current manufacturing facilities. If they are unable to obtain or retain third-party manufacturers for these products on commercially acceptable terms, they may not be able to distribute such products as planned. Any additional material delays or difficulties with third-party manufacturers could adversely affect the marketing and distribution of certain of the Debtors' products, which could have a material adverse effect on their business, financial condition, and results of operations.

4. *The Debtors Depend on A Small Number of Wholesalers to Distribute Their Products, the Loss of Any of Which Could Have A Material Adverse Effect on Their Business.*

A small number of large wholesale drug distributors account for a significant portion of the Debtors' gross sales, net revenue, and accounts receivable. The following three wholesalers—Amerisource, Cardinal and McKesson—accounted for approximately 82.6% of total gross sales and 60.3% of total net revenue in 2019 and constituted 83.4% of gross trade receivables as of December 31, 2019. In addition to acting as distributors of the Debtors' products, these three companies also distribute a broad range of healthcare products on behalf of many other companies. The loss of the Debtors' relationship with one or more of these wholesalers, together with a delay or inability to secure an alternative distribution source for their hospital, retail, and other customers, could have a material adverse impact on the Debtors' revenue and results of operations. A change in purchasing patterns or inventory levels, an increase in returns of the Debtors' products, delays in purchasing products, and delays in payment for products by one or more of these wholesale drug distributors also could have a material adverse impact on the Debtors' revenue, results of operations, and cash flows.

5. *The Debtors' Operations or Ability to Emerge from Bankruptcy May Be Impacted by the Continuing COVID-19 Pandemic.*

The continued spread of COVID-19 could have a significant impact on the Debtors' business. On a macro level, this pandemic could dampen global growth and ultimately lead to an economic recession. Given the unprecedented and evolving nature of the pandemic and the swift-moving response from multiple levels of government, the impact of these changes and other potential changes on the Debtors are uncertain at this time.

(a) *The COVID-19 pandemic could adversely affect the Debtors' business, financial condition, and results of operations.*

While the COVID-19 pandemic did not materially adversely affect the Debtors' financial results and business operations in the quarter ended March 31, 2020, the pandemic had a negative effect on the capital markets and availability of funds for potential bidders in the Debtors' sale process, and economic and health conditions in the United States and across most of the globe have changed rapidly since the end of the quarter. Demand for the Debtors' products has not been significantly altered by the impact of COVID-19 during the three month period ended March 31, 2020, but that could change depending on the duration and severity of the COVID-19 pandemic, the length of time it takes for normal economic and operating conditions to resume, additional governmental actions that may be taken and/or extensions of time for restrictions that have been imposed to date, and numerous other uncertainties. Such events may result in disruption to the sale process and interest of potential bidders as well as business and manufacturing disruption, interruptions to the Debtors' research and development efforts, inventory shortages, delivery delays, and reduced demand and sales of the Debtors' products, any of which could materially affect the Debtors' business, financial condition, and results of operations.

(b) *The ability of the Debtors' employees to work may be significantly impacted by the COVID-19 pandemic.*

The ability of the Debtors' employees to work may be significantly impacted by the COVID-19 pandemic. The Debtors have adopted a series of precautionary measures in an effort to protect their employees and mitigate the potential spread of COVID-19. The majority of the Debtors'office and management personnel are working remotely, and some of their employees engaged in manufacturing, production, and distribution facilities have been restricted by the Debtors and/or by governmental order from coming to work. At the same time, the Debtors have worked to continue their critical business functions and support uninterrupted access to their medicines. For example, the Debtors have instituted additional safety precautions, including increased sanitization of their facilities, to help protect the health and safety of their employees who work in their manufacturing facilities and laboratories, as they continue to manufacture and deliver important medicines for patients. The health of the Debtors' workforce is of primary concern and the Debtors may need to enact further precautionary measures to help minimize the risk of their employees being exposed to the coronavirus. Further, the Debtors' management team is focused on mitigating the adverse effects of the COVID-19 pandemic, which has required and will continue to require a large investment of time and resources across the entire company, thereby diverting their attention from other priorities that existed prior to the outbreak of the pandemic. If these conditions worsen, or last for an extended period of time, the Debtors' ability to manage their business may be impaired, and operational risks, cybersecurity risks, and other risks facing the Debtors prior to the pandemic may be elevated.

(c) *The Debtors cannot predict the impact of the COVID-19 pandemic on their customers, suppliers, vendors, and other business partners.*

The Debtors cannot predict the impact of the COVID-19 pandemic on their customers, suppliers, vendors, and other business partners. The Debtors rely upon third parties for many

aspects of our business, including the provision of goods and services related to the development, manufacture, and distribution of their products. The COVID-19 pandemic's potential effects on the third parties on which the Debtors rely could have a material and adverse effect on their business, financial condition, and results of operations. For example, if the Debtors' sales channels are substantially impaired for an extended period of time because of the COVID-19 pandemic, the Debtors' sales may be materially reduced.

(d) *The full effects of the COVID-19 pandemic are highly uncertain and cannot be predicted.*

The COVID-19 pandemic could significantly affect the Debtors' operations. The Debtors are continuously monitoring their own operations and intend to take appropriate actions to mitigate the risks arising from the COVID-19 pandemic to the best of their abilities, but there can be no assurances that the Debtors will be successful in doing so. The Debtors will seek to minimize disruptions to their supply chain and distribution channels, but many circumstances will be beyond the Debtors' control. Governmental action may further cause the Debtors to temporarily close their facilities and/or regional quarantines may result in labor shortages and work stoppages. The COVID-19 pandemic may continue to make it difficult or impossible for patients to visit their physicians' offices to determine whether the Debtors' medicines may be appropriate. As a result, the Debtors may experience a decline in the number of new patients starting their medicines, which could cause a negative impact on their revenues. All of these factors may have far reaching direct and indirect impacts on the Debtors' business, operations, and financial results and condition. The ultimate extent of the effects of the COVID-19 pandemic on the Debtors is highly uncertain and will depend on future developments which cannot be predicted. Although the Debtors did not experience a material impact to their business operations during the quarter ended March 31, 2020 due to the COVID-19 pandemic, the pandemic had a negative effect on the capital markets and availability of funds for potential bidders in the Debtors' sale process. The Debtors cannot predict the duration or magnitude of the pandemic or the full impact that it may have on the Debtors' sale process and any interest of potential bidders or future financial condition, operations, suppliers, and workforce.

6. *The Debtors May Be Subject to Significant Disruptions or Failures in Their Information Technology Systems and Network Infrastructures That Could Have A Material Adverse Effect on Their Business.*

The Debtors rely on the efficient and uninterrupted operation of complex information technology systems and network infrastructures to operate their business. They also hold data in various data center facilities upon which their business depends. The Debtors have experienced occasional, actual, and attempted breaches of their cybersecurity, and at least one of such breaches the Debtors believe had a material effect on their business, operations, or reputation. Any significant disruption, infiltration, or failure of their information technology systems or any of their data centers, as a result of software or hardware malfunctions, system implementations or upgrades, computer viruses, third-party security breaches, employee error, theft, misuse, or malfeasance, could cause breaches of data security, loss of intellectual property and critical data, and the release and misappropriation of sensitive competitive information, as has happened on at least on one significant occurrence of data deletion. As the Debtors on at least the one occasion mentioned, any another such event could result in the loss of key information, impair the

Debtors' production and supply chain processes, damage their reputation in the marketplace, deter people from purchasing their products, cause the Debtors to incur significant costs to remedy any damages, subject them to significant civil and criminal liability, and require them to incur significant technical, legal, and other expenses, and ultimately materially and adversely affect the Debtors' business, results of operations, financial condition, and price of their common stock.

7. *The Debtors Depend on Their Employees and Must Continue to Attract and Retain Key Personnel in Order to Be Successful, and Failure to Do so May Hinder Successful Execution of Their Business and Development Plans.*

The Debtors' performance depends, to a large extent, on the continued service of their key personnel, including in R&D and regulatory compliance functions, other technical employees, managers and sales personnel, and the Debtors' ability to continue to attract and retain such personnel. Competition for such personnel is intense, particularly for highly motivated and experienced R&D and other technical personnel, including those involved in ensuring regulatory compliance for pharmaceuticals and controlled substances. The Debtors face competition from companies with greater financial resources for such personnel. Additionally, given the Debtors' current financial position, attracting and retaining highly skilled personnel may become more difficult and may adversely affect their business operations.

8. *The Debtors Are Involved in Legal Proceedings and Governmental Investigations from Time to Time, Any of Which May Result in Substantial Losses, Government Enforcement Actions, Damage to Their Business and Reputation, and Place A Strain on Their Internal Resources.*

In the ordinary course of their business, the Debtors become involved in legal proceedings, as a party or non-party witness, with both private parties and certain government agencies, including the FDA, DEA, and SEC. The Debtors incur substantial time and expense participating in these types of lawsuits and investigations, which also divert management's attention from ongoing business concerns and normal operations. In addition, these matters and any other substantial litigation may result in verdicts against the Debtors or government enforcement actions, which may include significant monetary awards, judgments invalidating certain of their intellectual property rights, and preventing the manufacture, marketing, and sale of their products. When such disputes are resolved unfavorably, the Debtors' business, financial condition, and results of operations are adversely affected. Any litigation, whether or not successful, may also damage the Debtors' reputation.

