

**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 No. 656

**CERTIFICATION OF COUNSEL REGARDING SUPPLEMENTAL 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**

The undersigned hereby certifies as follows:

1. On May 20, 2020, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. On September 2, 2020, the Court entered 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* [Docket No. 656] (the “Sale Order”).²

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.

² Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Sale Order or the Agreement (as defined below), as applicable.



3. Debtor Akorn, Inc. (“Akorn”), Akorn Operating Company LLC (“Akorn Operating”), and Exela Pharma Sciences LLC (“Exela,” and together with Akorn and Akorn Operating, the “Parties”) have agreed on terms (the “Agreement”) for the assumption and assignment of certain executory contracts, including a certain Development and Supply Agreement dated February 23, 2017 between Akorn Animal Health, Inc., and Exela (the “Supply Agreement”). Pursuant to paragraph 27(xvi) of the Sale Order, the Debtors seek entry of a supplemental order approving, among other things, the Agreement (the “Proposed Order”), which is attached hereto as **Exhibit A**.

4. A substantially final form of the Agreement is attached hereto as **Exhibit 1** to the Proposed Order.

5. The Agreement has been circulated to the United States Trustee for the District of Delaware (the “U.S. Trustee”), and the U.S. Trustee does not object to the Debtors’ entry into the Agreement.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Proposed Order, substantially in the form attached hereto as **Exhibit A**, be entered at the earliest convenience of the Court.

Wilmington, Delaware
October 20, 2020

/s/ J. Zachary Noble

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EXHIBIT A

Proposed Order

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

<p>In re:</p> <p style="margin-left: 100px;">AKORN, INC., <i>et al.</i>,¹</p> <p style="margin-left: 150px;">Debtors.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Chapter 11</p> <p>Case No. 20-11177 (KBO)</p> <p>(Jointly Administered)</p> <p>Re: Docket No. ____</p>
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SUPPLEMENTAL 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**

Upon consideration of 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* [Docket No. 656] (the “Sale Order”), the *Certification of Counsel Regarding 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*, and the *Assumption and Assignment Agreement* (the “Agreement”),² attached hereto as **Exhibit 1**; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Agreement is approved as set forth herein.

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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Subject to the execution of the Agreement by Akorn, Inc. (“Akorn”), Akorn Operating Company LLC (“Akorn Operating”), and Exela Pharma Sciences LLC (“Exela,” and together with Akorn and Akorn Operating, the “Parties”), the Debtors are authorized to assume and assign that certain Supply Agreement (specified in the Agreement) to Akorn Operating, pursuant to the terms specified in the Agreement.

3. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.

4. The Parties are authorized to take all actions necessary to effectuate the terms of this Order and the Agreement.

5. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

EXHIBIT 1

Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”), dated as of [____], 2020 (the “Effective Date”), is made by and between Akorn, Inc., a Delaware corporation (“Assignor”), Akorn Operating Company LLC, a Delaware limited liability company (“Assignee”), and Exela Pharma Sciences LLC (“Exela”).

WHEREAS, Assignor filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) on May 20, 2020, Case No. 20-11177 (the “Bankruptcy Case”).

WHEREAS, pursuant to 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 (the “Sale Order”) entered by the Bankruptcy Court on September 2, 2020 [Docket No. 656], the Bankruptcy Court authorized Assignor’s sale of substantially all of its assets to Assignee.

WHEREAS, in connection with Assignor’s sale of its assets to Assignee, Assignor and Assignee executed an Implementation Agreement, dated October 1, 2020, (as amended, modified or supplemented from time to time in accordance with its terms, the “Implementation Agreement”) pursuant to an Asset Purchase Agreement, dated as of May 20, 2020, by and among Assignor and the other parties thereto (as amended, modified or supplemented from time to time in accordance with its terms, the “Purchase Agreement”).

WHEREAS, pursuant to the Implementation Agreement and Purchase Agreement and as authorized by the Sale Order, Assignor is assuming and assigning certain executory contracts to Assignee.

WHEREAS, among those executory contracts that Assignor intends to assume and assign to Assignee is a certain Development and Supply Agreement dated February 23, 2017 between Akorn Animal Health, Inc., and Exela Pharma Sciences, (the “Supply Agreement”), and Exela has agreed to consent to such assignment, in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants set forth herein and in the Implementation Agreement and Purchase Agreement, and intending to be legally bound hereby, Assignor and Assignee hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns all of its right, title and interest in and to the Supply Agreement, and Assignee accepts the assignment of the Supply Agreement and assumes Assignor’s rights and obligations thereunder as of the Effective Date. Assignor remains responsible for all obligations under the Supply Agreement prior to the Effective Date.

2. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

3. Consent. Exela hereby consents to Assignor's assignment to Assignee of all of Assignor's right, title and interest in the Supply Agreement, subject to the terms and conditions of this Assignment Agreement.

4. Cure Amounts. Any and all amounts due and owing under the Supply Agreement as of the Effective Date (as defined in the Agreement) shall be immediately paid to Exela on the Effective Date.

5. Terms of the Purchase Agreement. The terms of the Purchase Agreement are incorporated herein by reference. Assignor and Assignee acknowledge and agree that the representations, warranties, covenants and agreements set forth in the Purchase Agreement shall not be superseded, modified, or amended hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNEE:

Akorn Operating Company LLC

By: _____

Name:

Title:

ASSIGNOR:

Akorn, Inc.

By: _____

Name:

Title:

EXELA:

Exela Pharma Sciences LLC

By: _____

Name:

Title: