

Fill in this information to identify the case:

Debtor Akorn, Inc.

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 20-11177

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>ASD Specialty Healthcare, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	<u>ASD Specialty Healthcare, LLC</u> <u>227 Washington Street</u> <u>Conshohocken, PA 19428</u>	
	Contact phone _____	Contact phone _____
	Contact email <u>See summary page</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>225</u> Filed on <u>7/29/2020</u> MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 5,324,117. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Executory Contract

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: See attached.



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/03/2020
MM / DD / YYYY

/s/Melissa W Rand
Signature

Print the name of the person who is completing and signing this claim:

Name Melissa W Rand
First name Middle name Last name

Title Senior Counsel

Company AmerisourceBergen Corporation
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 725-7539 | International (424) 236-7247

Debtor: 20-11177 - Akorn, Inc.		
District: District of Delaware		
Creditor: ASD Specialty Healthcare, LLC 227 Washington Street Conshohocken, PA, 19428 Phone: Phone 2: Fax: Email: melissa.rand@amerisourcebergen.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party:	
Other Names Used with Debtor:	Amends Claim: Yes - 225, 7/29/2020 Acquired Claim: No	
Basis of Claim: Executory Contract	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 5,324,117	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: Yes, See attached.	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: Melissa W Rand on 03-Aug-2020 3:06:35 p.m. Eastern Time Title: Senior Counsel Company: AmerisourceBergen Corporation		

Attachment to Proof of Claim

Debtor: Akorn, Inc. (Case No. 20-11177)

ASD Specialty Healthcare, LLC ("ASD") hereby submits this Proof of Claim in the above-captioned case. ASD's claim against the Debtor is as follows and is based upon the following facts:

Basis for and Amount of Claim

1. On May 20, 2020 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

2. ASD is a party to certain distribution agreements with the Debtor and its affiliates (collectively, the "DSAs") whereby ASD purchases goods from the Debtor ("Goods") and resells the Goods to retailers.

3. As of the Petition Date, ASD believes that its claim against the Debtor totals approximately \$5,324,117 comprised of the following:

A/P Balance	\$ 3,393,202
Morgue Inventory to be returned to Debtor:	\$ 1,644
Anticipated inventory return liability:	\$ 1,929,271
Total:	\$ 5,324,117

ASD reserves all rights to claim different amounts owed now or in the future. The actual figure that the Debtor owes ASD may be different than the amount set forth above, as the returns of inventory purchased prepetition may be higher or lower than projected.

4. Pursuant to the DSAs, ASD is entitled to certain distribution fees, prompt pay discounts, chargebacks, rejected inventory claims, inventory shortage claims, inventory pricing discrepancy claims, and credits for returned product. Generally, these credits are determined after the Goods are received by ASD. Some of these, such as credits for returned products, could be determined a substantial time after the Goods are received by ASD.

5. This claim is secured by way of set-off against funds owed to the Debtor by ASD. In addition to being secured by set-off, ASD asserts a defense of recoupment against any claim of the Debtor, and/or any transferee of Debtor, against ASD arising from or related to the DSA. To the extent any portion of the claim is not secured, ASD asserts an unsecured claim for the remaining balance.

6. The documents supporting this claim include, among other things, the DSA, various purchase orders and invoices. These documents are voluminous and will be provided upon written request after appropriate confidentiality measures are implemented.

Distributions

7. Any distribution on account of this Proof of Claim should be directed as follows:

Melissa W. Rand, Esquire
Senior Counsel
AmerisourceBergen Corporation
227 Washington Street
Conshohocken, PA 19428

Reservation of Rights

8. In executing and filing this Proof of Claim, ASD is not waiving in any manner or under any circumstances any security interest it now has or may be determined to have at any time, nor is it waiving any claim, action, or cause of action it may have against the Debtor or any other entity or person, including the right to assert amounts different from the amounts set forth herein, nor is it waiving any defense, offset, recoupment, counterclaim or similar right or remedy it may now have or at any time has against the Debtor or any other entity or person or with respect to any legal or equitable proceeding now existing or hereafter commenced. ASD reserves the right to amend or supplement this Proof of Claim in any respect including, but not limited to, the assertion, by proof of claim or other application to this Bankruptcy Court, for any amount that becomes due under any of the various agreements, pursuant to court order or otherwise, and continuing costs, fees and expenses (including legal fees and disbursements) arising in relation to the claims asserted herein or any of the agreements and the assertion of an administrative expense priority and adequate protection for any such claim or claims.