

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 (___)
))	
Debtors.	)	)	(Joint Administration Requested)
))	

**DEBTORS’ MOTION SEEKING ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO,
(C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM
INTERCOMPANY TRANSACTIONS AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”): (a) authorizing, but not directing, the Debtors to (i) continue to operate their cash management system; (ii) honor certain prepetition obligations related thereto; (iii) maintain

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 A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Duane Portwood in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on May 20, 2020 (the “Petition Date”) and incorporated by reference herein. Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed to them in the First Day Declaration.



existing business forms in the ordinary course of business, and (iv) continue intercompany transactions and funding consistent with the Debtors' historical practices; and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the Petition Date to consider approval of this motion on a final basis.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 345, 363, 364, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rules 2015-2 and 9013-1(m).

Background

5. Akorn, Inc., together with its Debtor and non-Debtor subsidiaries (collectively, "Akorn") is a specialty pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, branded as well as private-label over-the-counter consumer health products, and animal health pharmaceuticals. Akorn is an

industry leader in the development, manufacturing, and marketing of specialized generic pharmaceutical products in alternative dosage forms. Headquartered in Lake Forest, Illinois, Akorn has approximately 2,180 employees worldwide and maintains a global manufacturing presence, with pharmaceutical manufacturing facilities located in Illinois, New Jersey, New York, Switzerland, and India. Akorn's operations generated approximately \$682 million in revenue and approximately \$124 million of Adjusted EBITDA in 2019. The Debtors commenced these chapter 11 cases to conduct an orderly sale process that will position the Debtors for sustained future success by right-sizing their balance sheet and addressing their litigation overhang.

6. On the Petition Date, each of the Debtors filed a voluntary petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Cash Management System

I. Overview.

7. The Debtors operate an integrated and streamlined cash management system, depicted on **Exhibit 1** annexed to **Exhibit A** and **Exhibit B** attached hereto (the "**Cash Management System**"), that is tailored to meet the Debtors' operating needs as a niche pharmaceutical company. The Debtors use their Cash Management System in the ordinary course to transfer and distribute funds and to facilitate cash monitoring, forecasting, and reporting. The Debtors' treasury department maintains daily oversight over the

Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with Intercompany Transactions (as defined herein). Additionally, the treasury department regularly reconciles the Debtors' books and records to ensure that all transfers are accounted for properly.

II. The Cash Management System.

8. As of the Petition date, the Cash Management System consists of five³ active bank accounts (the "Bank Accounts"),⁴ each of which is maintained at Bank of America, N.A. (the "Cash Management Bank" or "BofA") and identified on **Exhibit 2** annexed to **Exhibit A** and **Exhibit B** attached hereto. All of the Debtors' Bank Accounts are in the name of Debtor Akorn, Inc. The Debtors fund the operations of all domestic Debtors from four Bank Accounts, excluding the Adequate Assurance Account (as defined in the Utilities Motion), including cash collection and concentration, operating disbursements, payroll disbursements, and other treasury activity.

A. Cash Collection and Concentration.

9. The Debtors generate and receive funds from the sales of their products to wholesale pharmaceutical distributors and pharmacies. Customer and third-party payments are made by check, wire transfer, or merchant card into a collections and concentration account ending in 8391 (the "Collections and Concentration Account"), an interest bearing checking account. On an as-needed basis, the Debtors manually transfer amounts from the Collections and

³ Pursuant to the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers From Altering, Refusing, or Discontinuing Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief* (the "Utilities Motion"), the Debtors have opened the Adequate Assurance Account (as defined in the Utilities Motion) ending in 8878 at BofA.

⁴ As of the Petition Date, the Cash Management System includes five active Bank Accounts, including the Adequate Assurance Account; however, in the ordinary course, the Debtors may close existing accounts or open new accounts, subject to the limitations of the Interim Order and Final Order.

Concentration Account via wire transfer to an operating disbursements account ending in 6603 (the “Operating Disbursements Account”), a payroll disbursements account ending in 0893 (the “Payroll Disbursements Account”), and a treasury activity account ending in 8409 (the “Treasury Activity Account”).⁵

10. As of the Petition Date, the Collections and Concentration Account held a balance of approximately \$50 million.

B. Operating and Payroll Disbursements.

11. In the ordinary course of business, the Debtors make disbursements on account of operational expenses (such as vendor and freight provider payments) and accounts payable from the Operating Disbursements Account, and disbursements on account of employee payroll from the Payroll Disbursements Account. The Operating Disbursements Account is the Debtors’ primary Bank Account for processing disbursements for, among other things, accounts payable and certain taxes. The Payroll Disbursements Account is used for processing employee payroll, certain fringe benefits, and administrative fees on account of services provided to the Debtors by WageWorks, Automatic Data Processing, and Fidelity.

12. The Debtors’ treasury department processes requests for funds related to operational and payroll expenses and manually transfers amounts necessary to fund either the Operating Disbursements Account or the Payroll Disbursements Account, depending on the expense, on an as-needed basis. Outgoing payments from the Operating Disbursements Account

⁵ In connection with the *Debtors’ Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the “DIP Motion”), the Debtors anticipate opening new Bank Accounts at Wilmington Savings Fund Society, FSB (“WSFS”). The Debtors anticipate that excess cash will be transferred to WSFS after the Petition Date and proceeds from the DIP Facility (as defined in the DIP Motion) will also be held in the WSFS account. The Debtors will continue to use the existing accounts at BofA for operating purposes. WSFS is an authorized depository in Delaware.

are made via automated clearing house (“ACH”) transfer, check, and automatic debit. Outgoing payments from the Payroll Disbursements Account are made via ACH, wire transfer, reverse wire transfer, check, and automatic debit.

13. As of the Petition Date, the Operating Disbursements Account held a balance of approximately \$38,000 and the Payroll Disbursements Account held a balance of approximately \$40,000.

