

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
AKORN, INC.,1) Chapter 11
Debtor.) Case No. 20-11177 (KBO)

CERTIFICATION OF COUNSEL REGARDING THE
ORDER APPROVING STIPULATION BETWEEN THE DEBTOR AND
THE BAUSCH ENTITIES RESOLVING THE BAUSCH CLAIM

The undersigned hereby certifies as follows:

1. On May 20, 2020 (the "Petition Date"), the above-captioned post-effective date debtor (the "Debtor") and its affiliated debtors and debtors in possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, commencing their chapter 11 cases (the "Chapter 11 Cases").

2. Prior to the Petition Date, Bausch Health Companies Inc., then known as Valeant Pharmaceuticals International, Inc. ("BHC") entered into a stock purchase agreement (the "SPA") with Debtors Akorn, Inc. and Hi-Tech Pharmacal Co., Inc. ("Hi-Tech"). The SPA includes certain indemnification obligations by Hi-Tech.

3. On or about March 10, 2017, the State of Mississippi, through its Attorney General, Jim Hood, filed a lawsuit against E. Claiborne Robins Company, Inc., ECR Pharmaceuticals Co.,

1 The Debtor in this chapter 11 case, along with the last four digits of the Debtor's federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor's service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.



Inc., Hi-Tech, Valeant Pharmaceuticals International, Inc. and Valeant Pharmaceuticals North America LLC, Case No. 25CH1:17-cv-000305, which is part of consolidated proceeding Mississippi Medicaid Master Docket No. G2017-000304 Covered Outpatient Drug Litigation, in the Chancery Court of Hinds County, Mississippi First Judicial District, relating to Medicaid prescription drug reimbursement (the “Mississippi Litigation”).

4. BHC, Bausch Health Americas, Inc. f/k/a Valeant Pharmaceuticals International, as successor in interest to ECR Pharmaceuticals Co., Inc. (“BHA”), and Bausch Health US, LLC f/k/a Valeant Pharmaceuticals North America LLC (“BHUS” and, with BHC and BHA, the “Bausch Entities”),² made a demand for and notice of indemnification relating to the Mississippi Litigation and Hi-Tech agreed to defend and indemnify those entities and Hi-Tech defended and indemnified the Bausch Entities from 2017 to the Petition Date. After the Petition Date, the Bausch Entities paid their own attorneys’ fees and litigation costs associated with the Bausch Entities’ defense in the Mississippi Litigation.

5. On August 3, 2020, the Bausch Entities filed proof of claim number 497 asserting an unliquidated general unsecured claim against Hi-Tech for indemnification relating to damages and/or settlement amounts and legal fees and costs that may be incurred by the Bausch Entities in the Mississippi Litigation (the “Bausch Claim”).

6. On September 4, 2020, the Bankruptcy Court entered an order [D.I. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [D.I. 673-1] (the “Plan”).

7. On October 1, 2020, the Plan became effective pursuant to its terms and DriveTrain LLC was appointed as Plan Administrator pursuant thereto.

² The Bausch Entities and the Debtor are collectively referred to herein as the “Parties.”

8. On March 8, 2024, the Parties, by and through their respective counsel, entered into that certain *Stipulation Between the Debtor and the Bausch Entities Resolving the Bausch Claim* (the “Stipulation”),³ settling the Bausch Claim.

9. A copy of the Stipulation is attached as **Exhibit 1** to the proposed form of order approving the Stipulation (the “Order”), which is attached hereto as **Exhibit A**.

WHEREFORE, the Debtor respectfully requests that the Order, substantially in the form attached hereto as **Exhibit A**, be entered at the earliest convenience of the Bankruptcy Court.

Wilmington, Delaware
March 8, 2024

/s/ Emily R. Mathews

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³ Capitalized terms used but not otherwise defined shall have the meaning ascribed to such terms in the Stipulation.

