
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM T-3

FOR APPLICATION FOR QUALIFICATION OF INDENTURE
UNDER THE TRUST INDENTURE ACT OF 1939

Akorn, Inc.

(Name of applicant)

**1925 W. Field Court, Suite 300
Lake Forest, Illinois 60045**
(Address of principal executive offices)

Securities to be Issued Under the Indenture to be Qualified

TITLE OF CLASS	AMOUNT
Series A Contingent Value Rights	\$60,000,000

Approximate date of proposed public offering:
Upon, or as soon as practicable after, the entry of the Order and Final Judgment referred to herein.

Joseph Bonaccorsi, Esq.
Executive Vice President, General Counsel and Secretary
Akorn, Inc.

**1925 W. Field Court, Suite 300
Lake Forest, Illinois 60045
(847) 279-6100**
(Name and address of agent for service)

With a copy to:
Paul H. Zumbro, Esq.
Nicholas A. Dorsey, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
(212) 474-1000

The Issuer (as defined herein) hereby amends this Application (as defined herein) on such date or dates as may be necessary to delay its effectiveness until: (i) the 20th day after the filing of an amendment which specifically states that it shall supersede this Application, or (ii) such date as the Commission (as defined herein), acting pursuant to Section 307(c) of the Trust Indenture Act of 1939, may determine upon the written request of the Issuer.

GENERAL

1. General Information

Akom, Inc. (the “Issuer”) is a corporation organized under the laws of the State of Louisiana.

2. Securities Act Exemption Available.

On August 9, 2019, the Issuer and the other defendants in a putative class action litigation captioned *In re Akorn, Inc. Data Integrity Securities Litigation*, C.A. No. 18-cv-1713 (N.D. Ill.) (the “Securities Class Action”) concerning certain alleged violations of the Securities Exchange Act of 1934, as amended, entered into a Stipulation and Agreement of Settlement (the “Securities Class Action Settlement Agreement”) to resolve the Securities Class Action and the claims of the putative class (the “Class Claims”), and lead plaintiffs filed a motion for preliminary approval of the Securities Class Action Settlement Agreement and certain related matters. The Securities Class Action Settlement Agreement was filed as Exhibit 10.1 to the Issuer’s Form 8-K filed with the Securities and Exchange Commission (the “Commission”) on August 12, 2019.

The terms of the Securities Class Action Settlement Agreement provide for the release of the Class Claims by the putative class in exchange for a combination of (i) up to \$30 million in insurance proceeds from the Issuer’s D&O insurance policies, (ii) the issuance by the Issuer of approximately 6.5 million shares of the Issuer’s common stock and any additional shares of the Issuer’s common stock that are released as a result of the expiration of out of the money options, outstanding as of August 9, 2019, through December 31, 2024 (collectively, the “Settlement Shares”) and (iii) the issuance by the Issuer of the Series A Contingent Value Rights (the “CVRs”) under the Contingent Value Rights Agreement (the “Indenture”) between the Issuer and the trustee named therein (the “Trustee”) to be (x) executed upon, or as soon as practicable after, the final approval of the settlement by the United States District Court for the Northern District of Illinois (the “Court”) and (y) qualified by this Application for Qualification (this “Application”). For more detailed information on the Indenture, see Item 8, “Analysis of Indenture Provisions”.

The Securities Class Action Settlement Agreement is subject to numerous terms and conditions including, among other things, (i) the unilateral right of the Issuer and the other defendants in the Securities Class Action to terminate the Securities Class Action Settlement Agreement if persons who purchased a number of shares exceeding an agreed threshold validly opt out of and elect not to participate in or be bound by its terms and (ii) final approval of the settlement by the Court. There can be no guarantee that the Issuer and the other defendants will not exercise their termination right or that the Securities Class Action Settlement Agreement will receive the Court’s approval.

Subject to the Court’s approval and the Issuer’s termination right, the Settlement Shares and the CVRs will be issued pursuant to the exemption from registration provided by Section 3(a)(10) of the Securities Act of 1933, as amended (the “Securities Act”). Section 3(a)(10) of the Securities Act provides an exemption from registration under the Securities Act for securities issued in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the terms and conditions of such issuance and exchange are approved, after a hearing upon the fairness of such terms and conditions at which all persons to whom it is proposed the securities will be issued in such exchange have the right to appear, by any court or other governmental authority that is expressly authorized by law to grant such approval.

The three main elements of the Section 3(a)(10) exemption are (a) an exchange of outstanding securities, claims or property interests, (b) a fairness hearing and (c) court approval of the issuance of securities in exchange for securities, claims or property interests. As described below, and in the Form of Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) and the Form of Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Publication Notice”) incorporated herein by reference as Exhibits T3E.1 and T3E.2, respectively, each of these elements will be satisfied in connection with the issuance of the CVRs.

(a) Exchange

Pursuant to the Securities Class Action Settlement Agreement, the CVRs, among other things, will be issued in exchange for the release of the Class Claims by the putative class.

(b) Settlement Hearing

On August 26, 2019, the Court entered the Order Preliminarily Approving Settlement, Approving Form of Class Notice and Setting Hearing Date for Final Approval of Settlement (the "Preliminary Approval Order"), filed herewith as Exhibit T3D.1. Among other things, the Preliminary Approval Order (i) preliminarily approves the settlement; (ii) approves the form of the Notice and Publication Notice, and authorizes lead plaintiffs' counsel to send the Notice to the members of the putative class and to cause the claims administrator to publish the Publication Notice; and (iii) sets the hearing date for final approval of the settlement (the "Settlement Hearing") for December 3, 2019, or such other date as may be approved by the Court. The Settlement Hearing will be open to all members of the putative class, which includes every person entitled to receive the CVRs. All such persons will have the right to appear at the Settlement Hearing. Measures will be taken pursuant to the Preliminary Approval Order to provide relevant information and adequate and timely notice of the right to appear to all members of the putative class, including by mailing the Notice to all members of the putative class, publishing the Publication Notice in *Investor's Business Daily* and transmitting the Publication Notice once over the *PR Newswire*. There will be no improper impediments to appearance by any member of the putative class at the Settlement Hearing.

(c) Court Approval

The Issuer anticipates that, at the Settlement Hearing, the parties will seek the Court's approval of the settlement and the Court will enter an order in, or substantially in, the form attached to the Securities Class Action Settlement Agreement as Exhibit B (the "Order and Final Judgment"). The Issuer has advised the Court in advance of the Settlement Hearing that it will rely on the Section 3(a)(10) exemption based on the Court's approval of the issuance of the CVRs. The Issuer further anticipates that, at the Settlement Hearing, the Court will, among other things, (i) determine whether the proposed settlement on the terms and conditions provided for in the Securities Class Action Settlement Agreement is fair, reasonable and adequate to the putative class; and (ii) find, before approving the issuance of the CVRs to the putative class pursuant to an exemption from registration requirements under Section 3(a)(10) of the Securities Act, that the terms and conditions of the issuance are fair both procedurally and substantively to all persons and entities to whom the shares will be issued.

AFFILIATIONS

3. Affiliates

For purposes of this Application only, certain directors and executive officers of the Issuer may be deemed to be "affiliates" of the Issuer by virtue of their positions with the Issuer. See Item 4, "Directors and Executive Officers". In addition, certain persons may be deemed to be "affiliates" of the Issuer by virtue of their holdings of the voting securities of the Issuer. See Item 5, "Principal Owners of Voting Securities".

MANAGEMENT AND CONTROL

4. Directors and Executive Officers.

The names of and offices held by all current directors and executive officers of the Issuer, as of the date hereof, are set forth below. The mailing address for each director and executive officer is: c/o Akom, Inc., 1925 W. Field Court, Suite 300, Lake Forest, Illinois 60045, and each director's and executive officer's telephone number is (847) 279-6100.

NAME	TITLE
Douglas S. Boothe	President and Chief Executive Officer
Duane A. Portwood	Executive Vice President and Chief Financial Officer
Joseph Bonaccorsi	Executive Vice President, General Counsel and Secretary
Randall E. Pollard	Senior Vice President, Finance and Chief Accounting Officer
Jonathan Kafer	Executive Vice President, Chief Commercial Officer
Christopher C. Young	Executive Vice President, Global Operations
Erislandy Dorado-Boladeres	Executive Vice President of Global Quality
Alan Weinstein	Director, Chairman of the Board
Kenneth S. Abramowitz	Director
Adrienne L. Graves	Director
Ronald M. Johnson	Director
Steven J. Meyer	Director
Thomas G. Moore	Director
Terry Allison Rappuhn	Director
Brian Tambi	Director

5. Principal Owners of Voting Securities.

The Issuer furnishes the following information as to each person owning 10% or more of the voting securities of the Issuer as of the dates specified in the footnotes to this table.

Name and Complete Mailing Address	Title of Class Owned	Amount Owned	Percent of Voting Securities Owned
Rao Akella 121 Stonegate Road Lake Forest, Illinois 60045	Common Shares	26,045,251 ⁽¹⁾	20.7%
BlackRock, Inc. 55 East 52nd Street New York, New York 10055	Common Shares	15,707,461 ⁽²⁾	12.5%

(1) The stock ownership of Rao Akella is as of July 19, 2019, as reflected in the Schedule 13D filed with the Commission on July 19, 2019.

(2) The stock ownership of BlackRock, Inc. is as of December 31, 2018, as reflected in the Schedule 13G/A filed with the Commission on January 24, 2019.

UNDERWRITERS

6. Underwriters

(a) Within the three years prior to the date of the filing of this Application, no person has acted as an underwriter of any securities of the Issuer that are currently outstanding as of the date of this Application.

(b) There is no proposed underwriter for the CVRs that are proposed to be issued in connection with the Indenture.