9. *Charges to Earnings Resulting from Acquisitions Could Have A Material Adverse Effect on the Debtors' Business, Financial Position, and Results of Operations.*

Under accounting principles generally accepted in the United States of America business acquisition accounting standards, the Debtors recognize the identifiable assets acquired, the liabilities assumed, and any non-controlling interests in acquired companies generally at their acquisition date fair values and, in each case, separately from goodwill. Goodwill as of the acquisition date is measured as the excess amount of consideration transferred, which is also generally measured at fair value, and the net of the acquisition date amounts of the identifiable

assets acquired and the liabilities assumed. The Debtors' estimates of fair value are based upon assumptions believed to be reasonable, but which are inherently uncertain. After the Debtors complete an acquisition, the following factors could result in material charges and adversely affect their operating results and may adversely affect their cash flow:

- costs incurred to combine the operations of companies they acquire, such as transitional employee expenses and employee retention, redeployment, or relocation expenses;
- impairment of goodwill or intangible assets;
- amortization of intangible assets acquired;
- a reduction in the useful lives of intangible assets acquired;
- identification of or changes to assumed contingent liabilities, including, but not limited to, contingent purchase price consideration, income tax contingencies, and other non-income tax contingencies, after their final determination of the amounts for these contingencies or the conclusion of the measurement period (generally up to one year from the acquisition date), whichever comes first;
- charges to their operating results to eliminate certain duplicative pre-acquisition activities, to restructure their operations, or to reduce their cost structure;
- charges to their operating results resulting from expenses incurred to effect the acquisition;
- changes to contingent consideration liabilities, including accretion and fair value adjustments. A significant portion of these adjustments could be accounted for as expenses that will decrease the Debtors' net income and earnings per share for the periods in which those costs are incurred.

Such charges could cause a material adverse effect on the Debtors' business, financial position, results of operations, and/or cash flow, and could cause the price of their common stock to decline.

E. *Risks Related to the Debtors' Industry.*

1. *Sales of the Debtors' Products May Be Adversely Affected by Further Increases in Competition.*

Competition in the pharmaceutical industry is significant, and trends related to the volume and pace of new applications and approvals of products have increased the level of competition the Debtors face. Given the FDA mandate to continue to reduce the cost of prescription drugs by increasing the number of generic drug approvals, the Debtors anticipate that this trend will continue. As a result, this may continue to adversely impact the profitability of their current portfolio and will magnify the need for them to develop and launch new products in order to grow their business.

Additionally, trends toward increased substitution and reimbursement of generics for cost-containment purposes may reduce and limit the sales of the Debtors' off-patent branded products. Increased focus by the FDA on approval of generics may accelerate this trend.

2. *Many of the Raw Materials and Components Used in the Debtors' Products Come from A Single Source, the Loss of Any of Which Could Have A Material Adverse Effect on the Debtors' Business.*

The Debtors require raw materials and components to manufacture and package pharmaceutical products. The principal components of their products are active and inactive pharmaceutical ingredients and certain packaging materials. Many of these materials are available from only a single source and, in the case of many of the Debtors' products, only one supplier of raw materials has been identified and qualified. Because FDA approval of drugs requires manufacturers to specify their proposed suppliers of active ingredients and certain packaging materials in their applications, FDA approval of any new supplier would be required if such active ingredients or such packaging materials were no longer available from the specified supplier. The qualification of a new supplier could delay the Debtors' development and marketing efforts. If for any reason the Debtors are unable to obtain sufficient quantities of any of the raw materials or components required to produce and package their products, they may not be able to manufacture their products as planned.

3. *Sales of the Debtors' Products May Be Adversely Affected by Further Consolidation of Their Customer Base, Which May Have A Material Adverse Effect on the Debtors' Business, Financial Position, and Results of Operations.*

Drug wholesalers, drug retailers, and group purchasing organizations have undergone significant consolidation, which has provided and may continue to provide them with additional purchasing leverage, and consequently may increase the pricing pressures that the Debtors face. In addition, since such a significant portion of the Debtors' revenue is derived from relatively few customers, any financial difficulties experienced by a single customer, or any delay in receiving payments from a single customer could have a material adverse effect on the Debtors' business, results of operations, and financial condition.

4. *International Trade Complications Could Have an Adverse Impact.*

Product constraints from suppliers could have an adverse impact on the Debtors' business, as there continues to be uncertainty regarding the impact of the Coronavirus outbreak. Moreover, changes to the law, including that of the law regarding the application of country of origin requirements for drug products, could adversely impact the Debtors' business.

5. *Changes in Technology Could Render the Debtors' Products Obsolete.*

The pharmaceutical industry is characterized by rapid technological change. The products that the Debtors sell today and their drug delivery methods may be replaced by more effective methods to deliver the same care, rendering the Debtors' current products obsolete. Further, the technologies that the Debtors invest in for future use may not become the preferred method of delivery.

F. *Risks Related to Regulations.*

1. *The Debtors Are Subject to Extensive Government Regulations. When Regulations Change or the Debtors Fall out of Compliance, the Debtors Can Face Increased Costs, Additional Obligations, Fines, or Halts to Their Operations.*

New, modified, and additional regulations, statutes, or legal interpretations, which occur from time to time, among other things, require changes to manufacturing methods, expanded or different labeling, recall, replacement or discontinuation of certain products, additional record keeping procedures, expanded documentation of the properties of certain products, and additional scientific substantiation. Such changes or new legislation can have a material adverse effect on the Debtors' business, financial condition, and results of operations. Certain of the regulatory risks that the Debtors are subject to are outlined below:

The Debtors, their third-party manufacturers, and their suppliers are subject to periodic inspection by the FDA to assure regulatory compliance regarding the manufacturing, distribution, and promotion of pharmaceutical products. The FDA imposes stringent mandatory requirements on the manufacture and distribution of pharmaceutical products to ensure their safety and efficacy. The FDA also regulates drug labeling and the advertising of prescription drugs. A finding by a governmental agency or court that the Debtors are not in compliance with FDA requirements could have a material adverse effect on the Debtors' business, financial condition, and results of operations.

As previously disclosed in various reports filed with the SEC, the Debtors, with the assistance of outside consultants, have been investigating alleged breaches of FDA data integrity requirements relating to development of the Debtors' products. The Debtors have informed the FDA regarding the investigation and will continue to update the FDA as it proceeds. During 2018, the Debtors had FDA inspections at their Decatur and Somerset facilities that resulted in Official Action Indicated ("OAI") facility status, and the Debtors received warning letters in January and June of 2019 related to the 2018 inspections at these facilities, respectively. Significant costs were incurred to address the FDA observations from the inspections of their Decatur and Somerset facilities in 2019 and 2018. If the Debtors are unable to adequately address the FDA's concerns in a timely manner, the FDA may take further actions and the Debtors' pipeline product approvals may be further delayed.

The Debtors must obtain approval from the FDA for each prescription pharmaceutical product that they market, and the timing of such approval process is unknown and uncertain. The FDA approval process is typically lengthy, and approval is never certain. The Debtors' new products could take a significantly longer time than the Debtors expect to gain regulatory approval and may never gain approval. Even if the FDA or another regulatory agency approves a product, the approval may limit the indicated uses for a product, may otherwise limit the Debtors' ability to promote, sell, and distribute a product, or may require post-marketing studies or impose other post-marketing obligations, which could have a material adverse effect on the marketability and profitability of the new products.

The Debtors are subject to recalls and other enforcement actions by the FDA and other regulatory bodies. The FDA or other government agencies having regulatory authority over

pharmaceutical products may request the Debtors to voluntarily or involuntarily conduct product recalls due to disputed labeling claims, manufacturing issues, quality defects, or for other reasons. Restriction or prohibition on sales, halting of manufacturing operations, recalls of the Debtors' pharmaceutical products, or other enforcement actions could have a material adverse effect on the Debtors' business, financial condition, and results of operations. Further, such actions, in certain circumstances, may constitute an event of default under the terms of the Debtors' various financing arrangements.

If the FDA changes its regulatory policies, it could force the Debtors to delay or suspend their manufacturing, distribution, or sales of certain products. FDA interpretations of existing or pending regulations and standards may change over time with the advancement of associated technologies, industry trends, or prevailing scientific rationale. If the FDA changes its regulatory policies due to such factors, it could result in delay or suspension of the manufacturing, distribution, or sales of certain of the Debtors' products. In addition, modifications or enhancements of approved products are in many circumstances subject to additional FDA approvals that may or may not be granted and that may be subject to a lengthy application process. Any change in the FDA's enforcement policy, or any decision by the FDA to require an approved application for one of the Debtors' products not currently subject to the approved application requirements, or any delay in the FDA approving an application for one of the Debtors' products could have a material adverse effect on the Debtors' business, financial condition, and results of operations.

