

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

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In re:	)	
	)	Chapter 11
	)	
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	<b>Re: Docket No. 434</b>

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**NOTICE OF FILING OF FIRST AMENDED PLAN SUPPLEMENT**

**PLEASE TAKE NOTICE THAT** on August 7, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Notice of Filing of Plan Supplement* [Docket No. 434] (the “Initial Plan Supplement”), with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

**PLEASE TAKE FURTHER NOTICE THAT** the Debtors hereby file this amendment to the Initial Plan Supplement (the “First Amended Plan Supplement” and together with the Initial Plan Supplement, the “Plan Supplement”) in support of the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* [Docket No. 101] (as may be modified, amended, or supplemented from time to time, the “Plan”)<sup>2</sup> filed in these chapter 11 cases on May 26, 2020. The documents contained in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. The Plan Supplement documents have not yet been approved by the Bankruptcy Court. If the Plan is approved, the documents in the Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

**PLEASE TAKE FURTHER NOTICE THAT** the First Amended Plan Supplement includes the following documents, as may be amended, modified, or supplemented from time to time by the Debtors in accordance with the Plan, as set forth below:

- **Exhibit A** - Schedule of Retained Causes of Action
  - **Exhibit A-1** - Schedule of Additional Retained Causes of Action
- **Exhibit C** - Description of Transaction Steps

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Plan.



**PLEASE TAKE FURTHER NOTICE THAT** the hearing at which the Court will consider confirmation of the Plan (the “Confirmation Hearing”) will commence **on September 1, 2020, at 10:00 a.m., prevailing Eastern Time** before the Honorable Karen B. Owens, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Sixth Floor, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE THAT** the deadline for filing objections to the Plan is **August 25, 2020, at 12:00 p.m., prevailing Eastern Time** (the “Confirmation Objection Deadline”). Any objection to the Plan *must*: (a) be in writing, (b) conform to the Bankruptcy Rules, the Local Rules, and any orders of the Court, (c) 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 (d) be filed with the Court (contemporaneously with a proof of service).

**PLEASE TAKE FURTHER NOTICE THAT** if you would like to obtain a copy of the Disclosure Statement, the Plan, the Plan Supplement, or related documents, you should contact Kurtzman Carson Consultants LLC, the notice and claims agent retained by the Debtors in the chapter 11 cases (the “Notice and Claims Agent”), by: (a) calling the Notice and Claims Agent at (877) 725-7539, (U.S. and Canada) or (424) 236-7247, (International); (b) visiting the Debtors’ restructuring website at: <https://www.kccllc.net/akorn>; (c) writing to the Notice and Claims Agent at Akorn Ballot Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245; and/or (d) emailing [AkornInfo@kccllc.com](mailto:AkornInfo@kccllc.com) and requesting paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors’ expense). You may also obtain copies of any pleadings filed in the chapter 11 cases for a fee via PACER at: <https://ecf.deb.uscourts.gov>.

**ARTICLE VIII OF THE PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS, AND ARTICLE VIII.F CONTAINS A THIRD-PARTY RELEASE. THUS, YOU ARE ADVISED TO REVIEW AND CONSIDER THE PLAN CAREFULLY BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER.**

**THIS NOTICE IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY. IF YOU HAVE QUESTIONS WITH RESPECT TO YOUR RIGHTS UNDER THE PLAN OR ABOUT ANYTHING STATED HEREIN OR IF YOU WOULD LIKE TO OBTAIN ADDITIONAL INFORMATION, CONTACT THE NOTICE AND CLAIMS AGENT.**

*[Remainder of page intentionally left blank]*

Wilmington, Delaware  
August 21, 2020

*/s/ Paul N. Heath*

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Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
AKORN, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 20-11177 (KBO)
	)	
Debtors.	)	(Jointly Administered)
	)	

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**FIRST AMENDED PLAN SUPPLEMENT FOR  
JOINT CHAPTER 11 PLAN OF AKORN, INC. AND ITS DEBTOR AFFILIATES**