EXHIBIT A

Proposed Order

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

| | | |
|---------------------------|---|----------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| AKORN, INC., ¹ |) | Case No. 20-11177 (KBO) |
| |) | |
| Debtor. |) | Re: Docket No. ____ |
| |) | |

**ORDER APPROVING STIPULATION BETWEEN THE DEBTOR AND
THE BAUSCH ENTITIES RESOLVING THE BAUSCH CLAIM**

Upon consideration of the *Certification of Counsel Regarding the Order Approving Stipulation Between the Debtor and the Bausch Entities Resolving the Bausch Claim* (the "Stipulation")², attached hereto as Exhibit 1; it is HEREBY ORDERED THAT:

1. The Stipulation is approved.

[Remainder of page intentionally left blank.]

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor’s 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 Stipulation.

2. The Parties are authorized to take all actions necessary to effectuate the terms of the Stipulation.

EXHIBIT 1

Stipulation

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

| | | |
|---------------------------|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| AKORN, INC., ¹ |) | Case No. 20-11177 (KBO) |
| |) | |
| Debtor. |) | |
| |) | |

**STIPULATION BETWEEN THE DEBTOR AND THE BAUSCH ENTITIES
RESOLVING THE BAUSCH CLAIM**

The above-captioned post-effective date debtors (the “Debtor”) in this chapter 11 case and Bausch Health Companies Inc. f/k/a Valeant Pharmaceuticals International, Inc. (“BHC”), Bausch Health Americas, Inc. f/k/a Valeant Pharmaceuticals International, as successor in interest to ECR Pharmaceuticals Co., Inc. (“BHA”), and Bausch Health US, LLC f/k/a Valeant Pharmaceuticals North America LLC (“BHUS” and, with BHC and BHA, the “Bausch Entities”),² by and through their respective counsel and/or representatives, hereby enter into this stipulation (the “Stipulation”)³ and stipulate and agree as follows:

WHEREAS, on May 20, 2020 (the “Petition Date”), the Debtor and its affiliated debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under

¹ The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is: Akorn, Inc. (7400). The Chapter 11 Cases of the following entities, formerly administratively consolidated with the foregoing case, have been closed: 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 Debtor’s service address is: 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045.

² The Bausch Entities and the Debtor are collectively referred to herein as the “Parties.”

³ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan (as defined herein).

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”).

WHEREAS, prior to the Petition Date, BHC, then known as Valeant Pharmaceuticals International, Inc., entered into a stock purchase agreement (the “SPA”) with Debtors Akorn, Inc. and Hi-Tech Pharmacal Co., Inc. (“Hi-Tech”). The SPA includes certain indemnification obligations by Hi-Tech.

WHEREAS, on or about March 10, 2017, the State of Mississippi, through its Attorney General, Jim Hood, filed a lawsuit against E. Claiborne Robins Company, Inc., ECR Pharmaceuticals Co., Inc., Hi-Tech, Valeant Pharmaceuticals International, Inc. and Valeant Pharmaceuticals North America LLC, Case No. 25CH1:17-cv-000305, which is part of consolidated proceeding Mississippi Medicaid Master Docket No. G2017-000304 Covered Outpatient Drug Litigation, in the Chancery Court of Hinds County, Mississippi First Judicial District, relating to Medicaid prescription drug reimbursement (the “Mississippi Litigation”).

WHEREAS, the Bausch Entities made a demand for and notice of indemnification relating to the Mississippi Litigation and Hi-Tech agreed to defend and indemnify those entities and Hi-Tech defended and indemnified the Bausch Entities from 2017 to the Petition Date.

WHEREAS, after the Petition Date, the Bausch Entities paid their own attorneys’ fees and litigation costs associated with the Bausch Entities’ defense in the Mississippi Litigation.

WHEREAS, on August 3, 2020, the Bausch Entities filed proof of claim no. 497 asserting an unliquidated general unsecured claim against Hi-Tech for indemnification relating to damages and/or settlement amounts and legal fees and costs that may be incurred by the Bausch Entities in the Mississippi Litigation (the “Bausch Claim”).

WHEREAS, on September 4, 2020, the Bankruptcy Court entered an order [D.I. 673] confirming the *Modified Joint Chapter 11 Plan of Akorn, Inc. and its Debtor Affiliates* [D.I. 673-1] (the “Plan”).