The Debtors are subject to extensive DEA regulation, which could result in their being fined or otherwise penalized if they are not in compliance. The DEA could limit or reduce the amount of controlled substances that the Debtors are permitted to manufacture and market, or issue fines and penalties against the Debtors for non-compliance with DEA regulations, which could have a material adverse effect on our business, financial condition, and results of operations.

2. *The Debtors' Inability to Timely and Adequately Address FDA Warning Letters Status May Adversely Affect Their Business.*

The Debtors received warning letters in January and June of 2019 related to the 2018 FDA inspections at their Decatur and Somerset facilities, respectively. In addition, the Debtors received a Form 483 related to the February 2020 FDA inspection at their Hettlingen facility. The Debtors responded to this Form 483 in March 2020. While the Debtors have already completed a substantial majority of outstanding FDA compliance-related items, if the Debtors are unable to adequately address the FDA's remaining or potential future concerns in a timely manner, the FDA may take further actions, and the Debtors' pipeline product approvals may be further delayed.

3. *Changes in Healthcare Law and Policy May Adversely Affect the Debtors' Business and Results of Operations.*

The sales of the Debtors' products depend in part on the availability of reimbursements from third-party payers such as government health administration authorities, private health insurers, health maintenance organizations, including pharmacy benefit managers ("PBMs"), and

other healthcare-related organizations. The Debtors expect both federal and state governments in the United States and foreign governments to continue to propose and pass new legislation, rules, and regulations designed to contain or reduce the cost of healthcare. Existing regulations that affect the price of pharmaceutical and other medical products may also change. Cost control initiatives could decrease the price that the Debtors receive for any product they develop in the future. In addition, PBMs and other third-party payers are increasingly challenging the price and cost-effectiveness of medical products and services. Significant uncertainty exists as to the reimbursement status of newly approved pharmaceutical products. The Debtors' products may not be considered cost effective, or adequate third-party reimbursement may not be available to enable the Debtors to maintain price levels sufficient to realize a return on their investments. Any such changes in healthcare law or policy may harm the Debtors' ability to market their products and generate profits.

4. *The FDA May Require the Debtors to Stop Marketing Certain Unapproved Drugs, Which Could Have A Material Adverse Effect on the Debtors' Business, Financial Position, and Results of Operations.*

The Debtors market several generic prescription products that do not have formal FDA approvals. These products are non-application drugs that are manufactured and marketed without formal FDA approval on the basis of their having been marketed by the pharmaceutical industry prior to the 1962 Amendments of the FDC Act. The FDA has increased its efforts to require companies to file and seek FDA approval for unapproved products, and when a product is approved, the FDA has typically increased its effort to remove unapproved products from the market by issuing notices to companies currently manufacturing these products to cease its distribution of said products. The Debtors have discontinued marketing of previously unapproved products after receipt such notices from the FDA. During 2019, the Debtors marketed six such unapproved products, generating net revenue of approximately $30.4 million. At the FDA's request, the Debtors discontinued marketing one unapproved product in early 2020.

5. *Any Failure to Comply with the Complex Reporting and Payment Obligations Under Medicare, Medicaid, and Other Government Programs May Result in Litigation or Sanctions.*

The Debtors are subject to various federal and state laws pertaining to healthcare fraud and abuse, including anti-kickback, false claims, marketing, and pricing laws. The Debtors are also subject to Medicaid and other government reporting and payment obligations that are highly complex and, at times, ambiguous. Violations of these laws and reporting obligations are punishable by criminal or civil sanctions and exclusion from participation in federal and state healthcare programs such as Medicare and Medicaid. If the Debtors' past, present or future operations are found to be in violation of any of the laws described above or other similar governmental regulations, the Debtors may be subject to the applicable penalty associated with the violation, which could adversely affect their ability to operate their business and negatively impact their financial results. Further, if there is a change in laws, regulations, or administrative or judicial interpretations, the Debtors may have to change their business practices or their existing business practices could be challenged as unlawful, which could materially adversely affect their business, financial position, and results of operations.

6. *Failure to Comply with the U.S. Foreign Corrupt Practices Act Could Subject the Debtors To, Among Other Things, Penalties and Legal Expenses That Could Harm Their Reputation and Have A Material Adverse Effect on Their Business, Financial Condition, and Operating Results.*

The Debtors and their employees are subject to the FCPA, which generally prohibits covered entities and their intermediaries from engaging in bribery or making other prohibited payments to foreign officials for the purpose of obtaining or retaining business or other benefits. In addition, the FCPA imposes record keeping standards and requirements on publicly traded U.S. corporations and their foreign affiliates, which are intended to prevent the diversion of corporate funds to the payment of bribes and other improper payments, and to prevent the establishment of "off books" slush funds from which such improper payments can be made. If the Debtors' employees, third-party sales representatives, or other agents are found to have engaged in such practices, the Debtors could suffer severe penalties, including criminal and civil penalties, disgorgement, and other remedial measures, including further changes or enhancements to their procedures, policies, and controls, as well as potential personnel changes and disciplinary actions.

7. *The FDA May Authorize Sales of Some Prescription Pharmaceuticals on A Non-Prescription Basis, Which May Reduce the Profitability of the Debtors' Prescription Products.*

The FDA may change the designation of some prescription pharmaceuticals that the Debtors currently sell to non-prescription. If the Debtors are unable to gain approval of their product(s) on a non-prescription designation, they may experience an adverse effect on their business.

8. *State Legislatures Are Increasingly Active in Regulating the Sale and Distribution of Pharmaceuticals Which May Have an Adverse Effect on the Debtors' Business.*

New laws and regulations are imposing fees and reporting obligations on the sale and distribution of the Debtors' products. Identifying, interpreting, and complying with such new laws requires significant time and resources. Enforcement actions at the state level could impact the Debtors' operations.

G. *Risks Related to the Debtors' Intellectual Property.*

1. *Third Parties May Claim That the Debtors Infringe Their Proprietary Rights and May Prevent or Delay the Debtors from Manufacturing and Selling Some of Their New Products.*

The manufacture, use, and sale of new products that are the subject of conflicting patent rights have been the subject of substantial litigation in the pharmaceutical industry. Pharmaceutical companies with patented brand products frequently sue companies that file applications to produce generic equivalents of their patented brand products for alleged patent infringement or other violations of intellectual property rights, which may delay or prevent the entry of such generic products into the market. Generally, a generic drug may not be marketed until the applicable patent(s) on the brand name drug expire or are held to be not infringed,

invalid, or unenforceable. When the Debtors or their development partners submit a filing to the FDA for approval of a generic drug, the Debtors or their development partners must certify: (a) that there is no patent listed by the FDA as covering the relevant brand product, (b) that any patent listed as covering the brand product has expired, (c) that the patent listed as covering the brand product will expire prior to the marketing of the generic product, in which case the filing will not be finally approved by the FDA until the expiration of such patent, or (d) that any patent listed as covering the brand drug is invalid or will not be infringed by the manufacture, sale, or use of the generic product for which the filing is submitted.

Under any circumstance in which an act of infringement is alleged to occur, there is a risk that a brand pharmaceutical company may sue the Debtors for alleged patent infringement or other violations of intellectual property rights. Also, competing pharmaceutical companies may file lawsuits against the Debtors or their strategic partners alleging patent infringement or may file declaratory judgment actions of non-infringement, invalidity, or unenforceability against the Debtors relating to the Debtors' own patents. The Debtors have been sued for patent infringement related to several of their filings, and they anticipate that they may be sued once they file for other products in their pipeline. Such litigation is often costly and time-consuming and could result in a substantial delay in, or prevent the introduction and/or marketing of, our products, and allow for damages for any at-risk launches, which could have a material adverse effect on the Debtors' business, financial condition, and results of operations.

Even if the parties settle their intellectual property disputes through licensing or similar arrangements, the costs associated with these arrangements may be substantial and could include ongoing royalties, and the necessary licenses might not be available to the Debtors on terms they believe to be acceptable.

2. *The Debtors' Patents and Proprietary Rights May Be Challenged, Circumvented, or Otherwise Compromised by Competitors, Which May Result in the Debtors' Protected Products Losing Their Market Exclusivity and Becoming Subject to Generic Competition Before Their Patents Expire.*

The patent and proprietary rights position of competitors in the pharmaceutical industry generally is highly uncertain, involves complex legal and factual questions, and is the subject of much litigation. There can be no assurance that any patent applications or other proprietary rights, including licensed rights, relating to the Debtors' potential products or processes will result in patents being issued or other proprietary rights secured, or that the resulting patents or proprietary rights, if any, will provide protection against competitors who: (a) successfully challenge the Debtors' patents or proprietary rights; (b) obtain patents or proprietary rights that may have an adverse effect on the Debtors' ability to conduct business; or (c) are able to circumvent the Debtors' patent or proprietary rights position. It is possible that other parties have conducted or are conducting research and could make discoveries of pharmaceutical formulations or processes that would precede any discoveries made by the Debtors, which could prevent the Debtors from obtaining patent or other protection for these discoveries or marketing products developed therefrom. Consequently, others could independently develop pharmaceutical products similar to or rendering obsolete those that the Debtors are planning to develop, or duplicate any of the Debtors' products. The Debtors' inability to obtain patents for, or other proprietary rights in, their products and processes or the ability of competitors to circumvent or

cause to be obsolete the Debtors' patents or proprietary rights could have a material adverse effect on the Debtors' business, financial condition, and results of operations. Additionally, the Debtors' inability to successfully defend the existing patents on their products against challenges by competing drug companies could have a material adverse effect on the Debtors' business, financial condition, and results of operations.