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**Table of Contents**

- Exhibit A     Schedule of Retained Causes of Action**
- Exhibit A-1   Schedule of Additional Retained Causes of Action**
- Exhibit C     Description of Transaction Steps**

Certain documents, or portions thereof, contained in this Plan Supplement<sup>2</sup> remain subject to continuing negotiations among the Debtors, the Required Consenting Term Loan Lenders, and other interested parties with respect thereto. The Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Plan Effective Date, or any such other date in accordance with the Plan, the Confirmation Order, or any other order of the Bankruptcy Court. Each of the documents contained in the Plan Supplement or its amendments are subject to certain consent and approval rights to the extent provided in the Plan or Restructuring Support Agreement.

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

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meanings as set forth in the *Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates* (as may be modified, amended, or supplemented from time to time, the “Plan”).

**Exhibit A**

**Schedule of Retained Causes of Action**

**Exhibit A**

**Schedule of Retained Causes of Action**

This **Exhibit A** contains the Schedule of Retained Causes of Action. Certain documents, or portions thereof, contained in this **Exhibit A** and the Plan Supplement remain subject to continuing negotiations among the Debtors, the Required Consenting Term Loan Lenders, and other interested parties with respect thereto. All parties reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for in the Plan or by order of the Bankruptcy Court. Each of the documents contained in the Plan Supplement or its amendments are subject to certain consent and approval rights to the extent provided in the Plan, the Restructuring Support Agreement, the Sale Transaction Documentation, or the DIP Loan Documents.

**Exhibit A-1**

**Schedule of Additional Retained Causes of Action**

**Exhibit A-1****Causes of Action Related to Litigation**

<b>Debtor</b>	<b>Counter Party Names</b>	<b>Counter Party / Notice Party Addresses</b>	<b>Debtor Position</b>	<b>Caption of Suit</b>	<b>Type of Claim or Nature of Proceeding</b>	<b>Case Number</b>	<b>Status</b>	<b>Nature</b>
Akorn, Inc.	Thomas Duffy	<p>ATTN: Congdon, Flaherty, O'Callghan, Reid, Donlon, Travis &amp; Fishlinger, Attorneys for Defendant/Third Party Plaintiff - Tony Construction, Inc., 333 Earle Ovington Boulevard, Suite 50, Uniondale, New York 11553-3625</p> <p>ATTN: Block Otoole &amp; Murphey, LLP, Attorneys for Plaintiff, One Penn Plaza - Suite 5315, New York, NY 10119</p> <p>ATTN: Kenny Shelton Liptak Nowalk, LLP, Attorneys for Defendant - Four Seasons Roofing, Inc. 50 Main Street - 10th Floor, White Plains, NY 10606</p> <p>ATTN: Goldberg Segalla, LLP, Attorneys for Defendant - Westco F.F. Corp., 200 Garden City Plaza - Suite</p>	Defendant	Thomas Duffy v. Westco F.G. Corp., Four Seasons Roofing, Inc., Tony Construction, Inc.   Tony Construction Inc., v. Akorn, Inc.	Personal Injury	602708/2019	Active	Claims, defenses, crossclaims and counter-claims related to litigation and possible litigation.



		520, Garden City, NY 11530						
Akorn, Inc.	William Crue	ATTN: John J. Rachinsky, Esq., Kiczeek & Rachinsky, LLC, Bayonne, NJ 07002, Attorneys for Plaintiff  ATTN: Pro-Stat, 285 Pierce Street, Somerset, NJ 08873, Defendants	Defendant	William Crue v. 275 Pierce Stree, LLC, Pro-Stat, 275 285 Pierce Street Owners Association, Akorn, Inc., John and/or Jane Does 1-10 (names being fictitious and unknown), and ABC Companies 1-10 (names being fictitious and unknown)	Personal Injury	SOM-L-127-20	Active	Claims, defenses, crossclaims and counter-claims related to litigation and possible litigation.
Akorn, Inc.	Alcon/Novartis demand letter	ATTN: Amy Dolgin, Alcon, 6201 South Freeway, Fort Worth, Texas 76134-2099	Defendant	TBD	Misbranding	n/a	Active	Claims, defenses, crossclaims and counter-claims related to litigation and possible litigation.