CAPITAL SECURITIES

7. Capitalization

(a) As of July 31, 2019, the Issuer had the following capitalization:

Title of Class	Amount Authorized	Amount Outstanding
Common stock	150,000,000	126,142,943
Preferred Stock	5,000,000	0

(b) Holders of the Issuer’s common stock are entitled to one vote for each share of common stock registered in such Holder’s name.

INDENTURE SECURITIES

8. Analysis of Indenture Provisions.

Subject to the Court’s approval and the Issuer’s termination right, the CVRs will be issued under the Indenture. However, as of the date of this Application, the Issuer has not yet entered into the Indenture, and the following general description of certain provisions of the Indenture is qualified in its entirety by reference to the form of the Indenture filed as Exhibit T3C hereto. Unless otherwise specified herein, all capitalized and otherwise undefined terms in this Item 8 shall have the meanings ascribed to them in the Indenture.

(a) *Events of Default; Withholding of Notice.*

Under the Indenture, Event of Default, with respect to the CVRs, means each one of the following events, which shall have occurred and be continuing:

- (1) default in the payment by the Issuer pursuant to the terms of the Indenture of all or any part of any CVR Payment after a period of 10 Business Days after such CVR Payment shall become due and payable on the applicable Payment Date; or
- (2) material default in the performance, or breach in any material respect, of any covenant in respect of the CVRs (other than a covenant in respect of the CVRs, a default in the performance or breach of which is specifically dealt with elsewhere in the Indenture, and continuance of such default or breach for a period of 90 days after there has been given by registered or certified mail to the Issuer by the Trustee or to the Issuer and the Trustee by the Majority Holders, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” under the Indenture.

If an Event of Default occurs and is continuing, then, and in each and every such case, either the Trustee by notice in writing to the Issuer or the Trustee upon the written request of the Majority Holders by notice in writing to the Issuer and to the Trustee, may bring suit to protect the rights of the Holders, including to obtain payment for any amounts then due and payable.

The foregoing provisions described in this Item 8(a), however, are subject to the condition that if, at any time after the Trustee shall have begun such suit, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Issuer shall pay or shall deposit with the Trustee a sum sufficient to pay all amounts which shall have become due and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred and all advances made by the Trustee, and if any and all Events of Default under the Indenture shall have been cured, waived or otherwise remedied as provided in the Indenture, then and in every such case the Majority Holders, by written notice to the Issuer and to the Trustee, may waive all defaults with respect to the CVRs, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereof.

If any condition which is, or with notice or lapse of time or both would become, an Event of Default has occurred and is known to the Trustee, then the Trustee will send the Holders a notice of any such condition within 90 days after it occurs, unless such default shall have been cured before the giving of such notice; provided that, except in the case of a default in the payment of the amounts payable in respect of any of the CVRs, the Trustee shall be protected in withholding such notice if and for so long as the board of directors, the executive committee, or a trust committee of directors or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders; provided further, that in the case of any material default in the performance, or breach in any material respect, of any covenant in respect of the CVRs (other than a covenant in respect of the CVRs, a default in the performance or breach of which is specifically dealt with elsewhere in the Indenture, and continuance of such default or breach for a period of 90 days after written notice thereof has been given by registered or certified mail to the Issuer by the Trustee or to the Issuer and the Trustee by the Majority Holders, no notice to the Holders shall be given until at least 30 days after the occurrence thereof.

(b) Authentication and Delivery of the CVRs; Proceeds.

The Issuer’s chief executive officer, any president or vice president or any other individual duly authorized to act on behalf of the Issuer (each, an “Authorized Officer”) shall execute the Global Securities on behalf of the Issuer by manual or facsimile signature.

If an Authorized Officer whose signature is on a Global Security no longer holds that office at the time a Global Security is authenticated, the Global Security shall nevertheless be valid.

At any time and from time to time after the execution and delivery of the Indenture, the Issuer may deliver a Company Order for the authentication, as applicable, and delivery of CVRs, and the Trustee, in accordance with such Company Order, shall authenticate, as applicable, and deliver such CVRs as provided in the Indenture and not otherwise. In the case of Global Securities, such Company Order shall be accompanied by Global Securities executed by the Issuer and delivered to the Trustee for authentication in accordance with such Company Order.

No Global Security shall be entitled to any benefit under the Indenture or be valid or obligatory for any purpose unless there appears on such CVR a certificate of authentication substantially in the form provided for in the Indenture duly executed by the Trustee, by manual or facsimile signature of an Authorized Officer, and such certificate upon any CVR shall be conclusive evidence, and the only evidence, that such Global Security has been duly authenticated and delivered under the Indenture and that the Holder is entitled to the benefits of the Indenture. Each Global Security shall be dated the date of its authentication.

Direct Registration Securities need not be authenticated, and shall be valid and obligatory for all purposes and shall entitle each Holder thereof to all benefits of the Indenture.

The Issuer will not receive any proceeds from the issuance of the CVRs pursuant to the Indenture.

(c) *Release of Property Subject to Liens.*

The CVRs will be unsecured obligations and will not have the benefit of collateral.

(d) *Satisfaction and Discharge.*

The Indenture will, automatically and without any further action of any Party, terminate and be of no force and effect and shall be satisfied and discharged, and the Parties thereto shall have no liability or obligations under the Indenture, at the earliest to occur of:

(i) the consummation of a Change in Control; provided that, if a Change in Control Payment is due and payable pursuant to the terms of the Indenture, then upon making such payment on the Change in Control Payment Date;

(ii) the Bankruptcy Claim Date (upon receipt of the Bankruptcy Claim);

(iii) the Total Payment Cap Date; and

(iv) the Annual Payment Date with respect to the Excess EBITDA Measuring Period ending on December 31, 2023; provided that, in the case of this clause (iv), if the cumulative Annual Payments that the Issuer has paid to, or caused to be paid or deposited with, the Trustee as of such Annual Payment Date (after giving effect to any Annual Payment to be made on such date) is less than the Total Payment Cap, then such date shall be extended to the Annual Payment Date with respect to the Excess EBITDA Measuring Period ending on December 31, 2025;

provided, however, that Sections 1.5 through 1.10, 1.12, 1.13, 1.16, 4.7, 7.2, 7.5, 8.2, Article 10 and Section 1.1 (to the extent related to the foregoing) of the Indenture shall survive termination of the Indenture in accordance with their terms.

(e) *Evidence of Compliance with Conditions and Covenants.*

Upon any application or request by the Issuer to the Trustee to take any action under any provision of the Indenture, the Issuer shall furnish to the Trustee an Officer's Certificate stating that, in the opinion of the signor, all conditions precedent, if any, provided for in the Indenture relating to the proposed action have been satisfied, and an Opinion of Counsel stating, subject to customary exceptions, that in the opinion of such counsel, all such conditions precedent, if any, have been satisfied, except that, in the case of any such application or request as to which the furnishing of any one of such documents is specifically required by any provision of the Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to satisfaction of a condition or compliance with a covenant provided for in the Indenture shall include: (i) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such condition has been satisfied or covenant has been complied with; and (iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

9. Other Obligors.

No person, other than the Issuer, will be an obligor under the CVRs.

CONTENTS OF APPLICATION FOR QUALIFICATION

This Application comprises:

(a) Pages numbered 1 to 7, consecutively.

- (b) The Statement of Eligibility and Qualification on Form T-1 of the Trustee under the Indenture to be Qualified pursuant to this Application.
- (c) The following exhibits in addition to those filed as part of the Statement of Eligibility and Qualification of the Trustee:

Exhibit T3A	Restated Articles of Incorporation of Akorn, Inc. dated September 16, 2004 (incorporated by reference to Exhibit 3.1 to the Registration Statement on Form S-1 of Akorn, Inc. filed with the Commission on September 21, 2004).
Exhibit T3B	By-Laws of Akorn, Inc., as amended April 24, 2017 (incorporated by reference to Exhibit 3.1 of the Quarterly Report on Form 10-Q of Akorn, Inc. filed with the Commission on May 4, 2017).
Exhibit T3C	Form of Contingent Value Rights Agreement.
Exhibit T3D.1	Order Preliminarily Approving Settlement, Approving Form of Class Notice, and Setting Hearing Date for Final Approval of Settlement.
Exhibit T3D.2*	Order and Final Judgment.
Exhibit T3E.1	Form of Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.
Exhibit T3E.2	Form of Summary Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses.
Exhibit T3F	Trust Indenture Act of 1939 Cross-Reference Table showing the location in the Indenture of the provisions inserted therein pursuant to sections 310 through 318(a), inclusive, of the Trust Indenture Act of 1939 (included in Exhibit T3C).
Exhibit 25.1*	Form T-1 Qualifying the Trustee under the Indenture to be Qualified pursuant to this Application.

* To be filed by amendment.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, the applicant, Akorn, Inc., a corporation organized under the laws of the State of Louisiana, has duly caused this application to be signed on its behalf by the undersigned, thereunto duly authorized, and attested, all in the city of Lake Forest, and State of Illinois, on August 26, 2019.

AKORN, INC.

By: /s/ Duane A. Portwood

Name: Duane A. Portwood

Title: Chief Financial Officer

Attested

By: /s/ Joseph Bonaccorsi

Name: Joseph Bonaccorsi

Title: EVP, General Counsel and Secretary

EXHIBIT INDEX

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* To be filed by amendment.

CONTINGENT VALUE RIGHTS AGREEMENT

by and between

AKORN, INC.

and

[]

Dated as of [], 2019

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Annex A Example Calculations of EBITDA, Excess EBITDA and Annual Payment

Annex B Form of Global Security

Note: This table of contents shall not, for any purpose, be deemed to be a part of this CVR Agreement.