Further, the majority of the drug products that the Debtors market are generics, with essentially no patent or proprietary rights attached. While this fact has allowed the Debtors the opportunity to obtain FDA approval to market their generic products, it also allows competing drug companies to do the same. Should multiple additional drug companies choose to develop and market the same generic products that the Debtors actively market, the Debtors' profit margins could decline, which would have a material adverse effect on the Debtors' business, financial condition, and results of operations.

H. *Risks Related to the Debtors' Liquidity.*

1. *The Debtors' Limited Liquidity Could Materially and Adversely Affect Their Business Operations.*

The Debtors require certain capital resources in order to operate their business and their limited liquidity could materially and adversely affect their business operations. Without sufficient additional capital funding, the Debtors may be required to delay, scale back, or abandon some or all of their capital projects, product development, manufacturing, acquisition, licensing and marketing initiatives, or operations.

2. *The Debtors' Suppliers, Manufacturers, and Other Business Partners' Unwillingness to Do Business with Them or to Provide Acceptable Payment Terms Could Negatively Impact the Debtors' Liquidity or Reduce the Availability of Products or Services They Seek to Procure.*

The Debtors have ongoing discussions concerning their liquidity and financial position with their third-party suppliers, manufacturers, and other business partners. The topics discussed have included such areas as pricing, payment terms, and ongoing business arrangements. Third parties requiring or conditioning manufacture and supply of goods or services on new payment terms or other assurances could significantly disrupt the Debtors' access to materials or services and have a negative effect on the Debtors' business, financial condition, and results of operations.

Article IX.
MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

The following discussion is a summary of certain United States ("U.S.") federal income tax consequences of the consummation of the Plan to the Debtors, the Purchaser, and to certain Holders of Claims and Interests. The following summary does not address the U.S. federal income tax consequences to Holders of Claims or Interests not entitled to vote to accept or reject the Plan. This summary is based on the Internal Revenue Code of 1986, as amended (the "IRC"),

the U.S. Treasury Regulations promulgated thereunder (the "Treasury Regulations"), judicial authorities, published administrative positions of the U.S. Internal Revenue Service (the "IRS"), and other applicable authorities, all as in effect on the date of this Disclosure Statement and all of which are subject to change or differing interpretations, possibly with retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. No opinion of counsel has been obtained and the Debtors do not intend to seek a ruling from the IRS as to any of the tax consequences of the Plan discussed below. The discussion below is not binding upon the IRS or the courts. No assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to the Debtors or to certain Holders of Claims or Interests in light of their individual circumstances. This discussion does not address tax issues with respect to such Holders of Claims or Interests subject to special treatment under the U.S. federal income tax laws (including, for example, banks, governmental authorities or agencies, pass-through entities, subchapter S corporations, dealers and traders in securities, insurance companies, financial institutions, tax exempt organizations, small business investment companies, foreign taxpayers, Persons who are related to the Debtors within the meaning of the IRC, Persons using a mark-to-market method of accounting, Holders of Claims who are themselves in bankruptcy, and regulated investment companies and those holding, or who will hold, Claims or Interests, or the equity in the Purchaser or any other consideration to be received under the Plan, as part of a hedge, straddle, conversion, or other integrated transaction). No aspect of state, local, estate, gift, or non-U.S. taxation is addressed. Furthermore, this summary assumes that Holders of Claims hold only Claims in a single Class and holds Claims or Interests as "capital assets" (within the meaning of section 1221 of the IRC). This summary does not address any special arrangements or contractual rights that are not being received or entered into in respect of an underlying Claim, including the tax treatment of any backstop fees or similar arrangements (including any ramifications such arrangements may have on the treatment of a Holder under the Plan). This summary also assumes that the various debt and other arrangements to which the Debtors are a party will be respected for U.S. federal income tax purposes in accordance with their form. The U.S. federal income tax consequences of the implementation of the Plan to the Debtors and Holders of Claims or Interests described below also may vary depending on the nature of any Restructuring Transactions that the Debtors engage in.

For purposes of this discussion, a "U.S. Holder" is a Holder that is: (1) an individual citizen or resident of the United States for U.S. federal income tax purposes; (2) a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia; (3) an estate the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (4) a trust (A) if a court within the United States is able to exercise primary jurisdiction over the trust's administration and one or more United States persons has authority to control all substantial decisions of the trust or (B) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person. For purposes of this discussion, a "Non-U.S. Holder" is any Holder that is not a U.S. Holder other than any partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes).

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a Holder of a Claim or Interest, the tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the partner (or other beneficial owner) and the entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are Holders of Claims or Interests should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Plan.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS OR INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL, AND NON-U.S. TAX CONSEQUENCES OF THE PLAN.

A. *Certain U.S. Federal Income Tax Consequences of the Plan to the Debtors and the Purchaser.*

1. *In General.*

The Plan provides that the Sale Transaction may be structured as either (a) a taxable disposition of the Transferred Assets (a "Taxable Transaction") or (b) a disposition of the Transferred Assets in a tax-free reorganization pursuant to sections 368(a)(1)(G) and 354 of the IRC (a "Tax-Free Reorganization"). The Sale Transaction can only be structured as a Tax-Free Reorganization if a Credit Bid Transaction (as defined below occurs).

As will be described in further detail in the Description of Transaction Steps, either structure provides that (a) relevant assets are transferred by the Debtors to Purchaser; (b) any of the Debtors' remaining assets that were not transferred to Purchaser will be transferred to one or more liquidating entities or otherwise disposed of; (c) any Debtors that are not transferred to Purchaser shall be wound-down; and (d) (i) if Purchaser is acquiring assets pursuant to a credit bid (a "Taxable Credit Bid Transaction"), the equity of Purchaser will be distributed to Holders of Claims; and (ii) if Purchaser is a third party buyer (a "Third-Party Sale"), the sale consideration will be distributed to Holders of Claims (and, if there are sufficient proceeds, Holders of Interests).

The tax consequences of the implementation of the Plan to the Debtors, the Purchaser, and Holders of Claims will differ depending on whether the Sale Transaction is structured as a Taxable Transaction or Tax-Free Reorganization. The Debtors have not yet determined how the Sale Transaction will be structured, whether in whole or in part.

2. *Taxable Sale.*

(a) *Recognition of Gain or Loss and Tax Basis of Assets Acquired by Purchaser.*

(i) *Taxable Transaction.*

If the transactions undertaken pursuant to the Plan are structured as a Taxable Transaction, the Debtors would recognize gain or loss upon a transfer of all or a portion of their assets in an amount equal to the difference between the aggregate fair market value of the assets transferred by the Debtors and the Debtors' aggregate tax basis in such assets. Such gain or loss would be reduced by the amount of such Debtors' available tax attributes, and the reduced amount of gain or loss would be recognized by the Debtors (and the liability for which will constitute an Administrative Claim).

In a Taxable Transaction, Purchaser will take a fair market value basis in the acquired assets. As a general matter, the Debtors currently anticipate that in a Taxable Transaction, Purchaser will not acquire any stock of any material U.S. subsidiary of the Debtors (however, stock of non-U.S. subsidiaries are expected to be acquired) and, as a result, the tax basis of the assets of the Debtor's subsidiaries (except, potentially, for the assets of non-U.S. subsidiaries) would not be expected to transfer to Purchaser in a Taxable Transaction.

(ii) *Tax-Free Reorganization.*

If the transactions undertaken pursuant to the Plan are structured as a Tax-Free Reorganization, the Debtors are not expected to recognize any gain or loss for federal income tax purposes, but this expectation assumes that the Debtors do not have any "deferred intercompany gains" or "excess loss accounts," which is not known with certainty. In the event any federal income tax liability arises in connection with a Tax-Free Reorganization, Purchaser would be jointly liable for such federal income tax liability pursuant to section 1.1502-6 of the Treasury Regulations.

Purchaser should have carryover tax basis in any assets acquired pursuant to such transaction, subject to reduction due to COD Income, as described below.

(b) *Preservation of Tax Attributes and Cancellation of Indebtedness Income.*

In general, absent an exception, a debtor will realize and recognize cancellation of debt income ("COD Income") upon satisfaction of its outstanding indebtedness for total consideration less than the amount of such indebtedness. The amount of COD Income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied over (b) the sum of (x) the amount of Cash paid, (y) the issue price of any new indebtedness of the debtor issued, and (z) the fair market value of any new consideration given in satisfaction of such indebtedness at the time of the satisfaction.

