

Fill in this information to identify the case:

Debtor Hi-Tech Pharmacal Co., Inc.

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 20-11189

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

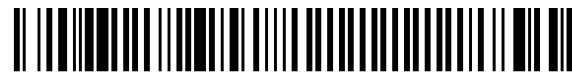
Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Bausch Health US, LLC and affiliates</u> <small>Name of the current creditor (the person or entity to be paid for this claim)</small>	
	Other names the creditor used with the debtor <u>See attached Addendum.</u>	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Contact phone <u>9089478952</u> Contact email <u>See summary page</u>	Contact phone _____ Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ <small>MM / DD / YYYY</small>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ See attached Addendum. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

See attached Addendum.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/03/2020
MM / DD / YYYY

/s/David L. Kleinman
Signature

Print the name of the person who is completing and signing this claim:

Name David L. Kleinman
First name Middle name Last name

Title Senior Director, Litigation and Government Investigations

Company Bausch Health US, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 725-7539 | International (424) 236-7247

Debtor: 20-11189 - Hi-Tech Pharmacal Co., Inc.		
District: District of Delaware		
Creditor: Bausch Health US, LLC and affiliates David L. Kleinman 400 Somerset Corporate Blvd. Bridgewater, New Jersey, 08807 United States Phone: 9089478952 Phone 2: Fax: Email: david.kleinman@bauschhealth.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Creditor	
Other Names Used with Debtor: See attached Addendum.	Amends Claim: No Acquired Claim: No	
Basis of Claim: See attached Addendum.	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: See attached Addendum.	Includes Interest or Charges: No	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: David L. Kleinman on 03-Aug-2020 2:53:02 p.m. Eastern Time Title: Senior Director, Litigation and Government Investigations Company: Bausch Health US, LLC		

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:

AKORN, INC., *et al.*,

Debtors.¹

Chapter 11

No. 20-11177 (KBO)

(Jointly Administered)

**ADDENDUM TO PROOF OF CLAIM FILED BY BAUSCH HEALTH COMPANIES
INC., BAUSCH HEALTH AMERICAS, INC. AND BAUSCH HEALTH US, LLC AND
RESERVATION OF RIGHTS**

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**”) (collectively, BHC, BHA and BHUS are “**the Bausch Entities**”), attach this Addendum in support of their Proof of Claim.

1. On May 20, 2020 (the “**Petition Date**”), Akorn, Inc. (“**Akorn**”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), filed voluntary petitions for relief under Chapter 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”). The cases are being jointly administered under Chapter 11 Case No. 20-11177.

2. On June 23, 2020, the Court entered an Order [Dkt. No. 214] (the “**Bar Date Order**”), which, among other things, established August 3, 2020 at 5:00 p.m. (Prevailing Eastern

¹ The Debtors in these cases (the “**Debtors**”), along with the last four digits of each Debtor’s federal tax identification number, if any, are as follows: 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.

Time) as the general deadline (the “**General Bar Date**”) for each person or entity to file proofs of claim based on prepetition claims against the Debtors.

3. The Bausch Entities file this proof of claim (the “**Proof of Claim**”) against Hi-Tech Pharmacal Co., Inc. (“**Hi-Tech**”) but reserve the right to assert it against one or more of the other debtors in the event one of those other debtors has assumed Hi-Tech’s obligation as described below.

4. On or about May 16, 2014, BHC, then known as Valeant Pharmaceuticals International, Inc., entered into a stock purchase agreement (the “**SPA**”) with Hi-Tech and Akorn, Inc. for the stock of ECR Pharmaceuticals Co., Inc. The SPA includes certain indemnification obligations by Hi-Tech.

5. On or about March 10, 2017, the State of Mississippi, through its Attorney General, Jim Hood, filed a lawsuit against defendants 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, pending in the Chancery Court of Hinds County, Mississippi First Judicial District, relating to Medicaid prescription drug reimbursement (the “**Mississippi Litigation**”).

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

7. Hi-Tech hired Kirkland & Ellis to defend the Bausch Entities in the Mississippi Litigation.

8. Subsequent to the Petition Date, the Bausch Entities have been told that Hi-Tech will most likely no longer be providing a defense and indemnification for the still-pending Mississippi Litigation.

STATEMENT OF CLAIMS

9. Without limiting the Bausch Entities' ability to amend, and without limiting the specific theories of recovery available to the Bausch Entities, the Bausch Entities assert the following claims (without limitation) against Hi-Tech or any of the other Debtors related to the Mississippi Litigation:

- a. claims for statutory, equitable and common law rights of indemnity, reimbursement, or otherwise under any theory of law or equity;
- b. claims for all damages, liabilities, assessments, judgments, losses, fees, costs, or expenses, including, but not limited to, all legal fees and expenses incurred by the Bausch Entities;
- c. claims, damages, liabilities, losses, fees, costs, expenses, and causes of action, including but not limited to any amounts paid by the Bausch Entities in settlement of claims; and
- d. all claims and causes of action asserted or capable of being asserted by the Bausch Entities as counterclaims or cross-claims against Hi-Tech or any of the other Debtors in the Mississippi Litigation or otherwise.