**Reconciliation and tie between Trust Indenture Act of 1939 and
Contingent Value Rights Agreement, dated as of [], 2019**

Trust Indenture Act Section	Agreement Section
Section 310 (a)(1)	4.9
(a)(2)	4.9
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(a)(5)	4.9
(b)	4.8, 4.10
(c)	Not Applicable
Section 311 (a)	4.13
(b)	4.13
(c)	Not Applicable
Section 312 (a)	5.1, 5.2(a)
(b)	5.2(b)
(c)	5.2(c)
Section 313 (a)	5.3(a)
(b)	5.3(a)
(c)	5.3(a), 8.11
(d)	5.3(b)
Section 314 (a)	5.4
(b)	Not Applicable
(c)(1)	1.2(a)
(c)(2)	1.2(a)
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.2(b)
(f)	Not Applicable
Section 315 (a)	4.1(a), 4.1(b)
(b)	8.11
(c)	4.1(a)
(d)	4.1(c)
(d)(1)	4.1(a), 4.1(b)
(d)(2)	4.1(c)(ii)
(d)(3)	4.1(c)(iii)
(e)	8.12
Section 316 (a)(last sentence)	1.1 (Definition of "Outstanding")
(a)(1)(A)	8.9
(a)(1)(B)	8.10
(a)(2)	Not Applicable
(b)	8.7
(c)	1.4(a)
Section 317 (a)(1)	8.2
(a)(2)	8.2
(b)	7.3
Section 318 (a)	1.7

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of this CVR Agreement.

THIS CONTINGENT VALUE RIGHTS AGREEMENT, dated as of [], 2019 (this “CVR Agreement”), by and between Akorn, Inc., a Louisiana corporation (the “Company”), and [], a [], as trustee (the “Trustee”), in favor of each person who from time to time holds one or more Contingent Value Rights (the “Securities” or “CVRs”) to receive cash payments in the amounts and subject to the terms and conditions set forth herein.

WITNESSETH:

WHEREAS, this CVR Agreement is entered into in accordance with to the Stipulation and Agreement of Settlement, dated as of August 9, 2019 (as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Settlement Stipulation”), by and among the Company, Gabelli & Co. Investment Advisors, Inc. and Gabelli Funds, LLC (together, the “Lead Plaintiffs”), on behalf of the Settlement Class (together with the Lead Plaintiffs, the “Plaintiffs”), and the Individual Defendants in the matter *In re Akorn, Inc. Data Integrity Securities Litigation*, C.A. No. 18-cv-173 (N.D. Ill.) (the “Securities Litigation”);

WHEREAS, as part of the consideration for the Settlement and the release of the Settled Claims, the Company has agreed to issue to the Plaintiffs the CVRs, which shall be issued pursuant to the terms of this CVR Agreement and in accordance with the Settlement Stipulation; and

WHEREAS, the CVRs shall be issued pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), provided by Section 3(a)(10) of the Securities Act, which exemption was perfected in the Order and Final Judgment entered by the Court on [], 2019 in the Securities Litigation.

NOW, THEREFORE, in consideration of the foregoing premises and the final resolution of the Settled Claims contemplated by the Settlement Stipulation, it is covenanted and agreed, for the equal and proportionate benefit of all Holders (as defined below) of the Securities, as follows:

**ARTICLE 1
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

Section 1.1. Definitions. For all purposes of this CVR Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article 1 have the meanings assigned to them in this Article 1, and include the plural as well as the singular;
- (b) all accounting terms used herein and not expressly defined herein shall, except as otherwise noted, have the meanings assigned to such terms in accordance with applicable Accounting Standards, where “Accounting Standards” means (A) GAAP (as defined below); or (B) to the extent that the Company adopts International Financial Reporting Standards (IFRS), then “Accounting Standards” means International Financial Reporting Standards (IFRS), in either case consistently applied;
- (c) all capitalized terms used in this CVR Agreement without definition shall have the respective meanings ascribed to them in the Settlement Stipulation;
- (d) all other terms used herein which are defined in the Trust Indenture Act (as defined herein), either directly or by reference therein, have the respective meanings assigned to them therein;
- (e) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this CVR Agreement as a whole and not to any particular Article, Section or other subdivision;
- (f) whenever the words “include,” “includes” or “including” are used in this CVR Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import;

(g) references to a particular statute or regulation include all rules and regulations thereunder and any successor statute, rule or regulation, in each case as amended or otherwise modified from time to time; and

(h) all references to “\$” or “dollar” refer to United States dollars.

“Act” shall have the meaning set forth in [Section 1.4\(a\)](#).

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purpose of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Annual Payment” means, with respect to any Excess EBITDA Measuring Period for any CVR that is Outstanding as of the applicable Annual Payment Record Date, an amount equal to the lesser of (a) (i) thirty-three and one third percent (33.3%) of the Excess EBITDA for such Excess EBITDA Measuring Period divided by (ii) the Initial Settlement CVR Amount, and (b) the Annual Payment Cap; provided that if the making of such Annual Payment would cause the cumulative amount of Annual Payments commencing from the date of this CVR Agreement (inclusive of such Annual Payment) with respect to such Outstanding CVR to exceed the Total Payment Cap with respect to such Outstanding CVR, then such Annual Payment will be reduced by an amount equal to such excess amount. Example calculations of Annual Payments are set forth on [Annex A](#).

“Annual Payment Cap” means, with respect to each CVR that is Outstanding as of the applicable Annual Payment Record Date, an amount equal to (a) twelve million dollars (\$12,000,000) divided by (b) the Initial Settlement CVR Amount.

“Annual Payment Date” means, with respect to any Annual Payment, the date that is selected by the Company, which date shall be no later than sixty (60) days following the date on which the Company files its annual report on Form 10-K setting forth the line items comprising EBITDA for the applicable Excess EBITDA Measuring Period.

“Annual Payment Record Date” shall have the meaning set forth in [Section 3.1\(c\)\(i\)](#).

“Applicable Procedures” means, with respect to any transfer or exchange of or for beneficial interests in any Global Security, the rules and procedures of the Depositary that apply to such transfer or exchange.

“Bankruptcy Claim” means, with respect to each CVR that is Outstanding as of the Bankruptcy Claim Date, a general unsecured claim on behalf of the Holder of such Outstanding CVR in an amount equal to (a) thirty million dollars (\$30,000,000) divided by (b) the Initial Settlement CVR Amount, in any case commenced under the Bankruptcy Code (i) by the Company or (ii) involuntarily against the Company in which an order for relief has been entered by the bankruptcy court against the Company, which claim shall be expressly subordinated in such case to the claims of holders of Senior Obligations in accordance with [Article 10](#) hereof.

“Bankruptcy Claim Date” shall mean (a) in the case of a case commenced by the Company under the Bankruptcy Code, the date of the filing by the Company of a petition in respect thereof, and (b) in the case of a case commenced involuntarily against the Company, the date on which an order for relief has been entered in such case by the bankruptcy court against the Company.

“Bankruptcy Code” means Title 11 of the United States Code (11 U.S.C. 101 et seq.).

“Board of Directors” means the board of directors of the Company or any other body performing similar functions, or any duly authorized committee of that board.

“Board Resolution” means a resolution duly adopted by the Board of Directors.

“Business Day” means any day (other than a Saturday or a Sunday) on which banking institutions in The City of New York, New York are not authorized or obligated by Law or executive order to close and, if the CVRs are listed on a national securities exchange, electronic trading network or other suitable trading platform, such exchange, electronic network or other trading platform is open for trading.

“Change in Control” means the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person of equity interests representing more than fifty percent (50%) of the aggregate ordinary voting power represented by the issued and outstanding equity interests of the Company, other than any transaction, including any consolidation or merger, pursuant to which the voting stock of the Company outstanding immediately prior to such transaction is converted into or exchanged for voting stock of a transferee entity constituting more than fifty percent (50%) of such voting stock of such surviving or transferee entity (immediately after giving effect to such issuance).

“Change in Control Payment” means, with respect to each CVR that is Outstanding as of the Change in Control Payment Record Date, an amount equal to (a) thirty million dollars (\$30,000,000) divided by (b) the Initial Settlement CVR Amount; provided that the Company shall not make the Change in Control Payment with respect to any Outstanding CVR unless, after giving effect to all Change in Control Payments, the Senior Obligations and any other debt for borrowed money of the Company and its Subsidiaries (and accrued interest in respect thereof) shall have been satisfied in full in cash.

“Change in Control Payment Date” means, with respect to the Change in Control Payment, the date that is selected by the Company or its successor in accordance with Article 9 hereof that is no later than sixty (60) days following the date of the consummation of the Change in Control.

“Change in Control Payment Record Date” shall have the meaning set forth in Section 3.1(c)(ii).

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Commission” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Company” means the Person named as the “Company” in the first paragraph of this CVR Agreement and its permitted successors and assigns. To the extent necessary to comply with the requirements of the provisions of Trust Indenture Act Sections 310 through 317, inclusive, to the extent that they are applicable to the Company, the term “Company” shall include any other obligor with respect to the Securities for the purposes of complying with such provisions.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by the chief executive officer, any president or vice president, the secretary or any assistant secretary or any other individual duly authorized to act on behalf of the Company for such purpose, and delivered to the Trustee.

“Corporate Trust Office” means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of execution of this CVR Agreement is located at [].

“CVRs” shall have the meaning set forth in the Preamble of this CVR Agreement.

“CVR Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

“CVR Payment” means any Annual Payment and any Change in Control Payment.

“Depositary” shall have the meaning set forth in Section 3.2.

“Direct Registration Securities” means Securities, the ownership of which is recorded on the Direct Registration System. The terms “deliver,” “execute,” “issue,” “register,” “surrender,” “transfer” or “cancel,” when used with respect to Direct Registration Securities, shall refer to an entry or entries or an electronic transfer or transfers in the Direct Registration System.

“Direct Registration System” means the system for the uncertificated registration of ownership of securities established by the Security Registrar and utilized by the Security Registrar pursuant to which the Security Registrar may record the ownership of CVRs without the issuance of a certificate, which ownership shall be evidenced by periodic statements issued by the Security Registrar to the Holders entitled thereto.