Pursuant to section 108 of the IRC, a debtor will not, however, be required to include any amount of COD Income in gross income if the debtor is under the jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of indebtedness occurs pursuant to

that proceeding. Instead, as a consequence of such exclusion, a debtor must reduce its tax attributes by the amount of COD Income that it excluded from gross income pursuant to section 108 of the IRC. In general, tax attributes of a debtor will be reduced in the following order: (a) NOLs and NOL carryforwards; (b) general business credit carryovers; (c) minimum tax credit carryovers; (d) capital loss carryovers; (e) tax basis in assets (subject to the Asset Tax Basis Floor, as described below); (f) passive activity loss and credit carryovers; and (g) foreign tax credits. A debtor with COD Income may elect first to reduce the basis of its depreciable assets pursuant to section 108(b)(5) of the IRC, prior to effecting any other reductions in tax attributes set forth above, though it has not been determined whether the Debtor will make this election. The reduction in tax attributes occurs only after the taxable income (or loss) for the taxable year of the debt discharge has been determined and any excess COD Income over the amount of available tax attributes will generally not give rise to U.S. federal income tax and will generally have no other U.S. federal income tax impact.

The Treasury Regulations address the method and order for applying tax attribute reduction to an affiliated group of corporations. Pursuant thereto, the tax attributes of each debtor member of an affiliated group of corporations that is excluding COD Income are first subject to reduction. To the extent the debtor member's tax basis in stock of a lower-tier member of the affiliated group is reduced, a "look through rule" requires that a corresponding reduction be made to the tax attributes of the lower-tier member. If a debtor member's excluded COD Income exceeds its tax attributes, the excess COD Income is applied to reduce certain remaining consolidated tax attributes of the affiliated group.

The aggregate tax basis of the Debtors in their assets (determined on an entity-by-entity basis, and in the case of an affiliated group of corporations, subject to the look-through rule described above) is not required to be reduced below the amount of indebtedness (determined on an entity-by-entity basis) that the Debtors will be subject to immediately after the cancellation of debt giving rise to COD Income (the "Asset Tax Basis Floor"). Generally, all of an entity's obligations that are treated as debt under general U.S. federal income tax principles (including intercompany debt treated as debt for U.S. federal income tax purposes) are taken into account in determining an entity's Asset Tax Basis Floor.

The Debtors expect to realize significant COD Income as a result of the consummation of the Plan. The exact amount of any COD Income that will be realized by the Debtors will not be determinable until after the consummation of the Plan.

The implications of these rules, and the more general question of whether Purchaser will succeed to any of the Debtors' tax attributes, depends on whether the Sale Transaction is consummated as a Taxable Transaction or a Tax-Free Reorganization.

(i) *Taxable Transaction.*

In the event the transactions undertaken pursuant to the Plan are consummated as a Taxable Transaction and Purchaser is not treated as acquiring the stock of any entity that is taxed as a corporation for U.S. federal income tax purposes, the rules related to COD Income, worthless stock deductions and section 382 of the IRC (as described below) will generally be irrelevant, Purchaser will acquire all such assets with an aggregate tax basis equal to their

aggregate fair market value (as determined under applicable tax rules), and Purchaser will not inherit any of the NOLs or other tax attributes of the Debtors.

(ii) *Tax-Free Reorganization.*

If the transactions undertaken pursuant to the Plan are structured as a Tax-Free Reorganization, Purchaser will succeed to some or all of the tax attributes of the Debtors, depending upon, among other things; (a) whether certain tax attributes attributable to the subsidiaries of Akorn, Inc. ("Parent Debtor") can be transferred to the Parent Debtor prior to the consummation of the Plan; and (b) whether the equity of any of the Parent Debtor's subsidiaries are transferred to Purchaser. However, such tax attributes will be subject to reduction for COD Income according to the rules described above.

(c) *Limitation of Surviving Tax Attributes Under Sections 382 and 383 of the IRC.*

After giving effect to the reduction in tax attributes from excluded COD Income, if any, to the extent that the transactions undertaken pursuant to the Plan are structured as a Tax-Free Reorganization, Purchaser's ability to use any remaining tax attributes post-emergence will be subject to certain limitations under sections 382 and 383 of the IRC.

(i) *General Sections 382 and 383 Annual Limitations.*

Under section 382 of the IRC, if a corporation undergoes an "ownership change," the amount of its NOLs, certain recognized built-in losses if the corporation has an overall "net unrealized built in loss" as determined pursuant to IRS Notice 2003-65 and other tax attributes (collectively, "Pre-Change Losses") that may be utilized to offset future taxable income generally are subject to an annual limitation. For this purpose, if a corporation (or consolidated group) has a net unrealized built-in loss at the time of an ownership change (taking into account most assets and items of "built-in" income and deductions), then generally built-in losses (including amortization or depreciation deductions attributable to such built-in losses) and deductions recognized during the following five years (up to the amount of the original net unrealized built-in loss) will be treated as Pre-Change Losses and similarly will be subject to the annual limitation. In general, a corporation's (or consolidated group's) net unrealized built-in loss will be deemed to be zero unless it is greater than the lesser of (a) $10,000,000, or (b) 15 percent of the fair market value of its assets (with certain adjustments) before the ownership change. The rules of sections 382 and 383 of the IRC are complicated, but as a general matter, the Debtors anticipate that the issuance of Purchaser Equity pursuant to the Plan will result in an "ownership change" for these purposes, and that Purchaser's use of any Pre-Change Losses will be subject to limitation unless an exception to the general rules of sections 382 and 383 of the IRC applies.

(ii) *General Section 382 Annual Limitation.*

In general, the amount of the annual limitation to which a corporation that undergoes an "ownership change" would be subject (the "382 Limitation") is equal to the product of (a) the fair market value of the stock of the corporation immediately before the "ownership change" (with certain adjustments), multiplied by (b) the "long-term tax-exempt rate" (which is the highest of

the adjusted federal long-term rates in effect for any month in the 3-calendar-month period ending with the calendar month in which the "ownership change" occurs: 1.47% percent for May 2020). The 382 Limitation may be increased, up to the amount of any net unrealized built-in gain (if any) at the time of the ownership change, to the extent that the Debtors recognize certain built-in gains in their assets during the five-year period following the ownership change, or are treated as recognizing built-in gains pursuant to the safe harbors provided in IRS Notice 2003-65.~~15~~31 Any unused limitation may be carried forward, thereby increasing the annual limitation in the subsequent taxable year. As discussed below, however, special rules may apply in the case of a corporation that experiences an ownership change as the result of a bankruptcy proceeding.

Notwithstanding the rules described above, if subsequent to an ownership change, a debtor corporation and its subsidiaries do not continue the debtor corporation's historic business or use a significant portion of its historic business assets in a new business for two years after the ownership change, the annual limitation resulting from the ownership change is zero.

(iii) *Special Bankruptcy Exceptions.*

An exception to the foregoing annual limitation rules generally applies when so called "qualified creditors" of a debtor company in chapter 11 receive, in respect of their claims, together with existing shareholders with respect to their stock, at least 50 percent of the vote and value of the stock of the reorganized debtor (or a controlling corporation if also in chapter 11) pursuant to a confirmed chapter 11 plan (the "382(l)(5) Exception"). Under the 382(l)(5) Exception, a debtor's Pre-Change Losses are not limited on an annual basis but, instead, the debtor's NOLs are required to be reduced by the amount of any interest deductions claimed during any taxable year ending during the three-year period preceding the taxable year that includes the Plan Effective Date of the plan of reorganization, and during the part of the taxable year prior to and including the Plan Effective Date of the plan of reorganization, in respect of all debt converted into stock in the reorganization. If the 382(l)(5) Exception applies and the debtor undergoes another ownership change within two years after consummation, then the debtor's Pre-Change Losses are eliminated in their entirety.

Where the 382(l)(5) Exception is not applicable (either because the debtor does not qualify for it or the debtor otherwise elects not to utilize the 382(l)(5) Exception), a second special rule will generally apply (the "382(l)(6) Exception"). When the 382(l)(6) Exception applies, a debtor corporation that undergoes an ownership change generally is permitted to determine the fair market value of its stock after taking into account the increase in value resulting from any surrender or cancellation of creditors' claims in the bankruptcy, along with certain integrated transactions. This differs from the ordinary rule that requires the fair market value of a debtor corporation that undergoes an ownership change to be determined before the events giving rise to the change. The 382(l)(6) Exception differs from the 382(l)(5) Exception in

~~15~~31 Regulations have been proposed that would significantly change the application of the rules relating to built-in gains and losses for purposes of computing the 382 Limitation. However, proposed regulations have also been released that would "grandfather" companies that undergo an "ownership change" pursuant to an order entered in a bankruptcy case that was commenced prior to, or within 30 days of, the publication of the finalized new rules in this area. Accordingly, the Debtors do not expect the proposed regulations to apply to them or to Purchaser with respect to the "ownership change" that will occur pursuant to the Plan.

that the debtor corporation is not required to reduce its NOLs by interest deductions in the manner described above, and the debtor may undergo a change of ownership within two years without triggering the elimination of its Pre-Change Losses.