C. Treasury Activity.

14. On an as-needed basis, the Debtors make disbursements via wire transfer on account of expenses that are not processed through the other Bank Accounts, such as payments on account of funded debt and Company Cards (as defined herein), from the Treasury Activity Account. In addition, the Debtors periodically make payments on account of Food and Drug Administration fees, Bank Fees (as defined herein), and payments to certain vendors via automatic debit from the Treasury Activity Account.

15. As of the Petition Date, the Treasury Activity Account held a balance of approximately \$826,000.

III. Compliance with U.S. Trustee Guidelines and Bankruptcy Code.

A. Compliance with U.S. Trustee Guidelines and Section 345 of the Bankruptcy Code.

16. Pursuant to the U.S. Trustee Guidelines, the U.S. Trustee generally requires chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the U.S. Trustee’s office. All Bank Accounts are maintained at BofA, which has executed a Uniform Depository Agreement (“UDA”) with, and is designated as an authorized depository by, the U.S. Trustee, pursuant to the U.S. Trustee Guidelines. Additionally, the Bank Accounts maintained at BofA

are insured by the Federal Deposit Insurance Corporation (the “FDIC”) up to \$250,000 on an aggregate basis and, therefore, comply with section 345(b) of the Bankruptcy Code.

17. Accordingly, the Debtors respectfully submit that the Bank Accounts satisfy the requirements set forth in the U.S. Trustee Guidelines and section 345 of the Bankruptcy Code.

B. Compliance with U.S. Trustee Guidelines as to Business Forms and Checks.

18. The Debtors utilize certain limited preprinted correspondence, letterhead, and business forms, and also maintain books and records to document, among other things, their profits and expenses (collectively, the “Business Forms”). The Debtors additionally utilize certain preprinted checks in the ordinary course of business. To minimize unnecessary additional expenses to their estates, the Debtors request that the Court authorize their continued use of their Business Forms, all as such forms were in existence immediately before the Petition Date, without reference to the Debtors’ status as debtors in possession, rather than requiring the Debtors to incur the unnecessary expense, nuisance, and delay of ordering entirely new Business Forms as required under the U.S. Trustee Guidelines. Once the Debtors exhaust their existing supply of checks during these chapter 11 cases, the Debtors shall, when reordering or with respect to checks which the Debtors or their agents print themselves, require or print the “Debtor in Possession” legend and the corresponding bankruptcy case number on all such items.

IV. Intercompany Transactions.

19. In the ordinary course of business, the Debtors have historically engaged in routine business relationships with certain Debtor and non-Debtor subsidiaries (the “Intercompany Transactions”), resulting in intercompany receivables and payables (the “Intercompany Balances”).⁶ The Debtors generally account for and record all

⁶ This motion provides an illustrative overview of the Debtors’ typical Intercompany Transactions. For the avoidance of doubt, the description of Intercompany Transactions and the Intercompany Balances resulting

Intercompany Transactions and Intercompany Balances in their centralized accounting system, the results of which are concurrently recorded on the Debtors' balance sheets and regularly reconciled. The accounting system requires that all general ledger entries be balanced at the legal entity level. When one entity records an entry at their location to an intercompany account, the other entity will also record an entry in their local intercompany account, which results in a net balance of zero when consolidating all intercompany accounts. These Intercompany Balances are settled in cash approximately every thirty days.

20. Intercompany receivables are generated by the Debtors' business relationship with non-Debtor Akorn AG, which manufactures finished goods in Switzerland and sells those products to certain U.S. Debtors, resulting in Intercompany Balances with their Debtor affiliates. Non-Debtor Akorn AG also passes along the cost of certain services to the Debtors, including costs related to certain technology services, quality compliance, and research and development. Akorn AG provides these services and finished goods to the Debtors at a 15% mark-up, but the mark-up percentage is subject to change from time to time. Additionally, Akorn AG purchases certain raw materials from the Debtors, which the Debtors sell to Akorn AG at cost.

21. In addition, the Debtors historically have contributed capital to certain international non-Debtor affiliates in the form of equity contributions (the "Equity Contributions"), which are reflected on the contributing Debtor's books as a "contribution of capital" and do not otherwise generate Intercompany Balances. The Debtors do not otherwise make intercompany loans, domestic or international, and do not fund international payroll from the Cash Management System.

therefrom does not constitute an admission of the Debtors or any other party as to the validity, priority, or status of any Intercompany Balance or any Intercompany Transaction, if any, from which such Intercompany Balance may have arisen.

22. Over the last 12 months, the Debtors have contributed approximately \$11.5 million in Equity Contributions, on an as-needed basis, to non-Debtor Akorn AG to fund large capital expenditures and certain other operational expenses, and expect to continue doing so during these chapter 11 cases. The Debtors also make Equity Contributions to fund expenses related to the wind-down of non-Debtor Akorn India Private Limited, typically up to \$3.0 million per quarter, and expect to continue doing so during these chapter 11 cases. The Debtors currently are exploring strategic alternatives to exit the India manufacturing facility.

23. Accordingly, pursuant to this motion, the Debtors seek authority to (a) continue to engage in Intercompany Transactions, (b) continue making Equity Contributions to non-Debtors Akorn AG and Akorn India Private Limited in the ordinary course of business, consistent with their historical accounting practices, without prejudice to any Debtor to assert reallocation or reimbursement of postpetition transfers, and (c) grant superpriority administrative expense status under section 364 of the Bankruptcy Code to Intercompany Balances due from the Debtors to other Debtors or non-Debtors as a result of postpetition Intercompany Transactions; *provided* that such superpriority administrative expense status claim shall be junior to any claim granted on account of the Debtors' postpetition financing facility and use of cash collateral.