WHEREAS, also on October 1, 2020, the Plan became effective pursuant to its terms and DriveTrain LLC was appointed as Plan Administrator pursuant thereto.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties to this Stipulation that:

1. The above recitals are true and correct and are incorporated herein by reference.

2. Upon the entry of a final order from the Bankruptcy Court approving this Stipulation:

- a. The Bausch Claim shall be allowed as a general unsecured claim in the amount of \$426,898.05 (the “Allowed Claim”);
- b. This Stipulation shall be effective and binding upon the Parties upon their entry into this Stipulation, subject only to the entry of an order by the Court (the date such order is entered, the “Approval Date”) approving the Stipulation. The Parties shall cooperate with one another to seek Court approval of this Stipulation.

3. The Debtor may adjust the claims register consistent with the terms of this Stipulation.

4. On the Approval Date, the Bausch Entities shall be deemed to have released and discharged the Debtor and the Plan Administrator and their respective estates, officers and directors (collectively, the “Debtor Released Parties” and each a “Debtor Released Party”) of and from any and all past, present and future actions, causes of action, demands, suits, claims,

liabilities, encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses, and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected, now existing, heretofore existing or which may hereafter accrue against any of the Debtor Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact event or omission or other matter, cause or thing occurring at any time prior to and including the Effective Date **solely** in any way directly or indirectly arising out of, connected with or relating to the Bausch Claim or the Mississippi Litigation; provided, however, that nothing herein shall release any Debtor Released Party from (a) its obligations under this Stipulation or with respect to the payment of the Allowed Claim, or (b) any act or omission of such Debtor Released Party to the extent that such act or omission is determined in a final, non-appealable order or judgment of this Court or another court of competent jurisdiction to have constituted fraud, gross negligence, or willful misconduct.

5. On the Approval Date, each of the Debtor Released Parties shall be deemed to have released and discharged the Bausch Entities on behalf of themselves and their current and former affiliates and their respective estates, officers and directors (collectively, the “Bausch Released Parties” and each a “Bausch Released Party”) of and from any and all past, present and future actions, causes of action, demands, suits, claims, liabilities, encumbrances, lawsuits, adverse consequences, amounts paid in settlement, costs, damages, debts, deficiencies, diminution in value, disbursements, expenses, losses, and other obligations of any kind or nature whatsoever, whether in law, equity or otherwise, whether known or unknown, fixed or contingent, direct, indirect, or derivative, asserted or unasserted, foreseen or unforeseen, suspected or unsuspected,

now existing, heretofore existing or which may hereafter accrue against the Bausch Released Parties, whether held in a personal or representative capacity, and which are based on any act, fact event or omission or other matter, cause or thing occurring at any time prior to and including the Effective Date **solely** in any way directly or indirectly arising out of, connected with or relating to the Bausch Claim or the Mississippi Litigation; provided, however, that nothing herein shall release the Bausch Released Parties from (a) their obligations under this Stipulation, or (b) any act or omission of the Bausch Released Parties to the extent that such act or omission is determined in a final, non-appealable order or judgment of this Court or another court of competent jurisdiction to have constituted fraud, gross negligence, or willful misconduct.

6. Each of the Parties understands and agrees that this Stipulation reflects a compromise of disputed claims and does not constitute, nor shall it be construed as, in any way, an admission of liability, fault, violation, responsibility, or wrongdoing by any of the Parties hereto such liability and wrongdoing being expressly denied.

7. This Stipulation is governed by the law of the State of Delaware, exclusive of its choice-of-law provisions. Each Party irrevocably consents to the jurisdiction of the Bankruptcy Court with respect to any action to enforce the terms and provisions of this Stipulation. Each Party waives any right to commence any such action in any other forum.

8. The undersigned persons represent and warrant that they have full authority to execute this Stipulation.

9. This Stipulation constitutes the entire agreement between the Parties **solely** with regard to the matters addressed herein and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the matters addressed herein.

10. This Stipulation has been drafted through a cooperative effort of the Parties, and no Party shall be considered the drafter of this Stipulation so as to give rise to any presumption or convention regarding construction of this Stipulation.

11. This Stipulation may be executed in counterparts, any of which may be transmitted by facsimile or electronic mail, and each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

STIPULATED AND AGREED TO:

Wilmington, Delaware

Date: March 8, 2024

/s/ Emily R. Mathews

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