The Debtors do not currently know whether Purchaser will be eligible for the 382(l)(5) Exception, and regardless of whether the 382(l)(5) Exception is available, Purchaser may decide to affirmatively elect out of the 382(l)(5) Exception so that the 382(l)(6) Exception instead applies. Whether the Purchaser take advantage of the 382(l)(6) Exception or the 382(l)(5) Exception, though, the Purchaser's use of Pre-Change Losses after the Effective Date may be adversely affected if a subsequent "ownership change" within the meaning of section 382 of the IRC were to occur after the Effective Date.

B. *Certain U.S. Federal Income Tax Consequences to U.S. Holders of Class 3 Term Loan Claims, Class 4 General Unsecured Claims, Class 7 Section 510(b) Claims, and Class 8 Akorn Interests.*

The following discussion assumes that the Debtors will undertake the Restructuring Transactions currently contemplated by the Plan. Holders of Claims are urged to consult their tax advisors regarding the tax consequences of the Restructuring Transactions.

1. *General Considerations.*

In general, the U.S. federal income tax treatment of Holders of Claims will depend, in part, on whether the transactions undertaken pursuant to the Plan constitute, for U.S. federal income tax purposes, (a) a Taxable Transaction or (b) a Tax-Free Reorganization. In a Tax-Free Reorganization, the U.S. federal income tax consequences to certain Holders of such Claims will further depend on whether the Claims surrendered constitute "securities" for U.S. federal income tax purposes.

Neither the IRC nor the Treasury Regulations define the term "security." Whether a debt instrument constitutes a "security" for U.S. federal income tax purposes is determined based on all the relevant facts and circumstances, but most authorities have held that the length of the term of a debt instrument is an important factor in determining whether such instrument is a security for U.S. federal income tax purposes. These authorities have indicated that a term of less than five years is evidence that the instrument is not a security, whereas a term of ten years or more is evidence that it is a security. There are numerous other factors that could be taken into account in determining whether a debt instrument is a security, including the security for payment, the creditworthiness of the obligor, the subordination or lack thereof to other creditors, the right to vote or otherwise participate in the management of the obligor, convertibility of the instrument into an equity interest of the obligor, whether payments of interest are fixed, variable, or contingent, and whether such payments are made on a current basis or accrued. The discussion below assumes that Class 3 Term Loan Claims constitute "securities" for U.S. federal income tax purposes; in the event that determination is not sustained, the tax consequences described below would be significantly different.

2. *Consequences to Holders of Class 3 Term Loan Claims.*

The form of recovery to be received by Holders of Class 3 Term Loan Claims will depend on the form of the Sale Transaction.

(a) *Taxable Transaction.*

If the Sale Transaction is structured as a Taxable Transaction, then, regardless of whether the Taxable Transaction is a Taxable Credit Bid Transaction or a Third-Party Sale, the receipt of consideration in satisfaction of Class 3 Term Loan Claims pursuant to the Plan will constitute a taxable exchange under section 1001 of the IRC. Accordingly, other than with respect to any amounts received that are attributable to accrued but untaxed interest (or OID), and subject to the rules relating to market discount, each U.S. Holder of such Claims would recognize gain or loss equal to the difference between (1) the amount of cash and the fair market value (or issue price, in the case of any debt received) of the non-cash consideration received pursuant to the Plan, and (2) such U.S. Holder's adjusted basis, if any, in such Claims. A U.S. holder's tax basis in the non-cash consideration received should equal the fair market value (or issue price, in the case of any debt received) of such consideration as of the Effective Date. A U.S. Holder's holding period for the non-cash consideration received should begin on the day following the Effective Date.

(b) *Tax-Free Reorganization.*

If the Sale Transaction is structured as a Tax-Free Reorganization, assuming the Class 3 Term Loan Claims constitute "securities" for U.S. federal income tax purposes, the receipt of consideration pursuant to the Plan should be at least partially tax-free under sections 354 and 356 of the IRC.

Other than with respect to any amounts received that are attributable to accrued but untaxed interest (or original issue discount ("OID")), and subject to the rules relating to market discount, a U.S. Holder of such a Claim should recognize gain (but not loss), to the extent of the lesser of (a) the amount of gain realized from the exchange, which should be equal to (i) the sum of (A) any Cash received and (B) the fair market value (or issue price, in the case of debt instruments) of any non-Cash consideration, minus (ii) the U.S. Holder's adjusted basis, if any, in the Claim; and (b) the sum of (i) any Cash received and (ii) the fair market value (or issue price, in the case of debt instruments) of any non-Cash consideration that constitutes "other property" that is not permitted to be received under sections 354 and 356 of the IRC without recognition of gain.

With respect to non-Cash consideration that is treated as a "stock or security" of Purchaser, such U.S. Holder should obtain a tax basis in such property, other than any such amounts treated as received in satisfaction of accrued but untaxed interest (or OID), and subject to the rules relating to market discount, equal to (a) the tax basis of the Claim surrendered, less (b) the Cash and "other property" received plus (c) gain recognized (if any). The holding period for such non-Cash consideration should include the holding period for the exchanged Claims.

With respect to non-Cash consideration that is not treated as a "stock or security" of Purchaser, U.S. Holders should obtain a tax basis in such property, other than any amounts treated as received in satisfaction of accrued but untaxed interest (or OID), and subject to the rules relating to market discount, equal to the property's fair market value (or issue price, in the case of debt instruments) as of the date such property is distributed to the U.S. Holder. The holding period for any such property should begin on the day following the receipt of such property.

3. *Consequences to Holders of Class 4 General Unsecured Claims.*

Pursuant to the Plan, in exchange for full and final satisfaction, compromise, settlement, **and** release ~~and discharge~~ of the Class 4 General Unsecured Claims, each Holder of an Allowed General Unsecured Claim, each Holder thereof will receive its pro rata share of cash (if any is available as Distributable Proceeds).

The receipt of consideration in satisfaction of such Claims pursuant to the Plan will constitute a taxable exchange under section 1001 of the IRC. Accordingly, other than with respect to any amounts received that are attributable to accrued but untaxed interest (or OID), and subject to the rules relating to market discount, each U.S. Holder of such Claims would recognize gain or loss equal to the difference between (1) the amount of cash consideration received pursuant to the Plan, and (2) such U.S. Holder's adjusted basis, if any, in such Claims.

4. *U.S. Federal Income Tax Consequences to U.S. Holders of Class 8 Akorn Interests and Class 7 Section 510(b) Claims.*

Pursuant to the Plan, holders of Akorn Interests may receive proceeds from the Sale Transaction in final satisfaction of such Akorn Interests. An Akorn Interest holder should recognize gain or loss equal to (a) the sum of the cash received minus (b) the holder's tax basis in the Akorn Interest.

While not free from doubt, under "relation back" principles, recoveries with respect to Class 7 Section 510(b) Claims are likely to be treated as if a Holder of such Claim received additional consideration in respect of such Holder's Akorn Interests (even if such Holder does not receive any recovery under the Plan in respect of its Akorn Interests and even if such Holder no longer owns any Akorn Interests. Holders of Class 7 Section 510(b) Claims should consult their own advisors regarding the treatment of any recoveries in respect of such Claims.

5. *Character of Gain or Loss.*

The character of any gain or loss recognized by a U.S. Holder as capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the Holder, the nature of the Claim or Interest in such Holder's hands, whether the Claim or Interest constitutes a capital asset in the hands of the Holder, whether a Claim was purchased at a discount, and whether and to what extent the Holder has previously claimed a bad debt deduction with respect to its Claim. If recognized gain is capital gain, it generally would be long term capital gain if the Holder held its Claim or Interest for more than one year at the time of the exchange. The deductibility of capital losses is subject to certain limitations as discussed below.

6. *Accrued Interest (and OID).*

To the extent that any amount received by a U.S. Holder of a surrendered Claim under the Plan is attributable to accrued but untaxed interest (or OID) on the debt instruments constituting the surrendered Claim, such amount should be taxable to the U.S. Holder as ordinary interest income (to the extent not already included in income by the U.S. Holder). Conversely, a U.S. Holder of a surrendered Claim may be able to recognize a deductible loss to the extent that any accrued interest on the debt instruments constituting such claim was previously included in the Holder's gross income but was not paid in full by the Debtors. Such loss may be ordinary, but the tax law is unclear on this point. The tax basis of any non-Cash consideration treated as received in satisfaction of accrued but untaxed interest (or OID) should equal the amount of such accrued but untaxed interest (or OID). The holding period for such non-cash consideration should begin on the day following the receipt of such property.

