

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

)	
In re:)	Chapter 11
)	
AKORN, INC., <i>et al.</i> , ¹)	Case No. 20-11177 (KBO)
)	
Debtors.)	(Jointly Administered)
)	Re: Docket Nos. 18, 547 & 610

NOTICE OF FILING OF AMENDMENT TO ASSET PURCHASE AGREEMENT

PLEASE TAKE NOTICE THAT on May 21, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed 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 Leases, and (E) Granting Related Relief [Docket No. 18] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”). Attached thereto as Exhibit B was a proposed form of order granting certain relief requested in the Motion (the “Sale Order”), and attached to the Sale Order as Exhibit A was the asset purchase agreement (the “APA”).

PLEASE TAKE FURTHER NOTICE THAT on August 25, 2020 the Debtors filed the Modified Joint Chapter 11 Plan of Akorn, Inc. and Its Debtor Affiliates [Docket No. 547] (the “Plan”).

PLEASE TAKE FURTHER NOTICE THAT on August 28, 2020, the Debtors filed a revised form of the Sale Order [Docket No. 610] (the “Revised Sale Order”).

PLEASE TAKE FURTHER NOTICE THAT the Debtors and the Purchaser have amended the APA, a copy of which is attached hereto as Exhibit 1 (“Amendment No. 1”), to incorporate, among other things, the terms of the UCC Settlement (as defined in the Plan).

PLEASE TAKE FURTHER NOTICE THAT a telephonic hearing to consider the relief requested in the Motion is currently scheduled for September 1, 2020 at 10:00 a.m. (Eastern Time)

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.



(the “Hearing”) before The Honorable Karen B. Owens, United States Bankruptcy Judge for the District of Delaware.

PLEASE TAKE FURTHER NOTICE THAT the Debtors intend to present the Revised Sale Order, including the APA and Amendment No. 1, to the Court at the Hearing, and reserve all rights to make modifications to, or adopt further amendments to, the foregoing documents prior to, or as a result of, the Hearing.

PLEASE TAKE FURTHER NOTICE THAT you may obtain additional information concerning the above-captioned chapter 11 cases at the website maintained in these chapter 11 cases at www.kccllc.net/akorn.

Wilmington, Delaware
August 31, 2020

/s/ Paul N. Heath

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EXHIBIT 1

AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT is entered into as of August 31, 2020 (this "Amendment") by and between Akorn Holdings Topco LLC, a Delaware limited liability company ("Purchaser"), and Akorn, Inc., a Louisiana corporation (the "Company"). Purchaser and the Company are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Purchaser, the Company and certain direct and indirect Subsidiaries of the Company are parties to that certain Asset Purchase Agreement, dated as of May 20, 2020 (the "Asset Purchase Agreement");

WHEREAS, pursuant to Section 10.5 of the Asset Purchase Agreement, any provision of the Asset Purchase Agreement and Schedules may be amended only in a writing signed by Purchaser and the Company; and

WHEREAS, the Parties desire to amend the Asset Purchase Agreement and the Schedules on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties, intending to be legally bound, hereby agree as follows.

Section 1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings assigned thereto in the Asset Purchase Agreement.

Section 2. Amendments to Asset Purchase Agreement and Schedules. The Parties hereby agree to amend the Asset Purchase Agreement and Schedules as set forth in this Section 2.

(a) Section 1.3(k) is hereby deleted in its entirety and replaced with: "undisputed unsecured claims not otherwise assumed pursuant to this Section 1.3, with an aggregate value not to exceed \$5,000,000."

(b) The language "the date that is one hundred three (103) days after the date hereof" in Section 8.1(c) is hereby deleted in its entirety and replaced with "September 30, 2020".

(c) Schedule 1.3 is hereby deleted in its entirety.

(d) Schedule 3.16(a) is hereby amended by adding the following items in appropriate numerical order:

"107. Retention Letter Agreement, dated as of June 19, 2019, between the Company and Chris Knight.

108. Retention Letter Agreement, dated as of June 19, 2019, between the Company and Brian Maschino."

Section 3. Effect of Amendment. Except as amended hereby, the Asset Purchase Agreement and Schedules shall continue in full force and effect. Any references to the Asset

Purchase Agreement or the Schedules (whether in the Asset Purchase Agreement or any agreement, document or certificate contemplated thereby and/or executed in connection therewith) are hereby amended to mean the Asset Purchase Agreement or Schedules as amended by this Amendment, as applicable.

Section 4. No Third Party Beneficiaries. This Amendment shall bind and inure to the benefit of the Parties and their respective successors and assigns. This Amendment is for the sole benefit of the Parties (and their permitted successors and assigns) and nothing expressed or referred to in this Amendment shall give or be construed to give any Person other than the Parties (and their permitted successors and assigns) any legal or equitable right, remedy, or claim under or with respect to this Amendment or any provision of this Amendment.

Section 5. Governing Law; Jurisdiction. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Amendment, and any Action that may be based upon, arising out of or related to this Amendment or the negotiation, execution or performance of this Amendment or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AMENDMENT, THE DOCUMENTS AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AMENDMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AMENDMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AMENDMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER (WHETHER BEFORE, ON OR FOLLOWING THE CLOSING) AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 6. Counterparts. This Amendment may be executed in multiple counterparts, any one of which need not contain the signature of more than one Party hereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding

legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Amendment or any agreement or instrument contemplated hereby, including footers from earlier versions of this Amendment or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any Party or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such Contract will raise the use of a .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of .PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

Section 7. Headings. Headings of the Sections of this Amendment are for convenience of the Parties only, and will be given no substantive or interpretive effect whatsoever.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the date first above written.

PURCHASER:

AKORN HOLDINGS TOPCO LLC

By: _____
Name:
Title:

Company:

AKORN, INC.

By: _____

Name:

Title: