

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

In re: Chapter 11
AKORN, INC.,¹ Case No.: 20-11177(KBO)
Debtors. (Jointly Administered)
_____/ **RE: D.I. 101**

**LIMITED OBJECTION OF LEADIANT BIOSCIENCES INC.
TO CONFIRMATION OF THE DEBTORS' JOINT CHAPTER 11 PLAN**

Leadiant Biosciences, Inc., f/k/a Sigma-Tau Pharmaceuticals, Inc. (“Leadiant”), hereby submits its Limited Objection (the “Objection”) to the confirmation of the Joint Chapter 11 Plan [D.E. 101] (the “Plan”) proposed by the above-captioned debtors (the “Debtors”) and in support thereof respectfully states as follows:

1. On May 20, 2020 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). (D.E. 1).

2. On May 26, 2020, the Debtors filed the Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates [Docket No. 101] (as modified, amended, or supplemented from time to time, the “Plan”) and the proposed Disclosure Statement for Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates [Docket No. 102] (as modified, amended, or supplemented from time to time, the “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.



3. On August 11, 2020, the Debtors issued their Notice of Adjournment of Confirmation Hearing and Sale Hearing [Docket No. 438], which among other things extended the deadline for creditors to file objections to the Debtors' Plan to and through August 25, 2020.

4. Leadiant is a party to various executory contracts with Akorn, Inc. and Hi-Tech Pharmacal Co., Inc., which are the subject of four separate Notices to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases (the "Leadiant Contract Notices"), all dated June 22, 2020. Given that the Debtors have not yet provided confirmation to creditors regarding the contracts that will or will not be assumed in these cases, or the definitive cure amount that will be paid in connection with such assumption, Leadiant has filed a timely objection to the Leadiant Contract Notices (the "Leadiant Contract Objection").

5. In addition to the foregoing objection, and pending confirmation that Leadiant's contracts will be assumed on terms acceptable to Leadiant and in a manner consistent with the requirements of section 365 of the Bankruptcy Code, Leadiant files the following objection.

6. Leadiant objects to the Plan to the extent that the treatment provided to general unsecured creditors fails to provide Leadiant with its full right to recover all property that is held by the Debtors pursuant to the terms of Leadiant's executory contracts, as more specifically set forth in Leadiant's filed proofs of claim and in the Leadiant Contract Objection, and therefore fails to satisfy the best interests of the creditors test.

7. "The best interest of creditors test requires that each creditor not accepting the plan receive at least the amount they would have received if the debtor were liquidated." *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 181 (Bankr. D.N.J. 2010) (citing *In re Am. Fam. Enters.*, 256 B.R. 377, 403 (D.N.J. 2000)). Pursuant to various executory contracts entered into by Leadiant and the Debtors (the "Executory Contracts"), the Debtors are in possession, custody or control of property

of Leadiant, including its intellectual property and equipment.² Accordingly, Leadiant objects to confirmation of the Plan to the extent that it does not preserve Leadiant's rights to its property.

8. Notwithstanding the foregoing, Leadiant expects that the Executory Contracts will be assumed and that defaults thereunder will be cured, resolving this Objection.

9. In addition to the foregoing, and absent assumption and assignment of its contracts, Leadiant reserves the right to join in any objections to the Plan filed by other creditors in these jointly administered proceedings.

RESERVATION OF RIGHTS

Leadiant reserves its right to amend, modify or supplement this Objection and to raise any additional arguments and objections as permitted under applicable law

WHEREFORE, Leadiant respectfully requests that, absent an agreement between Leadiant and the Debtors, the Court (i) condition confirmation of the Plan subject to Leadiant's rights to its property in possession, custody or control of the Debtors; and (ii) granting such other and further relief as the Court deems just and proper.

(Signature page to follow)

² The agreements setting forth Leadiant's rights are identified and further described in (i) Leadiant's Proof of Claim No. 209, as amended by Proofs of Claim Nos. 378 and 596, and Proof of Claim No. 210; and (ii) the Objection of Leadiant Biosciences Inc. to Notices to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases.

Dated: August 25, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 25, 2020, I caused a true and correct copy of the Limited Objection of Leadiant Biosciences Inc. to Confirmation of the Debtors' Joint Chapter 11 Plan to be electronically filed and served via CM/ECF upon all parties requesting electronic notices in this case and additionally upon the following counsel and parties in the manner indicated:

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