**Causes of Action Related to Rejected Contracts**

#	Debtor	Counterparty	Address	Description of Contract	Nature
15	Akorn, Inc.	Alcami Corporation	165 Fieldcrest Ave, Edison, NJ 08837	Proposal AKOC2301 dated June 25, 2018	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
16	Akorn, Inc.	Alcami Corporation	165 Fieldcrest Ave, Edison, NJ 08837	Proposal AKOC2302 dated June 25, 2018	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
17	Akorn, Inc.	Alcami Corporation	165 Fieldcrest Ave, Edison, NJ 08837	Change Order No. AKO2302.1 to Proposal AKOC2302 dated June 25, 2018	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
18	Akorn, Inc.	Alcami Corporation	165 Fieldcrest Ave, Edison, NJ 08837	Proposal AKOC2101C dated July 12, 2016	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
19	Akorn, Inc.	EGF Conway, LLC	EQX Real Estate Partners, L.P., Asset Manager & General Counsel, EGF One Conway, L.L.C., 2 N. Riverside Plaza, Ste. 600, Chicago, IL 60606	Lease dated June 8, 2015	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
20	Akorn, Inc.	EGF Conway, LLC	EQX Real Estate Partners, L.P., Asset Manager & General Counsel, EGF One Conway, L.L.C., 2 N. Riverside Plaza, Ste. 600, Chicago, IL 60606	First Lease Amendment to Lease dated June 8, 2015	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
21	Akorn, Inc.	EGF Conway, LLC	EQX Real Estate Partners, L.P., Asset Manager & General Counsel, EGF One Conway, L.L.C., 2 N. Riverside Plaza, Ste. 600, Chicago, IL 60606	Parking License Agreement dated December 22, 2015	Claims, defenses, crossclaims and counter-claims related to rejected contracts.

22	Akorn, Inc.	EGF Conway, LLC   PH Conway, LLC   Wells Fargo	EQX Real Estate Partners, L.P., Asset Manager & General Counsel, EGF One Conway, L.L.C., 2 N. Riverside Plaza, Ste. 600, Chicago, IL 60606	Estoppel Agreement dated February 12, 2018	Claims, defenses, crossclaims and counter-claims related to rejected contracts.
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**Exhibit C**

**Description of Transaction Steps**

**Exhibit C**

**Description of Transaction Steps**

This **Exhibit C** contains the Description of Transaction Steps. Certain documents, or portions thereof, contained in this **Exhibit C** and the Plan Supplement remain subject to continuing negotiations among the Debtors, the Required Consenting Term Loan Lenders, and other interested parties with respect thereto. All parties reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for in the Plan or by order of the Bankruptcy Court. Each of the documents contained in the Plan Supplement or its amendments are subject to certain consent and approval rights to the extent provided in the Plan, the Restructuring Support Agreement, the Sale Transaction Documentation, or the DIP Loan Documents.

## **Restructuring Transactions Memorandum**

This Restructuring Transactions Memorandum sets forth a summary description of certain proposed transactions (the “Restructuring Transactions”) to be effected in connection with the consummation of the transactions contemplated by (a) the Asset Purchase Agreement, dated as of May 20, 2020, by and among Akorn Holdings Topco LLC, a Delaware limited liability company, Akorn, Inc., a Louisiana corporation (the “Company”), and the Subsidiaries of the Company that are indicated on the signature pages thereto as Sellers (as amended, supplemented, or modified from time to time in accordance with its terms, including, for the avoidance of doubt, in connection with implementing the Restructuring Transactions, the “Purchase Agreement”); and (b) the *Joint Chapter 11 Plan of Reorganization of Akorn, Inc. and its Debtor Affiliates, dated May 26, 2020* (as amended, supplemented, or modified from time to time in accordance with its terms, the “Plan”).