“EBITDA” means, with respect to any Excess EBITDA Measuring Period, the Company’s consolidated net income (loss) (a) plus interest expense, net (or minus interest income, net, to the extent applicable) (b) plus income tax provision (or minus income tax benefit, to the extent applicable) (c) plus depreciation expense (d) plus amortization expense, in each case as determined with respect to such Excess EBITDA Measuring Period and reported in the Company’s annual report on Form 10-K with respect to such Excess EBITDA Measuring Period. Example calculations of EBITDA are set forth on Annex A.

“Event of Default” shall have the meaning set forth in Section 8.1 of this CVR Agreement.

“Excess EBITDA” means, with respect to any Excess EBITDA Measuring Period, an amount equal to the excess, if any, of (a) EBITDA for such Excess EBITDA Measuring Period over (b) (i) the sum of (x) Net Debt as of the last day of such Excess EBITDA Measuring Period and (y) one hundred million dollars (\$100,000,000) divided by (ii) 3.0. Example calculations of Excess EBITDA are set forth on Annex A.

“Excess EBITDA Measuring Period” means the twelve (12) month period beginning on the first day of each fiscal year of the Company during the term of this CVR Agreement and ending on the last day of each fiscal year of the Company during the term of this CVR Agreement; provided that the first Excess EBITDA Measuring Period shall begin on January 1, 2019 and end on December 31, 2019.

“Excess EBITDA Statement” means, with respect to each Excess EBITDA Measuring Period, the written statement of the Company setting forth the Annual Payments, if any, due with respect to each CVR that is Outstanding as of the applicable Annual Payment Record Date, if any, in respect of the applicable Excess EBITDA Measuring Period in accordance with this CVR Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“GAAP” means generally accepted accounting principles in the United States as in effect from time to time.

“Global Securities” means global securities in registered form, substantially in the form set forth in Annex B.

“Governmental Entity” means the government of the United States, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Holder” means a Person in whose name a Security is registered in the Security Register.

“Indirect Participant” means a Person who holds a beneficial interest in a Global Security through a Participant.

“Initial Settlement CVR Amount” shall have the meaning set forth in Section 3.1(a).

“Junior Obligations” shall have the meaning set forth in Section 10.1.

“Law” means any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Entity.

“Majority Holders” means, at the time of determination, Holders of at least a majority of the Outstanding CVRs.

“Net Debt” means, with respect to any Excess EBITDA Measuring Period, an amount equal to (a) the Company’s total short-term and long-term debt plus (b) the Company’s deferred financing costs minus (c) the Company’s unrestricted cash and cash equivalents, in each case as of the last day of such Excess EBITDA Measuring Period and reported in the Company’s annual report on Form 10-K with respect to such Excess EBITDA Measuring Period.

“Officer’s Certificate”, when used with respect to the Company, means a certificate signed by the chief executive officer, any president or vice president, the secretary or any assistant secretary or any other individual authorized to act on behalf of the Company delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, which may be counsel for the Company.

“Outstanding”, when used with respect to the Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this CVR Agreement, except: (i) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation and (ii) Securities in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this CVR Agreement; provided, however, that in determining whether the Holders of the requisite Outstanding Securities have given any request, demand, direction, consent or waiver hereunder, Securities owned by the Company or any Affiliate of the Company, whether held as treasury securities or otherwise, shall be disregarded and deemed not to be Outstanding.

“Participant” means, with respect to the Depository, a Person who has an account with the Depository.

“Party” shall mean the Trustee and the Company, as applicable.

“Paying Agent” means any Person authorized by the Company to pay the amount determined pursuant to Section 3.1, if any, on any Securities on behalf of the Company.

“Payment Date” means any Annual Payment Date and the Change in Control Payment Date, if applicable.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or Governmental Entity, including, in each case, such Person’s permitted successors and assigns.

“Responsible Officer”, when used with respect to the Trustee, means any officer assigned to the Corporate Trust Office and also means, with respect to any particular corporate trust matter, any other officer of the Trustee to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

“Securities” shall have the meaning set forth in the Preamble of this CVR Agreement.

“Securities Act” shall have the meaning set forth in the Recitals of this CVR Agreement.

“Security Register” shall have the meaning set forth in Section 3.4(a).

“Security Registrar” shall have the meaning set forth in Section 3.4(a).

“Senior Obligations” means any existing or future obligations of the Company and its Subsidiaries, including the principal of, premium (if any), interest (including any interest accruing subsequent to the filing of a petition of bankruptcy at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable Law) on, and all other amounts owing thereon, with respect to or as evidenced by (i) borrowed money, (ii) notes, debentures, bonds or other similar debt instruments, (iii) the net obligations owed under interest rate swaps or similar agreements or currency exchange transactions, (iv) reimbursement obligations in respect of letters of credit and similar obligations, (v) the deferred purchase price of property or services and conditional sale agreements, (vi) capital leases or (vii) guarantees in respect of obligations referred to in clauses (i) through (vi) above; unless, in any case, the instrument creating or evidencing the same or pursuant to which the same is outstanding expressly provides that such obligations are *pari passu* to or subordinate in right of payment to the Securities.

Notwithstanding the foregoing, “Senior Obligations” shall not include:

- (A) Junior Obligations;
- (B) trade debt incurred in the ordinary course of business;
- (C) any intercompany indebtedness between the Company and any of its Subsidiaries;
- (D) indebtedness or other obligations of the Company that by its terms ranks equal or junior in right of payment to the Junior Obligations;
- (E) indebtedness of the Company that, by operation of Law, is subordinate to any general unsecured obligations of the Company; or
- (F) indebtedness evidenced by any guarantee of indebtedness ranking equal or junior in right of payment to the Junior Obligations.

For the avoidance of doubt, all “Secured Obligations” under (and as defined in) that certain Loan Agreement, dated as of April 17, 2014, among the Company, the other loan parties party thereto, the other lenders party thereto and the administrative agent party thereto shall constitute “Senior Obligations” for the purposes hereof.

“Series A Contingent Value Rights” shall have the meaning set forth in Section 3.1(b).

“Settlement Stipulation” shall have the meaning set forth in the Recitals of this CVR Agreement.

“Subsidiary” means, with respect to any Person, any corporation, limited liability company, association, partnership or other business entity of which more than fifty percent (50%) of the total voting power of shares of Voting Securities is at the time owned or controlled, directly or indirectly, by: (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“Tax” means any federal, state, local or foreign income, profits, gross receipts, license, payroll, employment, severance, stamp, occupation, premium, windfall profits, environmental, customs duty, capital stock, franchise, sales, social security, unemployment, disability, use, property, withholding, excise, transfer, registration, production, value added, alternative minimum, occupancy, estimated or any other tax of any kind whatsoever, together with any interest, penalty or addition thereto, imposed by any Governmental Entity responsible for the imposition of any such tax, whether disputed or not.

“Tax Return” means any return, report, declaration, claim or other statement (including attached schedules) relating to Taxes.

“Termination Date” shall have the meaning set forth in Section 1.16.

“Total Payment Cap” means, with respect to each CVR, an amount equal to (a) sixty million dollars (\$60,000,000) divided by (b) the Initial Settlement CVR Amount.

“Total Payment Cap Date” means the Payment Date on which the cumulative Annual Payments (inclusive of any Annual Payments to be made on such Payment Date) that the Company has paid, or caused to be paid or deposited with, the Trustee in accordance with Section 3.1 with respect to each CVR Outstanding as of the applicable Annual Payment Record Date equals the Total Payment Cap.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended from time to time.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this CVR Agreement, until a successor Trustee shall have become such pursuant to the applicable provisions of this CVR Agreement, and thereafter “Trustee” shall mean such successor Trustee.

“Voting Securities” means securities or other interests having voting power or the right to elect or appoint a majority of the directors, or any Persons performing similar functions, irrespective of whether or not stock or other interests of any other class or classes shall have or might have voting power or any right by reason of the happening of any contingency.

Section 1.2. Certificates and Opinions.

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this CVR Agreement, the Company shall furnish to the Trustee an Officer’s Certificate stating that, in the opinion of the signor, all conditions precedent, if any, provided for in this CVR Agreement relating to the proposed action have been satisfied, and an Opinion of Counsel stating, subject to customary exceptions, that in the opinion of such counsel, all such conditions precedent, if any, have been satisfied, except that, in the case of any such application or request as to which the furnishing of any one of such documents is specifically required by any provision of this CVR Agreement relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to satisfaction of a condition or compliance with a covenant provided for in this CVR Agreement shall include: (i) a statement that each individual signing such certificate or opinion has read such condition or covenant and the definitions herein relating thereto; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (iii) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such condition has been satisfied or covenant has been complied with; and (iv) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.3. Form of Documents Delivered to Trustee.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any Officer’s Certificate may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel. Any Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company.

(c) Any certificate, statement or opinion of an officer of the Company or of counsel may be based, insofar as it relates to accounting matters, upon a certificate or opinion of or representations by an accountant or firm of accountants in the employ of the Company.

(d) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this CVR Agreement, they may, but need not, be consolidated and form one instrument.

Section 1.4. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent (including any consent obtained in connection with a tender offer or exchange for, or purchase of, the CVRs), waiver or other action provided by this CVR Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this CVR Agreement and (subject to Section 4.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4. The Company may set a record date for purposes of determining the identity of Holders entitled to vote or consent to any action by vote or consent authorized or permitted under this CVR Agreement. If not previously set by the Company, (i) the record date for determining the Holders entitled to vote at a meeting of the Holders shall be the date preceding the date notice of such meeting is mailed or otherwise delivered to the Holders, or if notice is not given, on the day next preceding the day such meeting is held, and (ii) the record date for determining the Holders entitled to consent to any action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company. If a record date is fixed, those Persons who were Holders of the Securities at such record date (or their duly designated proxies), and only those Persons, shall be entitled to take such action by vote or consent or, except with respect to clause (d) below, to revoke any vote or consent previously given, whether or not such Persons continue to be Holders after such record date.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner that the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the Security Register. Neither the Company nor the Trustee nor any agent of the Company or the Trustee shall be affected by any notice to the contrary.