V. Company Cards.

24. As part of the Cash Management System, the Debtors provide certain employees with credit cards (collectively, the "Company Cards") issued by the American Express Company ("American Express") to be used for approved and legitimate business expenses, including expenses related to travel, supplies incurred on behalf of the Debtors in the ordinary course of business, and certain third-party vendor obligations on a discretionary basis. As of the Petition Date, approximately ten employees have active Company Cards that are corporate guarantee cards for which the relevant employees do not have personal liability. The Company Cards have

an aggregate monthly credit limit of \$300,000. Additionally, the Debtors have two Company Cards, which are also issued by American Express, used only for fuel purchases. The Debtors historically have paid the balance of the Company Cards in full each month. The expenses incurred on the Company Cards are essential to the operation of the Debtors' business.

25. As of the Petition Date, the Debtors estimate that they owe approximately \$20,000 on account of unpaid obligations under the Company Cards, approximately \$20,000 of which is expected to become due and payable within 25 days of the Petition Date. The Debtors seek authority to continue using the Company Cards and to pay any undisputed prepetition amounts in connection therewith, including all related prepetition charges and fees, in the ordinary course of business consistent with prepetition practices.

VI. Bank Fees.

26. In the ordinary course of business, the Debtors incur and pay periodic service charges and other fees in connection with maintaining the Cash Management System (collectively, the "Bank Fees"). The Debtors incur approximately \$40,000 per month on account of the Bank Fees. As of the Petition Date, the Debtors estimate that they owe approximately \$50,000 on account of unpaid Bank Fees, approximately \$40,000 of which is expected to become due and payable within 25 days of the Petition Date. The Debtors seek authority to continue paying the Bank Fees, including any prepetition Bank Fees, in the ordinary course on a postpetition basis, consistent with historical practices.

Basis for Relief

I. Maintaining the Existing Cash Management System Is Essential to Maximizing the Value of the Debtors' Estates.

27. The U.S. Trustee Guidelines require debtors in possession to, among other things: (a) establish one debtor-in-possession bank account for all estate monies required for the

payment of taxes, including payroll taxes; (b) close all existing bank accounts and open new debtor-in-possession accounts; (c) maintain a separate debtor-in-possession account for cash collateral; and (d) obtain checks that bear the designation “debtor in possession” and reference the bankruptcy case number and type of account on such checks. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date.

28. Considering, however, the integrated and streamlined Cash Management System that the Debtors have in place for the transfer and distribution of funds, which ties into the Debtors’ existing corporate accounting and cash forecasting reporting, enforcement of this provision of the U.S. Trustee Guidelines during these chapter 11 cases would disrupt the Debtors’ ability to efficiently administer these chapter 11 cases. Accordingly, the Debtors respectfully request that the Court allow them to operate each of the Bank Accounts listed on **Exhibit 2**, annexed to **Exhibit A** and **Exhibit B** attached hereto, as they were maintained in the ordinary course before the Petition Date.

29. Continuation of the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the debtor in possession to “use property of the estate in the ordinary course without notice or a hearing.” 11 U.S.C. § 363(c)(1). Bankruptcy courts routinely treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). Additionally, courts recognize that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that

require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (noting that maintaining an existing cash management system allows debtors “to administer more efficiently and effectively its financial operations and assets”).

30. Here, requiring the Debtors to adopt a new, segmented cash management system during these chapter 11 cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors’ operations. Importantly, the Cash Management System provides the Debtors with the ability to instantaneously track and report the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized and streamlined method of coordinating the collection and movement of funds. Any disruption of the Cash Management System could negatively effect the Debtors’ restructuring efforts. New bank accounts would increase operating costs, and the delays that would result from opening new accounts, revising cash management procedures, and redirecting daily deposits would negatively impact the Debtors’ ability to operate their business while pursuing these arrangements. Further, the Debtors would be subject to significant administrative burdens and expenses because they would need to execute new signatory cards and depository agreements and create an entirely new manual system for issuing checks and paying postpetition obligations, all as would otherwise be required by the U.S. Trustee Guidelines. *See U.S. Trustee Guidelines*, at pp. 2–3.

31. Moreover, the Debtors respectfully submit that parties in interest will not be harmed by their maintenance of the Cash Management System, including maintenance of the Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred before the Petition Date. Specifically, with the assistance of their advisors, the Debtors have implemented internal control procedures that prohibit payments on account of prepetition debts without the prior approval of the Debtors' treasury department. In light of such protective measures, the Debtors submit that maintaining the Cash Management System is in the best interests of their estates and creditors.

32. Courts in this district and others routinely allow debtors in chapter 11 cases to maintain their existing cash management systems. *See, e.g., In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 18, 2020) (authorizing the debtors to continue using the cash management system maintained by the debtors prepetition on a final basis); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 21, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (authorizing the debtors to continue using the cash management system maintained by the debtors prepetition on an interim basis); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (authorizing the debtors to continue using the cash management system maintained by the debtors prepetition on a final basis); *In re Forever 21, Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (same).⁷

⁷ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

II. Authorizing the Debtors to Continue Using Debit, Wire, Credit Card, and ACH Payments Is Warranted.

33. The Debtors request that the Court grant further relief from the U.S. Trustee Guidelines to the extent they require the Debtors to make all disbursements by check. In particular, the U.S. Trustee Guidelines require that all receipts and all disbursements of estate funds must be made by check with a notation representing the reason for the disbursement. As discussed above, in the ordinary course of business, the Debtors conduct transactions through wires, ACH transactions, direct deposits, Company Cards, and other similar methods. If the Debtors' ability to conduct transactions by these methods is impaired, the Debtors may be unable to perform under certain contracts, and payments to vendors could be delayed, resulting in unnecessary disruption to their business operations and the incurrence of additional costs to their estates.