10. The Bausch Entities dispute the allegations made against them in the Mississippi Litigation, but to the extent any of the Bausch Entities are found liable for damages in that case or settle the Mississippi Litigation, Hi-Tech is obligated to those Bausch Entities for the amount of

any such damages and/or settlement amount plus legal fees and costs for the reasons set forth above.

RESERVATION OF RIGHTS

11. The Bausch Entities reserve all rights to adjust, revise, supplement or amend or modify this Proof of Claim including without limitation, because of future events, the discovery and analysis of additional information, the correction of any errors or the resolution of any disputes. Specifically, the Bausch Entities reserve the right to amend and supplement this Proof of Claim to among other things, (a) specify and quantify any damages, losses, costs, charges, fees (including, but not limited to, all pre- and post-petition legal fees and expenses incurred by the Bausch Entities), and other expenses incurred by or owed to the Bausch Entities, and/or otherwise set forth such amounts in this Proof of Claim with more particularity; (b) amend and supplement this Proof of Claim in any other manner, including to the extent that additional facts or theories become known or apparent; and/or (c) file additional proofs of claim for additional claims.

12. The Bausch Entities specifically reserve the right to conduct discovery with respect to the Claims or any other matter in connection with Hi-Tech or any of the other Debtors in accordance with the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

13. The setting forth of claims and classification of claims by the Bausch Entities herein is not a concession or admission as to the correct characterization or treatment of any such claims, nor is it a waiver of any of the Bausch Entities' rights or remedies. The execution and filing of this Proof of Claim is not: (a) a waiver or release of any of the Bausch Entities' rights or remedies against any other entity liable for all or any part of the claims asserted herein; (b) a consent by the Bausch Entities to the jurisdiction of the Bankruptcy Court with respect to any proceeding commenced in these Chapter 11 cases or any other case against or otherwise involving the Bausch

Entities; (c) a consent by the Bausch Entities to the treatment of any non-core claim against them as a core claim; (d) a waiver of the right to withdraw the reference with respect to the subject matter of the claims asserted herein or of any claims asserted by any of the Debtors or any other entity against the Bausch Entities; (e) a waiver of any right to have any claims constitutionally required to be determined by the District Court be determined therein; (f) a waiver of any right to the subordination, in favor of the Bausch Entities, of indebtedness or liens held by other creditors of the Debtors; (g) an election of any remedy that waives or otherwise affects any other remedy, including any right to pursue or assert alternative or simultaneous rights or remedies; (h) a waiver of any right to arbitration or other alternative dispute resolution mechanism that is otherwise applicable; (i) a waiver of any right with respect to property of the Bausch Entities held by a Debtor; or (j) a waiver or relinquishment of any other defenses, counterclaims, cross-claims, third-party claims, or any other matter or thing whatsoever.

14. The Bausch Entities expressly reserve all their procedural and substantive defenses and rights with respect to any claim that may be asserted against the Bausch Entities by any of the Debtors, including but not limited to any rights of setoff or recoupment.

15. The Bausch Entities expressly preserve all rights, claims, causes of action, defenses, counterclaims, rights of recoupment and/or offset, objections, and all similar rights, remedies, and defenses against all persons or entities, whether in this Court or elsewhere, whether currently existing or arising in the future, against which they determine to have claims.

16. To the extent any of the claims set forth herein, in whole or in part, or any component thereof, arise or relate in any manner to the period on or after the Petition Date, the Bausch Entities assert that such claims (or any portions thereof) are entitled to priority pursuant to sections 503 and 507 of the Bankruptcy Code. The Bausch Entities reserve the right to file one or

more requests for payment of administrative expenses pursuant to section 503(a) of the Bankruptcy Code, with respect to any administrative expense claim that the Bausch Entities may now have or hereafter have, hold or acquire against any Debtor or its estate.

17. To the best of the Bausch Entities' knowledge, information and belief, as of the date of this Proof of Claim, no judgment has been rendered on the claims, no security interest on any property of the Debtors is held for the claims, the Bausch Entities have not assigned any portion of the claims, and the above statements are true and accurate based upon the information currently available to the Bausch Entities.

18. All notices regarding this Proof of Claim and regarding any objection thereto or any request to estimate or disallow same shall be directed to:

David L. Kleinman
Senior Director, Litigation & Government Investigations
Bausch Health US, LLC
400 Somerset Corporate Boulevard
Bridgewater, NJ 08807
david.kleinman@bauschhealth.com