(d) At any time prior to (but not after) the evidencing to the Trustee, as provided in this Section 1.4, of the taking of any action by the Holders of the Securities specified in this CVR Agreement in connection with such action, any Holder of a Security the serial number of which is shown by the evidence to be included among the serial numbers of the Securities the Holders of which have consented to such action may, by filing written notice at the Corporate Trust Office and upon proof of holding as provided in this Section 1.4, revoke such action so far as concerns such Security. Any request, demand, authorization, direction, notice, consent (including any consent obtained in connection with a tender offer or exchange for, or purchase of, the CVRs), waiver or other action by the Holder of any Security shall bind every future Holder of the same Security or the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of anything done, suffered or omitted to be done by the Trustee, any Paying Agent or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 1.5. Notices, etc., to Trustee and Company. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this CVR Agreement to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished, filed or otherwise delivered, in writing, to or with the Trustee at its Corporate Trust Office; or

(b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first-class postage prepaid to the Company addressed to it at:

Akorn, Inc.
1925 West Field Court, Suite 300
Lake Forest, Illinois 60045
Attn: Joseph Bonaccorsi, General Counsel
Email: joe.bonaccorsi@akorn.com

with copies to (which shall not constitute notice):

Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
Attn: Paul H. Zumbro
Nicholas A. Dorsey
Email: pzumbro@cravath.com
ndorsey@cravath.com

or at any other address previously furnished in writing to the Trustee by the Company.

Section 1.6. Notice to Holders: Waiver.

(a) Except as otherwise expressly stated in this CVR Agreement, where this CVR Agreement provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if sent by electronic transmission in accordance with the Applicable Procedures or in writing and mailed, first-class postage prepaid, or otherwise delivered to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders is given by mail or otherwise delivered, neither the failure to mail or otherwise deliver such notice, nor any defect in any notice so mailed or otherwise delivered, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this CVR Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(b) In case by reason of the suspension of regular mail service or by reason of any other cause, it shall be impracticable to mail or otherwise deliver notice of any event as required by any provision of this CVR Agreement, then any method of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice.

Section 1.7. Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in this CVR Agreement by any of the provisions of the Trust Indenture Act, such required provision shall control.

Section 1.8. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.9. Benefits of Agreement. Nothing in this CVR Agreement or in the Securities, express or implied, shall give to any Person (other than the Parties hereto and their successors hereunder, any Paying Agent and the Holders) any benefit or any legal or equitable right, remedy or claim under this CVR Agreement or under any covenant or provision herein contained, all such covenants and provisions being for the sole benefit of the Parties hereto and their successors, any Paying Agent and of the Holders.

Section 1.10. Governing Law; Waiver of Jury. (A) THIS CVR AGREEMENT AND ALL SUITS, ACTIONS, PROCEEDINGS, CLAIMS AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT) BASED UPON, ARISING OUT OF OR RELATING TO THIS CVR AGREEMENT, THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS CVR AGREEMENT OR THE SECURITIES, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF. EACH OF THE COMPANY, THE TRUSTEE AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE HOLDERS, BY THEIR ACCEPTANCE OF THE SECURITIES, HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE (EXCEPT AS SET FORTH IN THE FINAL SENTENCE OF THIS SECTION 1.10) JURISDICTION OF ANY NEW YORK STATE COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK OR ANY FEDERAL COURT SITTING IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK IN RESPECT OF ANY SUIT, ACTION, PROCEEDING, CLAIM OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT) BASED UPON, ARISING OUT OF OR RELATING TO THIS CVR AGREEMENT, THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS CVR AGREEMENT OR THE SECURITIES, AND IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, JURISDICTION OF THE AFORESAID COURTS. EACH OF THE COMPANY AND THE TRUSTEE AGREES THAT PROCESS MAY BE SERVED UPON THEM IN ANY MANNER AUTHORIZED BY THE LAWS OF THE STATE OF NEW YORK FOR SUCH PERSONS AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO UNDER APPLICABLE LAW, ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO SUCH SERVICE OF PROCESS, THE LAYING OF THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. FOR THE AVOIDANCE OF DOUBT, AS PROVIDED IN PARAGRAPH 65 OF THE SETTLEMENT STIPULATION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS SHALL RETAIN EXCLUSIVE JURISDICTION OVER DISPUTES ARISING OUT OF THE INITIAL DISTRIBUTION OF CVRS FROM THE NET SETTLEMENT FUND TO PLAINTIFFS AND ANY OTHER DISPUTES ARISING OUT OF THE PLAN OF ALLOCATION.

(b) EACH OF THE COMPANY, THE TRUSTEE AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE HOLDERS, BY THEIR ACCEPTANCE OF THE SECURITIES, HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BASED UPON, ARISING OUT OF OR RELATING TO THIS CVR AGREEMENT, THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS CVR AGREEMENT OR THE SECURITIES.

Section 1.11. Legal Holidays. If a Payment Date shall not be a Business Day, then (notwithstanding any provision of this CVR Agreement or the Securities to the contrary) payment on the Securities need not be made on such date, but may be made, without the accrual of any interest thereon, on the next succeeding Business Day with the same force and effect as if made on such Payment Date.

Section 1.12. Separability Clause. If any provision in this CVR Agreement or in the CVRs shall be invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.13. No Recourse Against Others. A director, officer, employee, agent or representative of the Company or any Affiliate of the Company or the Trustee shall not have any liability for any obligations of the Company or the Trustee under the Securities or this CVR Agreement or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security each Holder waives and releases all such liability and all such claims. The waiver and release are part of the consideration for the issue of the Securities.

Section 1.14. Counterparts. This CVR Agreement shall be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this CVR Agreement.

Section 1.15. Acceptance of Trust. [], the Trustee named herein, hereby accepts the trusts in this CVR Agreement declared and provided, upon the terms and conditions set forth herein.

Section 1.16. Termination. This CVR Agreement will, automatically and without any further action of any Party, terminate and be of no force or effect and shall be satisfied and discharged, and the Parties hereto shall have no liability or obligations hereunder, at the earliest to occur of (a) the consummation of a Change in Control; provided that, if a Change in Control Payment is due and payable pursuant to the terms of this CVR Agreement, then upon the making of such payment on the Change in Control Payment Date, (b) the Bankruptcy Claim Date (upon the receipt of the Bankruptcy Claim), (c) the Total Payment Cap Date and (d) the Annual Payment Date with respect to the Excess EBITDA Measuring Period ending on December 31, 2023; provided that, in the case of clause (d), if the cumulative Annual Payments that the Company has paid to, or caused to be paid or deposited with, the Trustee in accordance with Section 3.1 as of such Annual Payment Date (after giving effect to any Annual Payment to be made on such date) is less than the Total Payment Cap, then such date shall be extended to the Annual Payment Date with respect to the Excess EBITDA Measuring Period ending on December 31, 2025 (the earliest of such dates, the “Termination Date”); provided, however, that Sections 1.5 through 1.10, 1.12, 1.13, this Section 1.16, 4.7, 7.2, 7.5, 8.2, Article 10 and Section 1.1 (to the extent related to the foregoing) shall survive termination of this CVR Agreement in accordance with their terms.

Section 1.17. Certain Purchases and Sales. Nothing contained herein shall prohibit the Company or any of its Subsidiaries or Affiliates from acquiring in open market transactions, private transactions or otherwise, any Securities.

ARTICLE 2 SECURITY FORMS

Section 2.1. Forms Generally.

(a) (i) The Global Securities and the Trustee’s certificate of authentication shall be in substantially the forms set forth in Annex B, attached hereto and incorporated herein by reference, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this CVR Agreement and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may be required by Law or any rule or regulation pursuant thereto, all as may be determined by the officers executing such Global Securities, as evidenced by their execution of the Global Securities. Any portion of the text of any Global Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Global Security.

(ii) The Global Securities shall be typewritten, printed, lithographed or engraved on steel engraved borders or produced by any combination of these methods or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Global Securities, as evidenced by their execution of such Global Securities.

(b) The Direct Registration Securities shall be uncertificated and shall be evidenced by the Direct Registration System maintained by the Security Registrar.

ARTICLE 3 THE SECURITIES

Section 3.1. Title and Terms.

(a) The aggregate number of CVRs which may be authenticated, as applicable, and delivered under this CVR Agreement is limited to a number equal to [●]¹ (such amount, the “Initial Settlement CVR Amount”), except for Securities authenticated, as applicable, and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.4, 3.5 or 6.6.

¹ To equal the amount of CVRs determined in accordance with the Plan of Allocation.

(b) The Securities shall be known and designated as the “Series A Contingent Value Rights” of the Company.

(c) Subject to the limitations set forth in Article 10:

(i) on each Annual Payment Date, the Company shall pay to the Trustee, by wire transfer to the account designated by the Trustee (so designated in writing at least two (2) Business Days prior to the applicable Annual Payment Date), an amount equal to the aggregate Annual Payment due, if any, in respect of the CVRs that are Outstanding as of the close of business in New York City, three (3) Business Days prior to such Annual Payment Date (the “Annual Payment Record Date”) for the Excess EBITDA Measuring Period ended immediately preceding such Annual Payment Date, and the Trustee shall pay to each Holder of record of the CVRs as of the Annual Payment Record Date an amount equal to the Annual Payment due, if any, in respect of such CVRs held by such Holder; provided that, the Company’s obligations to make any Annual Payment shall terminate in its entirety on the Termination Date;

(ii) on the Change in Control Payment Date, if any, the Company shall pay to the Trustee, by wire transfer to the account designated by the Trustee (so designated in writing at least two (2) Business Days prior to the Change in Control Payment Date), an amount equal to the aggregate Change in Control Payment due in respect of the CVRs that are Outstanding as of the close of business in New York City, three (3) Business Days prior to such Change in Control Payment Date (the “Change in Control Payment Record Date”), and the Trustee shall pay to each Holder of record of the CVRs as of the Change in Control Payment Record Date an amount equal to the Change in Control Payment due, if any, in respect of such CVRs held by such Holder; provided that, the Company’s obligations to make any Change in Control Payment shall terminate in its entirety on the Termination Date; and

(iii) on the Bankruptcy Claim Date, if any, each Holder as of such date shall receive a general unsecured claim in the Company’s bankruptcy in an amount equal to the Bankruptcy Claim in respect of each CVR held by such Holder as of the Bankruptcy Claim Date.