III. Authorizing the Cash Management Bank to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course Is Warranted.

34. The Debtors respectfully request that the Court authorize the Cash Management Bank to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course. In this regard, the Cash Management Bank should be authorized to receive, process, honor, and pay any and all checks, ACH transfers, and other instructions and drafts payable through, drawn, or directed on such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto; *provided* that any check, draft, or other notification that the Debtors advise the Cash Management Bank to have been drawn, issued, or otherwise presented before the Petition Date may be honored by the Cash Management Bank only to the extent authorized by order of the Court.

35. The Debtors further request that the Court authorize the Cash Management Bank to accept and honor all representations from the Debtors as to which checks, drafts, wires, or ACH transfers should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, wires, or ACH transfers are dated before or subsequent to the Petition Date. The Debtors also request that, to the extent the Cash Management Bank honors a prepetition check or other item drawn on any account either (a) at the direction of the Debtors, (b) in a good-faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of customary item handling procedures, the Cash Management Bank will not be deemed to be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item honored postpetition. The Debtors respectfully submit that such relief is reasonable and appropriate because the Cash Management Bank is not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

36. Moreover, the Debtors request that the Court authorize the Debtors to pay any prepetition Bank Fees on account of prepetition transactions that are charged postpetition and authorize BofA to (a) continue to charge the Debtors the Bank Fees and (b) charge-back returned items to the Bank Accounts, whether such items are dated before, on, or subsequent to the Petition Date, in the ordinary course.

IV. The Court Should Authorize the Debtors to Continue Using Their Existing Business Forms and Checks.

37. The U.S. Trustee Guidelines and Local Rule 2015-2(a) require debtors in possession to obtain checks that bear the designation “debtor in possession” on such checks. To avoid disruption of the Cash Management System and unnecessary expense, the Debtors request

that they be authorized to continue to use the Business Forms substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession. The Debtors submit that parties in interest will not be prejudiced by this relief. Parties doing business with the Debtors undoubtedly will be aware of their status as debtors in possession and, thus, changing Business Forms is unnecessary and would be unduly burdensome. If the Debtors exhaust their existing supply of checks during these chapter 11 cases, the Debtors shall, when reordering or with respect to checks which the Debtors or their agents print themselves, require or print the “Debtor in Possession” legend and the corresponding bankruptcy case number on all such items.

38. In other chapter 11 cases, courts in this district have allowed debtors to use their prepetition business forms without the “debtor in possession” label. *See, e.g., In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 18, 2020) (authorizing debtors’ continued use of preprinted business forms without a “Debtor in Possession” marking until the supply is exhausted on a final basis); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 21, 2020) (authorizing debtors’ continued use of preprinted business forms without a “Debtor in Possession” marking on a final basis); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr. D. Del. Dec. 3, 2019) (authorizing debtors’ continued use of preprinted business forms without a “Debtor in Possession” marking, if plan confirmed within 45 days, on an interim basis); *In re Destination Maternity Corp.*, No. 19-12256 (BLS) (Bankr. D. Del. Nov. 12, 2019) (authorizing debtors’ continued use of preprinted business forms without a “Debtor in Possession” marking on a final basis); *In re Forever 21, Inc.*, No. 19-12122 (KG)

(Bankr. D. Del. Oct. 28, 2019) (authorizing debtors' continued use of preprinted business forms without a "Debtor in Possession" marking until the supply is exhausted on a final basis).⁸

V. The Court Should Authorize the Debtors to Continue Engaging in Intercompany Transactions in the Ordinary Course of Business and Grant Superpriority Administrative Expense Status to Postpetition Intercompany Balances.

39. The Debtors' funds move through the Cash Management System as described above. At any given time, there may be Intercompany Balances owed by one Debtor or to another Debtor, or a Debtor to a non-Debtor affiliate (or vice versa). Intercompany Transactions are made between and among Debtors and non-Debtor affiliates in the ordinary course as part of the Cash Management System. The Debtors track all fund transfers in their accounting system and can ascertain, trace, and account for all Intercompany Transactions previously described. The Debtors, moreover, will continue to maintain records of such Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors' and each of their estates' detriment. Accordingly, the Debtors respectfully submit that the continued performance of the Intercompany Transactions is in the best interest of the Debtors' estates and their creditors and, therefore, the Debtors should be permitted to continue such performance.

40. Allowing the Debtors to engage in Intercompany Transactions is in the best interests of the Debtors' estates and their creditors, and the Debtors seek authority to continue such Intercompany Transactions postpetition. The Debtors respectfully submit that Intercompany Transactions arising in the ordinary course are authorized as a matter of law pursuant to section 363(c)(1) of the Bankruptcy Code and, thus, do not require the Court's

⁸ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

approval.⁹ Further, the Debtors will continue to maintain records of Intercompany Transactions, including records of all current Intercompany Balances, to facilitate parties' access to information where reasonably requested.

41. The Debtors further request that, pursuant to section 364 of the Bankruptcy Code, all postpetition payments between or among a Debtor and another Debtor or a non-Debtor affiliate on account of an Intercompany Transaction be accorded superpriority administrative expense status, which would result in a superpriority administrative expense claim in favor of the applicable Debtor-payer. This relief will ensure that each entity receiving payments from a Debtor will continue to bear ultimate repayment responsibility for such ordinary course transactions, thereby reducing the risk that these transactions would jeopardize the recoveries available to each Debtor's respective creditors. For the avoidance of doubt, the relief requested herein with respect to the postpetition Intercompany Transactions and the Intercompany Balances resulting therefrom shall not constitute an admission of the Debtors or any other party as to the validity, priority, or status of any prepetition Intercompany Balance or the Intercompany Transaction(s) from which such Intercompany Balance may have arisen.

42. Courts in this district have routinely authorized debtors to continue intercompany transactions in the ordinary course of business and granted administrative expense status to postpetition intercompany transfers for similar reasons. *See, e.g., In re Longview Power, LLC*, No. 20-10951 (BLS) (Bankr. D. Del. May 18, 2020) (granting administrative expense status to intercompany claims on a final basis); *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 21, 2020) (same); *In re Anna Holdings, Inc.*, No. 19-12551 (CSS) (Bankr.