The Restructuring Transactions remain under discussion among the Debtors and other parties. Subject to the applicable consent rights contained in the Restructuring Support Agreement, the Purchase Agreement, and the Plan, the Debtors reserve all rights to modify, amend, supplement, and restate any part of this Restructuring Transactions Memorandum as necessary or appropriate. Moreover, the list of steps in this Restructuring Transactions Memorandum is not necessarily comprehensive.

To the extent there is any inconsistency between this Restructuring Transactions Memorandum and the Purchase Agreement or the Plan, the Purchase Agreement or the Plan, as the case may be, shall govern. Capitalized terms used but not defined herein shall have the definitions set forth in the Purchase Agreement or the Plan, as the case may be. In the event of any inconsistency between the Plan and the Purchase Agreement, the Plan shall govern.

The Sale Order and/or the Confirmation Order, as the case may be, shall be deemed to authorize all actions as may be necessary or appropriate to effect any transaction described in, contemplated by, or necessary to effectuate the Closing and the Plan. The Debtors currently anticipate that the Restructuring Transactions will occur pursuant to the following steps, which may be subject to further change.

### Restructuring Transactions Steps

#### **Prior to the Closing Date, the following transactions will occur:**

1. The domestic subsidiaries of the Company will convert from corporations to limited liability companies under the formless conversion statutes in each state of incorporation. These conversions will occur in a sequential, “bottom-to-top” order, such that each of the Company’s direct and indirect domestic subsidiaries will have converted to limited liability companies no later than the day prior to the Closing Date.

#### **Prior to the Closing Date, the following transactions will occur:**

2. The Company will form a new limited liability company that will elect to be taxed as a corporation as of the Effective Date or, if earlier, the date of its formation (“Holdco”).

3. Holdco will form a new limited liability company that will be taxed as a disregarded entity of Holdco (“Intermediate”).
4. Intermediate will form a new limited liability company that will be taxed as a disregarded entity of Holdco (“Purchaser”).

**On the Closing Date, the following transactions will occur:**

5. Purchaser will enter into an exit ABL facility (the “Exit ABL Facility”) and borrow cash from the lenders under the Exit ABL Facility.
6. The Sellers will transfer the Acquired Assets to Purchaser and Purchaser shall assume the Assumed Liabilities in accordance with the Purchase Agreement, and the Sellers shall retain the Excluded Assets and the Excluded Liabilities. In connection with such transfer, Purchaser shall transfer the proceeds of the Exit ABL Facility and the lender interests in the new term loans to be issued by the Purchaser (the “Take-Back Debt”) to the Sellers, and Holdco will, on behalf of Purchaser, transfer the Interests in Holdco to the Sellers.
7. The Sellers (other than the Company) will distribute the Interests in Holdco, the proceeds of the Exit ABL Facility, and the lender interests in the Take-Back Debt (collectively, the “Consideration”) to the Company in a sequential, “bottom-to-top” order.
8. The Company will distribute the Consideration (other than the proceeds of the Exit ABL Facility) to Holders of Term Loan Claims in satisfaction of their credit bid pursuant to the Purchase Agreement.
9. The proceeds of the Exit ABL Facility will be used to, among other things, repay the Debtors’ Debtor-in-Possession financing facility and fund other expenses of the Debtors consistent with the Wind-Down Budget

**On and after the Effective Date:**

10. Any distributions to Holders of Claims not made on the Closing Date pursuant to the Purchase Agreement shall be made by the Debtors pursuant to the Plan.

**As soon as reasonably practicable after the Effective Date, following the completion of all necessary wind-down activities (and expenditures associated with such wind-down activities):**

11. The Debtors will liquidate and dissolve.