(d) The Holders of the CVRs, by acceptance thereof, agree that no joint venture, partnership or other fiduciary relationship is created hereby or by the Securities.

(e) Other than in the case of interest on amounts due and payable after the occurrence of an Event of Default, no interest or dividends shall accrue on any amounts payable in respect of the CVRs.

(f) The CVRs and any interest thereon may be sold, assigned, pledged encumbered or in any manner transferred or disposed of, in whole or in part, only in compliance with applicable United States federal and state securities Laws and, to the extent applicable, in accordance with Section 3.4.

(g) The Holder of any CVR is not, and shall not be, by virtue thereof, entitled to any rights of a holder of any Voting Securities or other equity security or other ownership interest of the Company or in any of its Affiliates, either at Law or in equity, and the rights of the Holders are limited to those contractual rights expressed in this CVR Agreement.

(h) Except as provided in this CVR Agreement, none of the Company or any of its Affiliates shall have any right to set-off any amounts owed or claimed to be owed by any Holder to any of them against such Holder’s Securities or any CVR Payment or other amount payable to such Holder in respect of such Securities.

(i) For the avoidance of doubt, (i) prior to the occurrence of the first Payment Date, if any, no amounts shall be owing to Holders pursuant to the terms of this CVR Agreement, (ii) from and after the Bankruptcy Claim Date, the Holders shall have only Bankruptcy Claims and shall not have claims with respect to any CVR Payments, (iii) in no event shall the Holders be entitled to receive both a Change in Control Payment and a Bankruptcy Claim and (iv) in no event shall any further Annual Payments be required following the consummation of a Change in Control (and where a Change in Control Payment is due in accordance with the terms hereof, upon the payment of the Change in Control Payment) or Bankruptcy Claim Date (upon the receipt of the Bankruptcy Claim).

Section 3.2. Registrable Form. The Securities shall be issuable only in registered form. The CVRs shall be issued initially in the form of (a) one or more permanent Global Securities, deposited with the Trustee, as the custodian for The Depository Trust Company, its nominees and successors (the “Depository”), or (b) one or more Direct Registration Securities. Each Global Security will represent such of the outstanding CVRs as will be specified therein and each shall provide that it represents the aggregate number of outstanding CVRs from time to time endorsed thereon and that the aggregate number of outstanding CVRs represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges.

Section 3.3. Execution, Authentication, Delivery and Dating.

(a) The Global Securities shall be executed on behalf of the Company by the Company’s chief executive officer, any president or vice president or any other individual duly authorized to act on behalf of the Company for such purpose, but need not be attested. The signature of any of these individuals on the Global Securities may be manual or facsimile.

(b) Global Securities bearing the manual or facsimile signatures of individuals who were, at the time of execution, the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Global Securities or did not hold such offices at the date of such Global Securities.

(c) At any time and from time to time after the execution and delivery of this CVR Agreement, the Company may deliver a Company Order for the authentication, as applicable, and delivery of Securities, and the Trustee, in accordance with such Company Order, shall authenticate, as applicable, and deliver such Securities as provided in this CVR Agreement and not otherwise. In the case of Global Securities, such Company Order shall be accompanied by Global Securities executed by the Company and delivered to the Trustee for authentication in accordance with such Company Order.

(d) Each Global Security shall be dated the date of its authentication.

(e) No Global Security shall be entitled to any benefit under this CVR Agreement or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee, by manual or facsimile signature of an authorized officer, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Global Security has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this CVR Agreement.

(f) Direct Registration Securities need not be authenticated, and shall be valid and obligatory for all purposes and shall entitle each Holder thereof to all benefits of this CVR Agreement.

Section 3.4. Registration, Registration of Transfer and Exchange.

(a) The Company shall cause to be kept at the office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 7.2 being herein sometimes referred to as the “Security Register”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby initially appointed “Security Registrar” for the purpose of registering Securities and transfers of Securities as herein provided.

(b) (i) A Global Security may not be transferred except as a whole by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Securities will be exchanged by the Company for Direct Registration Securities if (A) the Company delivers to the Security Registrar notice from the Depository that it is unwilling or unable to continue to act as Depository or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Company within one hundred twenty (120) days after the date of such notice from the Depository, (B) the Company in its sole discretion determines that the Global Securities should be exchanged for Direct Registration Securities and delivers a written notice to such effect to the Security Registrar or (C) an Event of Default has occurred and is continuing and the Security Registrar has received a request from the Depository to issue Direct Registration Securities. Upon the occurrence of either of the preceding events in (A) or (B) above, Direct Registration Securities shall be issued in such names as the Depository shall instruct the Trustee. Global Securities also may be exchanged or replaced, in whole or in part, as provided in Section 3.5 hereof. Every Global Security authenticated and delivered in exchange for, or in lieu of, a Global Security or any portion thereof, pursuant to this Section 3.4 or Section 3.5 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Security. A Global Security may not be exchanged for another Global Security other than as provided in this Section 3.4(b)(i); however, beneficial interests in a Global Security may be transferred and exchanged as provided in Sections 3.4(b)(ii) or (iii) hereof.

(ii) The transfer and exchange of beneficial interests in the Global Securities will be effected through the Depository, in accordance with the provisions of this CVR Agreement and the Applicable Procedures. Beneficial interests in any Global Security may be transferred to Persons who take delivery thereof in the form of a beneficial interest in Global Security. No written orders or instructions shall be required to be delivered to the Security Registrar to effect the transfers described in this Section 3.4(b)(ii).

(iii) If any holder of a beneficial interest in a Global Security proposes to exchange such beneficial interest for a Direct Registration Security or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Direct Registration Security, then the Security Registrar will cause the aggregate number of CVRs represented by the applicable Global Security to be reduced accordingly pursuant to Section 3.4(b)(vi) hereof, and the Security Registrar will deliver to the Person designated in the instructions a Direct Registration Security in the appropriate number of CVRs. Any Direct Registration Security issued in exchange for a beneficial interest pursuant to this Section 3.4(b)(iii) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Security Registrar from or through the Depository and the Participant or Indirect Participant.

(iv) A Holder of a Direct Registration Security may exchange such Direct Registration Security for a beneficial interest in a Global Security or transfer such Direct Registration Security to a Person who takes delivery thereof in the form of a beneficial interest in a Global Security at any time. Upon receipt of a request for such an exchange or transfer, the Security Registrar will cancel the applicable Direct Registration Security and increase or cause to be increased the aggregate number of CVRs represented by one of the Global Securities.

(v) Upon request by a Holder of Direct Registration Securities and such Holder's compliance with the provisions of this Section 3.4(b)(v), the Security Registrar will register the transfer or exchange of Direct Registration Securities. Prior to such registration of transfer or exchange, the requesting Holder must present to the Security Registrar a written instruction of transfer in form satisfactory to the Security Registrar duly executed by such Holder or by its attorney, duly authorized in writing. A Holder of Direct Registration Securities may transfer such Direct Registration Securities to a Person who takes delivery thereof in the form of Direct Registration Securities. Upon receipt of a request to register such a transfer, the Security Registrar shall register the Direct Registration Securities pursuant to the instructions from the Holder thereof.

(vi) At such time as all beneficial interests in a particular Global Security have been exchanged for Direct Registration Securities or a particular Global Security has been repurchased or canceled in whole and not in part, each such Global Security will be returned to or retained and canceled by the Security Registrar in accordance with Section 3.8 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security or for Direct Registration Securities, the aggregate number of CVRs represented by such Global Security will be reduced accordingly and an endorsement will be made on such Global Security by the Security Registrar or by the Depositary at the direction of the Security Registrar to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security will be increased accordingly and an endorsement will be made on such Global Security by the Security Registrar or by the Depositary at the direction of the Security Registrar to reflect such increase.

(vii) (A) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Securities upon receipt of a Company Order in accordance with Section 3.3 hereof or at the Security Registrar's request.

(B) No service charge will be made to a Holder of a beneficial interest in a Global Security or to a Holder of a Direct Registration Security for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith.

(C) All Global Securities and Direct Registration Securities issued upon any registration of transfer or exchange of Global Securities or Direct Registration Securities will be the valid obligations of the Company, evidencing the same rights, and entitled to the same benefits under this CVR Agreement, as the Global Securities or Direct Registration Securities surrendered upon such registration of transfer or exchange.

(D) The Trustee will authenticate Global Securities in accordance with the provisions of Section 3.3 hereof.

Section 3.5. Mutilated, Destroyed, Lost and Stolen Securities.

(a) If (i) any mutilated Global Security is surrendered to the Trustee, or (ii) the Company and the Trustee receive evidence to their satisfaction of the destruction, loss or theft of any Global Security, and there is delivered to the Company and the Trustee such security or indemnity as may be required by them to hold each of them harmless, then, in the absence of notice to the Company or the Trustee that such Global Security has been acquired by a bona fide purchaser, the Company shall execute and, upon delivery of a Company Order, the Trustee shall authenticate, as applicable, and deliver, in exchange for any such mutilated Global Security or in lieu of any such destroyed, lost or stolen Global Security, a new CVR, in the form of either a Global Security or a Direct Registration Security, of like tenor and amount of CVRs, bearing a number not contemporaneously outstanding.