The extent to which the consideration received by a U.S. Holder of a surrendered Claim will be attributable to accrued interest on the debt constituting the surrendered Claim is unclear. Certain legislative history and case law indicates that an allocation of consideration as between principal and interest provided in a chapter 11 plan of reorganization is binding for U.S. federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but untaxed interest. The Plan provides that amounts paid to Holders of Claims will be allocated first to unpaid principal and then to unpaid interest. The IRS could take the position that the consideration received by the Holder should be allocated in some way other than as provided in the Plan. Holders of Claims are urged to consult their tax advisor regarding the allocation of consideration and the deductibility of accrued but unpaid interest for U.S. federal income tax purposes.

7. *Market Discount.*

Under the "market discount" provisions of sections 1276 through 1278 of the IRC, some or all of any gain realized by a U.S. Holder exchanging the debt instruments constituting its Allowed Claim may be treated as ordinary income (instead of capital gain), to the extent of the amount of "market discount" on the debt constituting the surrendered Claim.

Subject to potential arguments that the market discount rules should not apply to market discount in respect of distressed debt that does not represent the economic equivalent of additional interest on OID, which the Debtors express no view on, any gain recognized by a U.S. Holder on the taxable disposition (determined as described above) of a Claim that was acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while such debt instruments were considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued). To the extent that the surrendered Claims that were acquired with market discount are exchanged in a tax-free or other reorganization transaction for other property (as may occur here), any market discount that accrued on such debt instruments but was not recognized by the U.S. Holder may be required to be carried over to the property received therefor and any gain recognized on the subsequent sale, exchange, redemption, or other disposition of such property may be treated as ordinary income to the extent of the accrued but unrecognized market discount with respect to the exchanged debt instrument.

8. *Consequences of Holding Equity in the Purchaser.*

Any distributions made on account of the equity in the Purchaser will constitute dividends for U.S. federal income tax purposes to the extent of the current or accumulated earnings and profits of the Purchaser as determined under U.S. federal income tax principles. Certain qualified dividends received by a non-corporate taxpayer are taxed at preferential rates. To the extent that a Holder receives distributions that would otherwise constitute dividends for U.S. federal income tax purposes but that exceed such current and accumulated earnings and profits, such distributions will be treated first as a non-taxable return of capital reducing the Holder's basis in its shares. Any such distributions in excess of the Holder's basis in its shares (determined on a share-by-share basis) generally will be treated as capital gain.

Dividends paid to U.S. Holders that are corporations generally will be eligible for the dividends-received deduction so long as there are sufficient earnings and profits. However, the dividends-received deduction is only available if certain holding period requirements are satisfied. The length of time that a shareholder has held its stock is reduced for any period during which the shareholder's risk of loss with respect to the stock is diminished by reason of the existence of certain options, contracts to sell, short sales, or similar transactions. In addition, to the extent that a corporation incurs indebtedness that is directly attributable to an investment in the stock on which the dividend is paid, all or a portion of the dividends received deduction may be disallowed.

9. *Sale, Redemption, or Repurchase of Non-Cash Consideration.*

Unless a non-recognition provision applies, and subject to the market discount rules discussed above, Holders generally will recognize capital gain or loss upon the sale, redemption, or other taxable disposition of non-Cash consideration received pursuant to the Plan. Such capital gain will be long-term capital gain if at the time of the sale, exchange, retirement, or other taxable disposition, the Holder held the applicable non-Cash consideration for more than one year. Long-term capital gains of a non-corporate taxpayer generally are taxed at preferential rates. Under the recapture rules of section 108(e)(7) of the Code, a U.S. Holder may be required to treat gain recognized on such dispositions of the equity in the Purchaser of Interests as ordinary income if such U.S. Holder took a bad debt deduction with respect to its Claim or recognized an ordinary loss on the exchange of its Claim for equity in the Purchaser or Interests.

For a description of certain limitations on the deductibility of capital losses, see the section entitled "Limitation on Use of Capital Losses" below.

10. *Limitations on Use of Capital Losses.*

A U.S. Holder of a Claim or Interest who recognizes capital losses as a result of the distributions under the Plan will be subject to limits on the use of such capital losses. For a non-corporate U.S. Holder, capital losses may be used to offset any capital gains (without regard to holding periods), and also ordinary income to the extent of the lesser of (1) $3,000 annually ($1,500 for married individuals filing separate returns) or (2) the excess of the capital losses over the capital gains. A non-corporate U.S. Holder may carry over unused capital losses and apply them against future capital gains and a portion of their ordinary income for an unlimited number

of years. For corporate Holders, capital losses may only be used to offset capital gains. A corporate U.S. Holder that has more capital losses than may be used in a tax year may carry back unused capital losses to the three years preceding the capital loss year or may carry over unused capital losses for the five years following the capital loss year.

11. *Medicare Tax.*

Certain U.S. Holders that are individuals, estates, or trusts are required to pay an additional 3.8 percent tax on, among other things, dividends and gains from the sale or other disposition of capital assets. U.S. holders that are individuals, estates, or trusts should consult their tax advisors regarding the effect, if any, of this tax provision on their ownership and disposition of stock.

C. *Certain U.S. Federal Income Tax Consequences to Non-U.S. Holders of Claims and Interests.*

The following discussion includes only certain U.S. federal income tax consequences to Non-U.S. Holders. The discussion does not include any non-U.S. tax considerations. The rules governing the U.S. federal income tax consequences to Non-U.S. Holders are complex. Each Non-U.S. Holder should consult its own tax advisor regarding the U.S. federal, state, and local and the foreign tax consequences to such Non-U.S. Holder and the ownership and disposition of non-Cash consideration.

1. *Gain Recognition.*

Whether a Non-U.S. Holder realizes gain or loss on the exchange and the amount of such gain or loss is determined in the same manner as set forth above in connection with U.S. Holders.

Any gain realized by a Non-U.S. Holder on the exchange of Claims or Interests[~~16~~32] generally will not be subject to U.S. federal income taxation unless (a) the Non-U.S. Holder is an individual who is present in the United States for 183 days or more during the taxable year in which the Sale Transaction occurs and certain other conditions are met or (b) such gain is effectively connected with the conduct by such Non-U.S. Holder of a trade or business in the United States (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such Non-U.S. Holder in the United States).

2. *If the first exception applies, to the extent that any gain is taxable, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such Non-U.S. Holder's capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of the exchange. If the second exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to any gain realized on the exchange if such gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business in the United States in the same manner as a U.S.*

[~~16~~32] Non-U.S. Holders of Interests and Section 510(b) Claims could also be subject to tax in the event the Interests constitute an interest other than solely as a creditor and Akorn, Inc. is a USRPHC (as defined below). The Debtors do not believe that Akorn, Inc. is or has been a USRPHC.

Holder. In order to claim an exemption from withholding tax, such Non-U.S. Holder will be required to provide properly executed original copies of IRS Form W-8ECI (or such successor form as the IRS designates). In addition, if such a Non-U.S. Holder is a corporation, it may be subject to a branch profits tax equal to 30 percent (or such lower rate provided by an applicable treaty) of its effectively connected earnings and profits for the taxable year, subject to certain adjustments. Interest Payments; Accrued but Untaxed Interest.

Payments to a Non-U.S. Holder that are attributable to either (a) interest on (or OID accruals with respect to) debt received under the Plan, or (b) accrued but untaxed interest on their Allowed Claim generally will not be subject to U.S. federal income or withholding tax, *provided* that the withholding agent has received or receives, prior to payment, appropriate documentation (generally, IRS Form W-8BEN or W-8BEN-E) establishing that the Non-U.S. Holder is not a U.S. person, unless:

- the Non-U.S. Holder actually or constructively owns 10 percent or more of the total combined voting power of all classes of (a) the Debtor obligor on a Claim (in the case of consideration received in respect of accrued but unpaid interest), or (b) Purchaser (in the case of debt received under the Plan);

- the Non-U.S. Holder is a "controlled foreign corporation" that is a "related person" with respect to the Debtors (each, within the meaning of the IRC);

- the Non-U.S. Holder is a bank receiving interested described in section 881(c)(3)(A) of the IRC; or

- such interest (or OID) is effectively connected with the conduct by the Non-U.S. Holder of a trade or business within the United States (in which case, provided the Non-U.S. Holder provides a properly executed IRS Form W-8ECI (or successor form) to the withholding agent), the Non-U.S. Holder (i) generally will not be subject to withholding tax, but (ii) will be subject to U.S. federal income tax in the same manner as a U.S. Holder (unless an applicable income tax treaty provides otherwise), and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such Non-U.S. Holder's effectively connected earnings and profits that are attributable to the accrued but untaxed interest at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty).

A Non-U.S. Holder that does not qualify for exemption from withholding tax with respect to interest that is not effectively connected income generally will be subject to withholding of U.S. federal income tax at a 30 percent rate (or at a reduced rate or exemption from tax under an applicable income tax treaty) on (a) interest on debt received under the Plan and (b) payments that are attributable to accrued but untaxed interest on such Non-U.S. Holder's Allowed Claim. For purposes of providing a properly executed IRS Form W-8BEN or W-8BEN-E, special procedures are provided under applicable Treasury Regulations for payments through qualified foreign intermediaries or certain financial institutions that hold customers' securities in the ordinary course of their trade or business.