⁹ Out of an abundance of caution, the Debtors are seeking express authority to engage in such transactions on a postpetition basis. Moreover, the continued performance of the ordinary course Intercompany Transactions, subject to any limitations set forth herein, is integral to ensure the Debtors' ability to operate their business as debtors in possession.

D. Del. Dec. 3, 2019) (granting administrative expense status to intercompany claims on an interim basis); *In re Dura Automotive Systems, LLC*, No. 19-12378 (KBO) (Bankr. D. Del. Nov. 19, 2019) (granting superpriority administrative expense status pursuant to section 364 of the Bankruptcy Code to intercompany claims on a final basis); *In re Forever 21 Inc.*, No. 19-12122 (KG) (Bankr. D. Del. Oct. 28, 2019) (granting administrative expense status to intercompany claims on a final basis).¹⁰

Processing of Checks and Electronic Fund Transfers Should Be Authorized

43. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, the proposed debtor-in-possession financing, and anticipated access to cash collateral. Under the Debtors' existing Cash Management System, the Debtors have made arrangements to readily identify checks or wire transfer requests relating to the authorized payments made hereunder, as applicable. Accordingly, the Debtors believe that checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

44. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. For the reasons discussed above, authorizing the Debtors to (a) continue to operate their Cash Management System, (b) honor certain prepetition obligations

¹⁰ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

related thereto, (c) maintain existing Business Forms in the ordinary course of business, and (d) granting the other relief requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases smoothly. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course, preserve the going concern value of the Debtors' operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

45. Nothing contained in the motion or any actions taken by the Debtors pursuant to relief granted in the Interim Order and Final Order is intended or should be construed as: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in the motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors or any other party-in-interest that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the motion are valid and the Debtors and all other parties-in-interest expressly reserve their rights to contest the extent, validity, or perfection, or to seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the

Court's order is not intended and should not be construed as an admission as to the validity, priority, or amount of any particular claim or a waiver of the Debtors' or any other party-in-interest's rights to subsequently dispute such claim.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

46. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

47. The Debtors will provide notice of this motion to: (a) the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) Wilmington Savings Fund Society, FSB, in its capacity as successor administrative agent under the Term Loan Credit Agreement, or any of its predecessors or successors (the "Term Loan Agent"); (d) counsel to the Term Loan Agent; (e) counsel to the ad hoc group of the Debtors' Prepetition Lenders (the "Ad Hoc Group"); (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the Food and Drug Administration; (i) the Drug Enforcement Administration; (j) the Securities Exchange Commission; (k) the state attorneys general for all states in which the Debtors conduct business; (l) the Cash Management Bank; and (m) any party that requests service pursuant to Local Rule 9013-1(m)(iii).

No Prior Request

48. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Wilmington, Delaware
May 21, 2020

/s/ Paul N. Heath

RICHARDS, LAYTON & FINGER, P.A.

Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Zachary I. Shapiro (No. 5103)
Brett M. Haywood (No. 6166)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701
Email: heath@rlf.com
steele@rlf.com
shapiro@rlf.com
haywood@rlf.com

*Proposed Co-Counsel for the
Debtors and Debtors in Possession*

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP
Patrick J. Nash, Jr., P.C. (*pro hac vice* admission pending)
Gregory F. Pesce (*pro hac vice* admission pending)
Christopher M. Hayes (*pro hac vice* admission pending)
300 North LaSalle Street
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: patrick.nash@kirkland.com
gregory.pesce@kirkland.com
christopher.hayes@kirkland.com

-and-

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP
Nicole L. Greenblatt, P.C. (*pro hac vice* admission pending)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: nicole.greenblatt@kirkland.com

*Proposed Co-Counsel for the
Debtors and Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:)	
	)	Chapter 11
AKORN, INC., ¹)	
	)	Case No. 19-11177 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. _____

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO,
(C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM
INTERCOMPANY TRANSACTIONS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing the Debtors to (i) continue to operate their cash management system, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing business forms in the ordinary course of business, and (iv) continue intercompany transactions and funding consistent with the Debtors’ historical practices, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and

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 defined herein have the meanings given to such terms in the Motion.

this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020, at __:__ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2020, and shall be served on: (a) the Debtors, Akorn, Inc., 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045 Attn: Joseph Bonaccorsi; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Patrick J. Nash, Jr., P.C., Gregory F. Pesce and Christopher M. Hayes, and 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C.; (c) proposed co-counsel to the Debtors, Richards, Layton & Finger, P.A., 920 N. King Street, Wilmington, Delaware 19801, Attn: Paul N. Heath; (d) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane M. Leamy; (e) counsel to any statutory committee

appointed in these chapter 11 cases; and (f) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: Scott J. Greenberg and Steven A. Domanowski. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, on an interim basis, to: (a) continue operating the Cash Management System, substantially as identified on **Exhibit 1** attached hereto and as described in the Motion; (b) honor their prepetition obligations related thereto; and (c) maintain existing Business Forms.

4. The Debtors are authorized, but not directed, to continue engaging in Intercompany Transactions, including Equity Contributions, in connection with the Cash Management System in the ordinary course of business; *provided* that transfers from the Debtors to non-Debtor subsidiaries shall be in accordance with the budget governing the Debtors' postpetition financing facility and use of cash collateral. The Debtors shall maintain accurate and detailed records of all Intercompany Transactions so that all transactions may be readily traced and ascertained. All postpetition payments from a Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded superpriority administrative expense status under section 364 of the Bankruptcy Code; *provided* that such superpriority administrative expense status claim shall be junior to any claim granted on account of the Debtors' postpetition financing facility and use of cash collateral.