(b) In case any such mutilated, destroyed, lost or stolen Global Security has become or is to become finally due and payable within fifteen (15) days, the Company in its discretion may, instead of issuing a new CVR, pay to the Holder of such Security on the applicable Payment Date all amounts due and payable with respect thereto.

(c) Every new Security issued pursuant to this Section 3.5 in lieu of any destroyed, lost or stolen Global Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Global Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this CVR Agreement equally and proportionately with any and all other Securities duly issued hereunder.

(d) The provisions of this Section 3.5 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Global Securities.

Section 3.6. Payments with respect to CVRs. Payment of any CVR Payment pursuant to the CVR Agreement shall be made in such coin or currency of the United States of America as at the time is legal tender for the payment of public and private debts. The Company may, at its option, pay such amounts by wire transfer or check payable in such money.

Section 3.7. Persons Deemed Owners. Prior to the time of due presentment for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.8. Cancellation. All Securities surrendered for payment, registration of transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Global Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Global Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this CVR Agreement. All cancelled Global Securities held by the Trustee shall be destroyed and a certificate of destruction shall be issued by the Trustee to the Company, unless otherwise directed by a Company Order.

Section 3.9. CUSIP Numbers. The Company in issuing the CVRs may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices to the Holders as a convenience to the Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the CVRs or as contained in any notices and that reliance may be placed only on the other identification numbers printed on the CVRs, and any such notice shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE 4 THE TRUSTEE

Section 4.1. Certain Duties and Responsibilities.

(a) With respect to the Holders, the Trustee, prior to the occurrence of an Event of Default (as defined in Section 8.1) with respect to the Securities and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this CVR Agreement and no implied covenants shall be read into this CVR Agreement against the Trustee. In case an Event of Default with respect to the Securities has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this CVR Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) In the absence of bad faith on its part, prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default which may have occurred, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee which conform to the requirements of this CVR Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this CVR Agreement.

(c) No provision of this CVR Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that (i) this Subsection (c) shall not be construed to limit the effect of Subsections (a) and (b) of this Section 4.1; (ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and (iii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders pursuant to Section 8.9 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this CVR Agreement.

(d) Whether or not therein expressly so provided, every provision of this CVR Agreement relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 4.1.

Section 4.2. Certain Rights of Trustee. Subject to the provisions of Section 4.1, including the duty of care that the Trustee is required to exercise upon the occurrence of an Event of Default:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties, and the Trustee need not investigate any fact or matter stated in the document;

(b) any request or direction or order of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution and the Trustee shall not be liable for any action it takes or omits to take in good faith reliance thereon;

(c) whenever in the administration of this CVR Agreement the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate and the Trustee shall not be liable for any action it takes or omits to take in good faith reliance thereon or an Opinion of Counsel;

(d) the Trustee may consult with counsel and the written advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this CVR Agreement at the request or direction of any of the Holders pursuant to this CVR Agreement, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval, appraisal, bond, debenture, note, coupon, security, or other paper or document, but the Trustee in its discretion may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the pertinent books and records of the Company, personally or by agent or attorney, as may be reasonably necessary for such inquiry or investigation and in a manner so as to not unreasonably interfere with the normal business operations of the Company or any of its Affiliates; provided, however, that Company shall not be required to provide any books or records to the extent that the provision thereof (i) would, as reasonably determined based on the advice of outside counsel, jeopardize any attorney-client privilege or (ii) would contravene any Law, charter, articles or certificate or organization or incorporation and bylaws or other organization or governing documents, or any contract or agreement to which the Company or any of its Affiliates is subject or bound;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this CVR Agreement; and

(i) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice thereof has been received by such Responsible Officer at the Corporate Trust Office and such notice references the CVRs and this CVR Agreement and the fact that such notice constitutes notification of default or Event of Default.

Section 4.3. Notice of Default. If a default occurs hereunder with respect to the Securities, the Trustee shall give the Holders notice of any such default actually known to it as and to the extent applicable and provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 8.1(b) with respect to the Securities, no notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 4.3, the term “default” means any event that is, or after notice or lapse of time or both would become, an Event of Default with respect to the Securities.

Section 4.4. Not Responsible for Recitals or Issuance of Securities. The Trustee shall not be accountable for the Company’s issuance of or obligations under the Securities. The recitals contained herein and in the Securities, except the Trustee’s certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this CVR Agreement or of the Securities.

Section 4.5. May Hold Securities. The Trustee, any Paying Agent, Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities, and, subject to Sections 4.8 and 4.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 4.6. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by Law. The Trustee shall be under no liability for interest on any money received by it hereunder.

Section 4.7. Compensation and Reimbursement. The Company agrees:

(a) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amount as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of Law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable and documented out-of-pocket expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this CVR Agreement (including the reasonable compensation and the reasonable expenses and disbursements of its agents and outside counsel), except any such expense, disbursement or advance as may be attributable to the Trustee’s negligence, bad faith or willful misconduct; and

(c) to indemnify the Trustee and each of its agents, officers, directors and employees (each an “indemnitee”) for, and to hold it harmless against, any loss, liability or reasonable and documented out-of-pocket expense (including the reasonable compensation and the reasonable expenses and disbursements of its agents and outside counsel) incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and the performance of its duties hereunder, including the reasonable and documented out-of-pocket costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Company’s payment obligations pursuant to this Section 4.7 shall survive the termination of this CVR Agreement.

Section 4.8. Disqualification; Conflicting Interests.

(a) If applicable, to the extent that the Trustee or the Company determines that the Trustee has a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall immediately notify the Company of such conflict and, within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this CVR Agreement. The Company shall take prompt steps to have a successor appointed in the manner provided in this CVR Agreement.

(b) If the Trustee fails to comply with Section 4.8(a), the Trustee shall, within ten (10) days of the expiration of such ninety (90) day period, transmit a notice of such failure to the Holders in the manner and to the extent provided in the Trust Indenture Act and this CVR Agreement.

(c) If the Trustee fails to comply with Section 4.8(a) after written request therefor by the Company or any Holder, then any Holder of any Security who has been a bona fide Holder for at least six (6) months may on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of such Trustee and the appointment of a successor Trustee.

Section 4.9. Corporate Trustee Required; Eligibility. There shall at all times be a Trustee hereunder which satisfies the applicable requirements of Sections 310(a)(1) and (5) of the Trust Indenture Act and has a combined capital and surplus of at least one hundred million dollars (\$100,000,000). If such corporation publishes reports of condition at least annually, pursuant to Law or to the requirements of a supervising or examining authority, then for the purposes of this Section 4.9, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 4.9, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 4.

Section 4.10. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 4 shall become effective until the acceptance of appointment by the successor Trustee under Section 4.11.

(b) The Trustee, or any trustee or trustees hereafter appointed, may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within thirty (30) days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by an Act of the Majority Holders, delivered to the Trustee and to the Company.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 4.8 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six (6) months, or

(ii) the Trustee shall cease to be eligible under Section 4.9 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any case, (A) the Company, by a Board Resolution or an action of the chief executive officer of the Company, may remove the Trustee, or (B) the Holder of any Security who has been a bona fide Holder of a Security for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution or an action of the chief executive officer of the Company, shall promptly appoint a successor Trustee. If, within one year after any removal by the Majority Holders, a successor Trustee shall be appointed by an Act of the Majority Holders delivered to the Company and the retiring Trustee, then the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with Section 4.11, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Majority Holders and accepted appointment within sixty (60) days after the retiring Trustee tenders its resignation or is removed, the retiring Trustee may, or, the Holder of any Security who has been a bona fide Holder for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee by mailing written notice of such event by first-class mail, postage prepaid, or otherwise delivering such written notice to the Holders as their names and addresses appear in the Security Register. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office. If the Company fails to send such notice within ten (10) days after acceptance of appointment by a successor Trustee, it shall not be a default hereunder but the successor Trustee shall cause the notice to be mailed or otherwise delivered at the expense of the Company.

Section 4.11. Acceptance of Appointment of Successor.

(a) Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, upon request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

(b) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 4.

Section 4.12. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, by sale or otherwise, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 4, without the execution or filing of any paper or any further act on the part of any of the Parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion, sale or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities; and such certificate shall have the full force which it is anywhere in the Securities or in this CVR Agreement provided that the certificate of the Trustee shall have; provided that the right to adopt the certificate of authentication of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 4.13. Preferential Collection of Claims Against Company. If and when the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company (or any other obligor upon the Securities), excluding any creditor relationship set forth in Section 311(b) of the Trust Indenture Act, if applicable, the Trustee shall be subject to the applicable provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

ARTICLE 5
HOLDERS' LISTS AND REPORTS BY THE TRUSTEE AND COMPANY

Section 5.1. Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee (a) promptly after the issuance of the Securities, and semi-annually thereafter, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a recent date, and (b) at such times as the Trustee may request in writing, within thirty (30) days after receipt by the Company of any such request, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the time such list is furnished; provided, however, that if and for so long as the Trustee shall be the Security Registrar, no such list need be furnished.

Section 5.2. Preservation of Information; Communications to Holders.

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of the Holders contained in the most recent list furnished to the Trustee as provided in Section 5.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 5.1 upon receipt of a new list so furnished.

(b) The rights of the Holders to communicate with other Holders with respect to their rights under this CVR Agreement and the corresponding rights and privileges of the Trustee shall be as provided by Section 312(b)(2) of the Trust Indenture Act, if applicable.

(c) Every Holder, by receiving and holding Securities, agrees with the Company and the Trustee that neither the Company nor the Trustee shall be deemed to be in violation of Law or held accountable by reason of the disclosure of any such information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act (if applicable), regardless of the source from which such information was derived.

Section 5.3. Reports by Trustee.