3. *Sale, Redemption, or Repurchase of Non-Cash Consideration.*

A Non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to any gain realized on the sale or other disposition (including a cash redemption) of its *pro rata* share of the non-Cash consideration received under the Plan unless:

- such Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition or who is subject to special rules applicable to former citizens and residents of the United States;

- such gain is effectively connected with such Non-U.S. Holder's conduct of a U.S. trade or business (and if an income tax treaty applies, such gain is attributable to a permanent establishment maintained by such Non-U.S. Holder in the United States); or

- in the case of the sale of equity in the Purchaser, Purchaser is or has been during a specified testing period a "U.S. real property holding corporation" for U.S. federal income tax purposes.

If the first exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty) on the amount by which such Non-U.S. Holder's capital gains allocable to U.S. sources exceed capital losses allocable to U.S. sources during the taxable year of disposition. If the second exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax with respect to such gain in the same manner as a U.S. Holder, and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to earnings and profits effectively connected with a U.S. trade or business that are attributable to such gains at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty).

If the third exception applies, the Non-U.S. Holder generally will be subject to U.S. federal income tax on any gain recognized on the disposition of all or a portion of its equity in the Purchaser under the Foreign Investment in Real Property Tax Act ("FIRPTA"). Taxable gain from the disposition of an interest in a USRPHC (generally equal to the difference between the amount realized and such Non-U.S. Holder's adjusted tax basis in such interest) will constitute effectively connected income. Further, the buyer of the equity in the Purchaser will be required to withhold a tax equal to 15 percent of the amount realized on the sale. The amount of any such withholding would be allowed as a credit against the Non-U.S. Holder's federal income tax liability and may entitle the Non-U.S. Holder to a refund, *provided* that the Non-U.S. Holder properly and timely files a tax return with the IRS. In general, the FIRPTA provisions will not apply if (a) the Non-U.S. Holder does not directly or indirectly own more than 5 percent of the value of such interest during a specified testing period and (b) such interest is regularly traded on an established securities market. In the event equity in the Purchaser is regularly traded on an established securities market, the withholding obligation described above would not apply, even if a Non-U.S. Holder is subject to the substantive FIRPTA tax.

In general, a corporation is a USRPHC as to a Non-U.S. Holder if the fair market value of the corporation's U.S. real property interests (as defined in the IRC and applicable Treasury Regulations) equals or exceeds 50 percent of the aggregate fair market value of its worldwide real property interests and its other assets used or held for use in a trade or business (applying certain look-through rules to evaluate the assets of subsidiaries) at any time within the shorter of the 5-year period ending on the effective time of the applicable disposition or the period of time the Non-U.S. Holder held such interest. The Debtors do not anticipate that Purchaser will be a USRPHC for U.S. federal income tax purposes on the Effective Date. However, the Debtors cannot provide a guarantee of that result, nor can the Debtors guarantee that Purchaser will not become a USRPHC in the future.

4. *Consequences of Holding Equity in the Purchaser.*

Any distributions made with respect to equity in the Purchaser will constitute dividends for U.S. federal income tax purposes to the extent of the issuer's current or accumulated earnings and profits as determined under U.S. federal income tax principles. To the extent that a Non-U.S. Holder receives distributions that would otherwise constitute dividends for U.S. federal income tax purposes but that exceed such current and accumulated earnings and profits, such distributions will be treated first as a non-taxable return of capital reducing the Non-U.S. Holder's basis in its shares. Any such distributions in excess of a Non-U.S. Holder's basis in its shares (determined on a share-by-share basis) generally will be treated as capital gain from a sale or exchange (and the respective excess distributions as proceeds from a sale or exchange).

Except as described below, dividends paid with respect to equity in the Purchaser held by a Non-U.S. Holder that are not effectively connected with a Non-U.S. Holder's conduct of a U.S. trade or business (or if an income tax treaty applies, are not attributable to a permanent establishment maintained by such non-U.S. Holder in the United States) will be subject to withholding at a rate of 30 percent (or lower treaty rate or exemption from tax, if applicable). A Non-U.S. Holder generally will be required to satisfy certain IRS certification requirements in order to claim a reduction of or exemption from withholding under a tax treaty by filing IRS Form W-8BEN or W-8BEN-E (or a successor form) upon which the Non-U.S. Holder certifies, under penalties of perjury, its status as a non-U.S. person and its entitlement to the lower treaty rate or exemption from tax with respect to such payments. Dividends paid with respect to equity in the Purchaser held by a Non-U.S. Holder that are effectively connected with a Non-U.S. Holder's conduct of a U.S. trade or business (and if an income tax treaty applies, are attributable to a permanent establishment maintained by such Non-U.S. Holder in the United States) generally will be subject to U.S. federal income tax in the same manner as a U.S. Holder, and a Non-U.S. Holder that is a corporation for U.S. federal income tax purposes may also be subject to a branch profits tax with respect to such Non-U.S. Holder's effectively connected earnings and profits that are attributable to the dividends at a rate of 30 percent (or at a reduced rate or exemption from tax under an applicable income tax treaty).

In the event Purchaser were, contrary to the Debtors' expectations, a USRPHC, distributions and dividends would both be subject to additional rules under FIRPTA.

5. *FATCA.*

Under legislation commonly referred to as the Foreign Account Tax Compliance Act ("FATCA"), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding at a rate of 30 percent on the receipt of "withholdable payments." For this purpose, "withholdable payments" are generally U.S. source payments of fixed or determinable, annual or periodical income (including dividends, if any, on shares of equity in the Purchaser), and also include gross proceeds from the sale of any property of a type which can produce U.S. source interest or dividends (which would include equity in the Purchaser and the Claims). FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal nonresident withholding.

Withholding with respect to the gross proceeds of a disposition of any stock, debt instrument, or other property that can produce U.S.-source dividends or interest has been eliminated under proposed Treasury Regulations, which can be relied on until final regulations become effective.

D. *Information Reporting and Withholding.*

The Debtors, Purchaser, and applicable withholding agents will withhold all amounts required by law to be withheld from payments of interest and dividends, whether in connection with distributions under the Plan or in connection with payments made on account of consideration received pursuant to the Plan, and will comply with all applicable information reporting requirements. The IRS may make the information returns reporting such interest and dividends and withholding available to the tax authorities in the country in which a Non-U.S. Holder is resident. In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim may be subject to backup withholding (currently at a rate of 24 percent) with respect to distributions or payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) timely provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding (generally in the form of a properly executed IRS Form W-9 for a U.S. Holder, and, for a Non-U.S. Holder, in the form of a properly executed applicable IRS Form W-8 (or otherwise establishes such Non-U.S. Holder's eligibility for an exemption)). Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; *provided* that the required information is timely provided to the IRS.

In addition, from an information reporting perspective, Treasury Regulations generally require disclosure by a taxpayer on its U.S. federal income tax return of certain types of transactions in which the taxpayer participated, including, among other types of transactions, certain transactions that result in the taxpayer's claiming a loss in excess of specified thresholds. Holders of Claims subject to the Plan are urged to consult their tax advisors regarding these regulations and whether the transactions contemplated by the Plan would be subject to these regulations and require disclosure on the Holders' tax returns.

THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR NON-U.S. TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

Article X.
RECOMMENDATIONS OF THE DEBTORS

In the opinion of the Debtors, the Plan is extremely preferable to any potential alternatives described in this Disclosure Statement because the Plan provides for a greater distribution to the Holders of Allowed Claims than would otherwise result in a liquidation under chapter 7 of the Bankruptcy Code. In addition, any alternative other than Confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to Holders of Allowed Claims than proposed under the Plan. **Accordingly, the Debtors recommend that Holders of Claims and Interests entitled to vote on the Plan support Confirmation of the Plan and vote to accept the Plan.**

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Respectfully submitted,

Dated: ~~May 26,~~**June 30,** 2020

Akorn, Inc.
on behalf of itself and all other Debtors

/s/ Joseph Bonaccorsi

Name: Joseph Bonaccorsi
Title: Executive Vice President and General Counsel
Company: Akorn, Inc.

EXHIBIT A

Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates

[*Plan filed separately on the docket.*]

EXHIBIT B

Wind-Down Budget

EXHIBIT C

Restructuring Support Agreement

Document comparison by Workshare Compare on Tuesday, June 30, 2020 4:22:09 PM

Input:	
Document 1 ID	interwovenSite://DMS.KIRKLAND.COM/LEGAL/66669356/48
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Document 2 ID	interwovenSite://DMS.KIRKLAND.COM/LEGAL/66669356/70
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Legend:	
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Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	396
Deletions	212
Moved from	1
Moved to	1
Style change	0
Format changed	0

Total changes	610