5. The Debtors are authorized, but not directed, on an interim basis, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit 2** attached hereto; (b) use, in their present form, all correspondence and Business Forms (including letterhead) without reference to

the Debtors' status as debtors in possession; (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; and (e) pay the Bank Fees, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts; *provided* that once the Debtors' existing supply of checks has been exhausted, the Debtors shall, when reordering, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all such items; *provided further* that, with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend and the corresponding bankruptcy case number on all such items once the Debtors' existing supply of checks has been exhausted. Any postpetition fees, costs, charges and expenses, including Bank Fees or charge-backs payable to the Cash Management Bank that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

6. The Cash Management Bank is authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be.

7. To the extent any Bank Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code, the Debtors shall have thirty days from the date of this Interim Order (or such additional time to which the U.S. Trustee may agree) to

either bring such Bank Accounts into compliance with section 345(b) of the Bankruptcy Code or to make such other arrangements as are agreed to by the U.S. Trustee or approved by the Court; *provided* that nothing in the foregoing shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent such an arrangement cannot be reached within that time period (or such other period as agreed to by the Debtors and the U.S. Trustee).

8. The relief granted in this Interim Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

9. For banks at which the Debtors hold Bank Accounts that are party to a UDA with the United States Trustee for the District of Delaware, within ten days of the date of entry of this Interim Order the Debtors shall: (a) contact each bank; (b) provide the bank with each of the Debtors' employer identification numbers; and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

10. The Debtors are authorized, but not directed, to continue issuing and reimbursing the Company Cards and using the Company Card program in the ordinary course of business and consistent with prepetition practices, including by paying prepetition and postpetition obligations outstanding with respect thereto, subject to the limitations of this Interim Order and any other applicable interim and/or final orders of this Court.

11. All banks, including the Cash Management Bank, provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further

direction from the Debtors. The Cash Management Bank is otherwise authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for all checks drawn on the Debtors' account.

12. The Debtors will maintain records in the ordinary course reflecting transfers of cash, if any, so as to permit all such transactions to be ascertainable.

13. In the course of providing cash management services to the Debtors, the Cash Management Bank is authorized, without further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors (including Bank Fees), whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

14. The Cash Management Bank is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of (a) all checks drawn on the Debtors' accounts that have been cashed at such banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date, (b) all checks or other items deposited in one of the Debtors' accounts with such bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the

Petition Date, and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owned to any bank as to service charges for the maintenance of the Cash Management System.

15. Any bank, including the Cash Management Bank, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to, on, or after the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of customary item handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Interim Order.

16. Any and all banks, including the Cash Management Bank, are further authorized, but not directed, to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Bank shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

17. The Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts and enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate; *provided* that the Debtors shall give ten days' notice to the U.S. Trustee, counsel to the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases prior to the opening or closing of any

Bank Accounts, and such opening or closing shall be timely indicated on the Debtors' monthly operating reports; *provided, further*, that the Debtors shall open any such new Bank Account at banks that have executed a UDA with the U.S. Trustee in the District of Delaware, or at such banks that are willing to immediately execute such an agreement. Notwithstanding the foregoing, the Debtors are authorized to open the Adequate Assurance Account (as defined in the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief*) with the Cash Management Bank.

18. Nothing contained herein shall permit the Cash Management Bank to terminate any cash management services without thirty days prior written notice (or such other period as may be specified in any agreement between the Debtors and such Cash Management Bank) to the Debtors, U.S. Trustee, the Prepetition Agent, and any official committee appointed in these chapter 11 cases.

19. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

20. Subject to section 553 of the Bankruptcy Code, the Cash Management Bank is prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in section 101(5) of the Bankruptcy Code) of any such bank against the Debtors that arose before the Petition Date, absent further order of this Court.

21. Nothing contained in the Motion or this Interim Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not

exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

22. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

23. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Bank Fees.

24. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law.

25. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this

Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

26. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

27. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

28. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

29. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Cash Management System Schematic

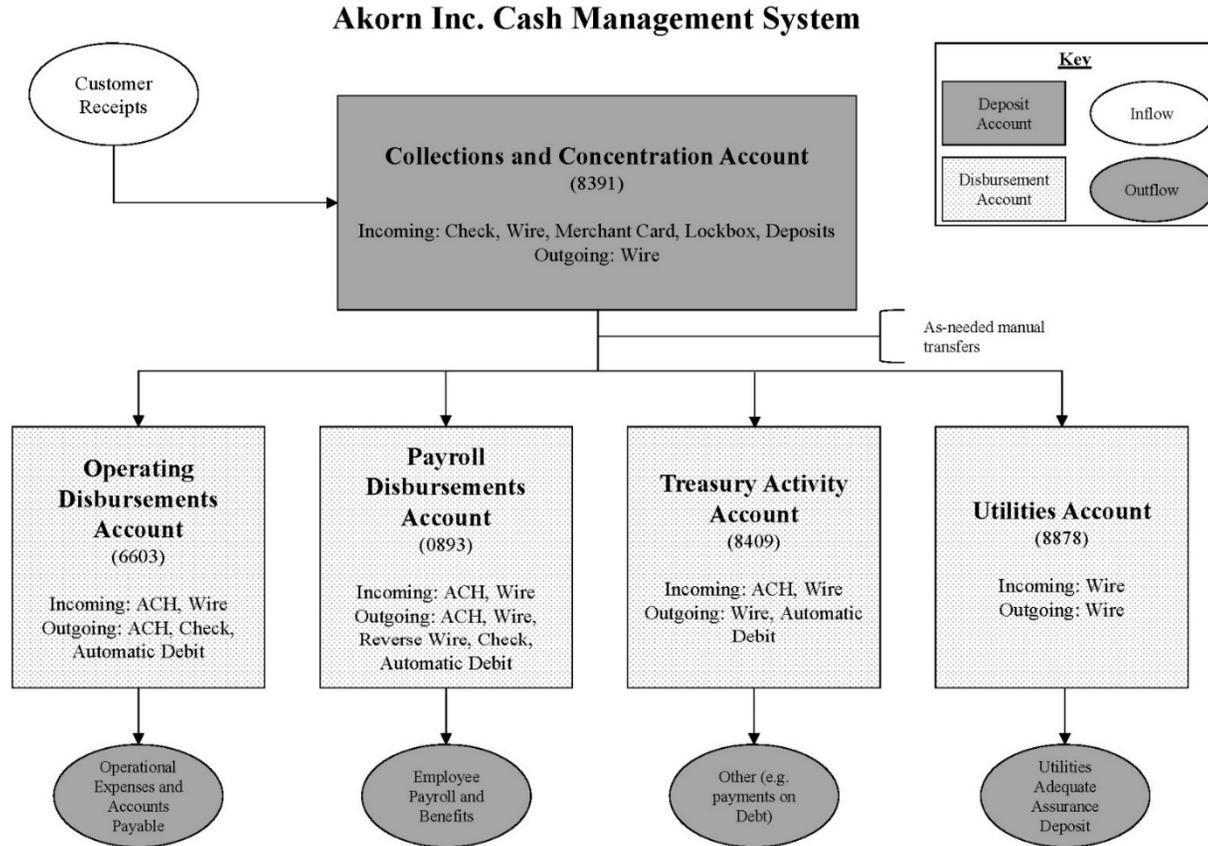


EXHIBIT 2**Bank Accounts**

Bank Name	Account Number	Account Holder	Account Description
Bank of America	8391	Akorn, Inc.	Collections and Concentration
Bank of America	6603	Akorn, Inc.	Operating Disbursements
Bank of America	0893	Akorn, Inc.	Payroll Disbursements
Bank of America	8409	Akorn, Inc.	Treasury Activity
Bank of America	8878	Akorn, Inc.	Utilities Adequate Assurance Account

EXHIBIT B

Proposed Final Order

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

In re:)	
	)	Chapter 11
AKORN, INC., ¹)	
	)	Case No. 19-11177 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	
	)	Re: Docket No. _____

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO,
(C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM
INTERCOMPANY TRANSACTIONS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”) (a) authorizing the Debtors to (i) continue to operate their cash management system, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing business forms in the ordinary course of business, and (iv) continue intercompany transactions and funding consistent with the Debtors’ historical practices, and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and

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 defined herein have the meanings given to such terms in the Motion.

that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and the First Day Declaration and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, on a final basis, to: (a) continue operating the Cash Management System, substantially as identified on Exhibit 1 attached hereto and as described in the Motion; (b) honor their prepetition obligations related thereto; and (c) maintain existing Business Forms.
3. The Debtors are authorized, but not directed, to continue engaging in Intercompany Transactions, including Equity Contributions, in connection with the Cash Management System in the ordinary course of business; *provided* that transfers from the Debtors to non-Debtor subsidiaries shall be in accordance with the budget governing the Debtors' postpetition financing facility and use of cash collateral. The Debtors shall maintain accurate and detailed records of all Intercompany Transactions so that all transactions may be readily

traced and ascertained. All postpetition payments from a Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded superpriority administrative expense status under section 364 of the Bankruptcy Code; *provided* that such superpriority administrative expense status claim shall be junior to any claim granted on account of the Debtors' postpetition financing facility and use of cash collateral.

4. The Debtors are authorized, but not directed, on a final basis, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on Exhibit 2 attached hereto; (b) use, in their present form, all correspondence and Business Forms (including letterhead) without reference to the Debtors' status as debtors in possession; (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, and other debits; and (e) pay the Bank Fees, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts; *provided* that once the Debtors' existing supply of checks has been exhausted, the Debtors shall, when reordering, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all such items; *provided further* that, with respect to checks which the Debtors or their agents print themselves, the Debtors shall begin printing the "Debtor in Possession" legend and the corresponding bankruptcy case number on all such items once the Debtors' existing supply of checks has been exhausted. Any postpetition fees, costs, charges and expenses, including Bank Fees, or charge-backs payable to the banks that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

5. The Cash Management Bank is authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided* that (a) those certain existing deposit agreements between the Debtors and the Cash Management Bank shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Bank, and all of the provisions of such agreements, including the termination and fee provisions and any provisions relating to offset or charge back rights with respect to returned items, shall remain in full force and effect, and (b) the Debtors and the Cash Management Bank may, without further order of this Court, agree to and implement changes to the Cash Management System and procedures related thereto in the ordinary course of business pursuant to terms of those certain existing deposit agreements, including, subject to paragraph 14 of this Final Order, the closing of Bank Accounts or the opening of new bank accounts.

6. The relief granted in this Final Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

7. The Debtors are authorized, but not directed, to continue issuing and reimbursing the Company Cards and using the Company Card program in the ordinary course of business and consistent with prepetition practices, including by paying prepetition and postpetition obligations outstanding with respect thereto, subject to the limitations of this Final Order and any other applicable interim and/or final orders of this Court.

8. All banks, including the Cash Management Bank, provided with notice of this Final Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors. The Cash Management Bank is otherwise authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for all checks drawn on the Debtors' account.

9. The Debtors will maintain records in the ordinary course reflecting transfers of cash, if any, so as to permit all such transactions to be ascertainable.

10. In the course of providing cash management services to the Debtors, the Cash Management Bank is authorized, without further order of this Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors (including Bank Fees), whether arising prepetition or postpetition, from the appropriate accounts of the Debtors, and further, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers.

11. The Cash Management Bank is authorized to debit the Debtors' accounts in the ordinary course and without further order of this Court on account of (a) all checks drawn on the Debtors' accounts that have been cashed at such banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date, (b) all checks or other items deposited in one of the Debtors' accounts with such bank prior to the Petition Date which have

been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date, and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owned to any bank as to service charges for the maintenance of the Cash Management System.

12. Any bank, including the Cash Management Bank, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of customary item handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Final Order.

13. Any and all banks, including the Cash Management Bank, are further authorized, but not directed, to (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account and (b) accept and hold the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Bank shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

14. The Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts and enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate; *provided* that

the Debtors shall give ten days' notice to the U.S. Trustee, counsel to the Ad Hoc Group, and any statutory committee appointed in these chapter 11 cases prior to the opening or closing of any Bank Accounts, and such opening or closing shall be timely indicated on the Debtors' monthly operating reports; *provided, further*, that the Debtors shall open any such new Bank Account at banks that have executed a UDA with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement. Notwithstanding the foregoing, the Debtors are authorized to open the Adequate Assurance Account (as defined in the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Determining Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Utility Services, (III) Establishing Procedures for Determining Adequate Assurance of Payment, and (IV) Granting Related Relief*) with the Cash Management Bank.

15. Nothing contained herein shall permit the Cash Management Bank to terminate any cash management services without thirty days prior written notice (or such other period as may be specified in any agreement between the Debtors and such Cash Management Bank) to the Debtors, U.S. Trustee, Prepetition Agent, and any official committee appointed in these chapter 11 cases.

16. The requirement to establish separate accounts for cash collateral and/or tax payments is hereby waived.

17. For the avoidance of doubt, no party is permitted to collect, net, withhold, or setoff Fines arising from prepetition breaches of the terms of any Payment Processing Agreements or similar agreements in violation of the automatic stay imposed by section 362 of the Bankruptcy Code absent further order of this Court.

18. Subject to section 553 of the Bankruptcy Code, the Cash Management Bank is prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in Bankruptcy Code section 101(5)) of any such bank against the Debtors that arose before the Petition Date, absent further order of this Court.

19. Nothing contained in the Motion or this Final Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

20. Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

21. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Bank Fees.

22. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's right to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the

Bankruptcy Code; or (f) a waiver or limitation of the Debtors' or any other party-in-interest's rights under the Bankruptcy Code or any other applicable law.

23. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order without any duty of further inquiry and without liability for following the Debtors' instructions.

24. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

25. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

26. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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

Dated: _____, 2020
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Cash Management System Schematic

Akorn Inc. Cash Management System

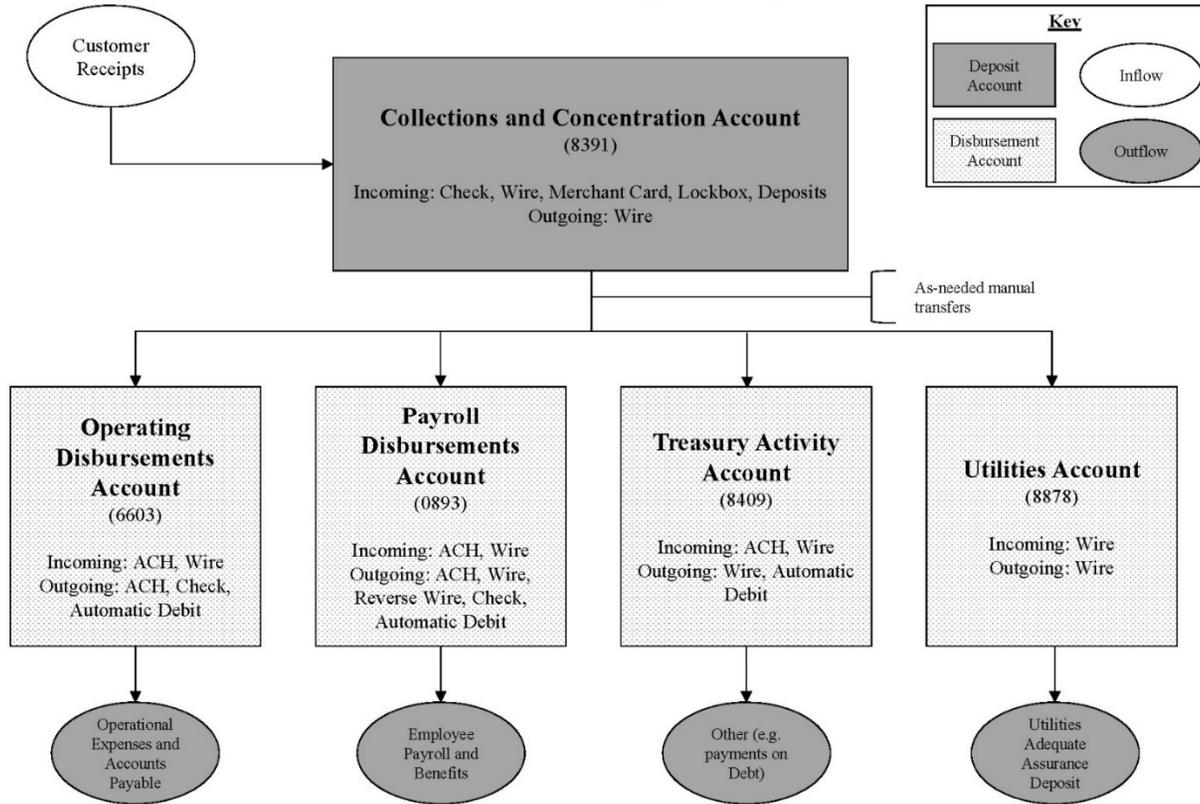


EXHIBIT 2**Bank Accounts**

Bank Name	Account Number	Account Holder	Account Description
Bank of America	8391	Akorn, Inc.	Collections and Concentration
Bank of America	6603	Akorn, Inc.	Operating Disbursements
Bank of America	0893	Akorn, Inc.	Payroll Disbursements
Bank of America	8409	Akorn, Inc.	Treasury Activity
Bank of America	8878	Akorn, Inc.	Utilities Adequate Assurance Account