(a) Within sixty (60) days after December 31 of each year commencing with the December 31 following the date of this CVR Agreement, the Trustee shall transmit to all Holders such reports concerning the Trustee and its actions under this CVR Agreement as may be required pursuant to the Trust Indenture Act to the extent and in the manner provided pursuant thereto. The Trustee shall also comply with Section 313(b)(2) of the Trust Indenture Act, if applicable. The Trustee shall also transmit by mail or otherwise deliver all reports as required by Section 313(c) of the Trust Indenture Act, if applicable.

(b) A copy of each such report shall, at the time of such transmission to the Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and also with the Company. The Company will promptly notify the Trustee when the Securities are listed on any stock exchange.

Section 5.4. Reports by Company. The Company shall comply with the provisions of Section 314(a) of the Trust Indenture Act to the extent applicable.

**ARTICLE 6
AMENDMENTS**

Section 6.1. Amendments Without Consent of Holders. Without the consent of any Holders, the Company and the Trustee, at any time and from time to time, may enter into one or more amendments hereto or to the Securities, for any of the following purposes:

- (a) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities any property or assets;
- (b) to evidence the succession of another Person to the Company, and the assumption by any such successor of any obligations pursuant to Article 9 hereof;
- (c) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as the Company and the Trustee shall consider to be for the protection of the Holders, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions, conditions or provisions an Event of Default permitting the enforcement of all or any of the several remedies provided in this CVR Agreement as herein set forth; provided that in respect of any such additional covenant, restriction, condition or provision, such amendment may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such an Event of Default or may limit the remedies available to the Trustee upon such an Event of Default or may limit the right of the Majority Holders to waive such an Event of Default;
- (d) to cure any ambiguity, or to correct or supplement any provision herein or in the Securities which may be defective or inconsistent with any other provision herein; provided, that such provisions shall not materially reduce the benefits of this CVR Agreement or the Securities to the Holders;
- (e) to make any other provisions with respect to matters or questions arising under this CVR Agreement; provided, that such provisions shall not adversely affect in any material respect the interests of the Holders;
- (f) to make any amendments or changes necessary to comply or maintain compliance with the Trust Indenture Act, if applicable; or
- (g) to make any other change that does not adversely affect in any material respect the interests of the Holders.

Section 6.2. Amendments with Consent of Holders. With the consent of the Majority Holders (including any consent obtained in connection with a tender offer or exchange for, or purchase of, the CVRs), by Act of said Holders delivered to the Company and the Trustee, the Company (when authorized by a Board Resolution or the chief executive officer of the Company) and the Trustee may enter into one or more amendments hereto or to the Securities for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this CVR Agreement or to the Securities or of modifying in any manner the rights of the Holders under this CVR Agreement or to the Securities; provided, however, that no such amendment shall, without the consent of the Holder of each Outstanding Security affected thereby:

- (a) (i) modify in a manner adverse in any material respect to the Holders the time for payment or (ii) modify in a manner adverse to the Holders the amount of any CVR Payment;
- (b) reduce the number of CVRs, the consent of whose Holders is required for any such amendment; or

(c) modify any of the provisions of this Section 6.2, except to increase the percentage of Holders from whom consent or approval is required or to provide that certain other provisions of this CVR Agreement cannot be modified or waived without the consent of the each Holder affected thereby.

It shall not be necessary for any Act of Holders under this Section 6.2 to approve the particular form of any proposed amendment, but it shall be sufficient if such Act shall approve the substance thereof.

Section 6.3. Execution of Amendments. In executing any amendment permitted by this Article 6, the Trustee (subject to Section 4.1) shall be fully protected in relying upon an Opinion of Counsel or Officer's Certificate stating that the execution of such amendment is authorized or permitted by this CVR Agreement. The Trustee shall execute any amendment authorized pursuant to this Article 6 if the amendment does not adversely affect the Trustee's own rights, duties or immunities under this CVR Agreement or otherwise. Otherwise, the Trustee may, but need not, execute such amendment.

Section 6.4. Effect of Amendments. Upon the execution of any amendment under this Article 6, this CVR Agreement and the Securities shall be modified in accordance therewith, and such amendment shall form a part of this CVR Agreement and the Securities for all purposes; and every Holder of Securities theretofore or thereafter authenticated, as applicable, and delivered hereunder shall be bound thereby.

Section 6.5. Conformity with Trust Indenture Act. Every amendment executed pursuant to this Article 6 shall conform to the applicable requirements of the Trust Indenture Act, if any.

Section 6.6. Reference in Securities to Amendments. If an amendment changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. Global Securities authenticated and delivered after the execution of any amendment pursuant to this Article 6 may, and shall if required by the Trustee, bear a notation in the form approved by the Trustee as to any matter provided for in such amendment. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee, on the one hand, and the Board of Directors or the chief executive officer of the Company, on the other hand, to any such amendment may be prepared and executed by the Company, as applicable, and authenticated, as applicable, and delivered by the Trustee in exchange for Outstanding Securities. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

ARTICLE 7 COVENANTS

Section 7.1. Payment of Amounts, if any, to Holders. The Company will duly and punctually pay the amounts, if any, due on the Securities in accordance with the terms of the Securities and this CVR Agreement. Such amounts shall be considered paid on the applicable Payment Date if, on or prior to such Payment Date, the Company makes, or causes to be made, the payment required pursuant to subclauses (i) or (ii) of Section 3.1(c) of this CVR Agreement. Notwithstanding any other provision of this CVR Agreement, the Company or any of its Affiliates, the Trustee or the Paying Agent, shall be entitled to deduct and withhold, or cause to be deducted and withheld, from any amounts payable or otherwise deliverable pursuant to this CVR Agreement to any Person, such amounts as are required to be deducted and withheld therefrom under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so deducted and withheld by the Company or any of its Affiliates, the Trustee or the Paying Agent, such deducted and withheld amounts shall be (a) paid over to the applicable Governmental Entity in accordance with applicable Law and (b) treated for all purposes of this CVR Agreement as having been paid to the Person in respect of which such deduction and withholding was made by the Company or any of its Affiliates, the Trustee or the Paying Agent, as the case may be. The consent of the Holders shall not be required for any such withholding.

Section 7.2. Maintenance of Office or Agency.

(a) As long as any of the Securities remain Outstanding, the Company will maintain an office or agency (i) where Securities may be presented or surrendered for payment, (ii) where Securities may be surrendered for registration of transfer or exchange and (iii) where notices and demands to or upon the Company in respect of the Securities and this CVR Agreement may be served. The office or agency of the Trustee at [] shall be such office or agency of the Company, unless the Company shall designate and maintain some other office or agency for one or more of such purposes. The Company or any of its Subsidiaries may act as Paying Agent, registrar or transfer agent; provided that such Person shall take appropriate actions to avoid the commingling of funds. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

(b) The Company may from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain at least one office or agency for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such office or agency.

Section 7.3. Money for Security Payments to Be Held in Trust.

(a) If the Company or any of its Subsidiaries shall at any time act as the Paying Agent, it will, on or before a Payment Date, segregate and hold in trust for the benefit of the Holders all sums held by such Paying Agent for payment on the Securities until such sums shall be paid to the Holders as herein provided, and will promptly notify the Trustee of any default by the Company in making payment on the Securities.

(b) Whenever the Company shall have one or more Paying Agents for the Securities, it will, on or before a Payment Date, deposit with the Paying Agent(s) a sum in same day funds sufficient to pay the amount, if any, so becoming due; such sum to be held in trust for the benefit of the Persons entitled to such amount, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of such action or any failure so to act.

(c) The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 7.3, that (i) such Paying Agent will hold all sums held by it for the payment of any amount payable on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will notify the Trustee of the sums so held and (ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Securities) to make any payment on the Securities when the same shall be due and payable.

(d) Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment on any Security and remaining unclaimed for one year after the applicable Payment Date shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as a general unsecured creditor (subject to Article 10), look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease.

Section 7.4. Listing of CVRs. The Company hereby covenants and agrees to work in good faith to cause the Securities to be approved for listing (subject to notice of issuance) for trading on the NASDAQ Global Market or other national securities exchange.

Section 7.5. Non-Use of Name. Neither the Trustee nor the Holders shall use the name, trademark, trade name, or logo of the Company, its Affiliates or their respective employees, agents or representatives in any publicity or news release relating to this CVR Agreement or its subject matter, without the prior express written permission of the Company.

ARTICLE 8
REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT

Section 8.1. Event of Default Defined; Waiver of Default. “Event of Default”, with respect to the Securities, means each one of the following events, which shall have occurred and be continuing:

(a) default in the payment by the Company pursuant to the terms of this CVR Agreement of all or any part of any CVR Payment after a period of ten (10) Business Days after such CVR Payment shall become due and payable on the applicable Payment Date; or

(b) material default in the performance, or breach in any material respect, of any covenant in respect of the Securities (other than a covenant in respect of the Securities, a default in the performance or breach of which is elsewhere in this Section 8.1 specifically dealt with), and continuance of such default or breach for a period of ninety (90) days after there has been given by registered or certified mail to the Company by the Trustee or to the Company and the Trustee by the Majority Holders, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “Notice of Default” hereunder.

If an Event of Default described above occurs and is continuing, then, and in each and every such case, either the Trustee by notice in writing to the Company or the Trustee upon the written request of the Majority Holders by notice in writing to the Company (and to the Trustee if given by the Majority Holders), may bring suit to protect the rights of the Holders, including to obtain payment for any amounts then due and payable.

The foregoing provisions of this Section 8.1, however, are subject to the condition that if, at any time after the Trustee shall have begun such suit, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all amounts which shall have become due and such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred and all advances made by the Trustee, and if any and all Events of Default under this CVR Agreement shall have been cured, waived or otherwise remedied as provided herein, then and in every such case the Majority Holders, by written notice to the Company and to the Trustee, may waive all defaults with respect to the Securities, but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or shall impair any right consequent thereof.

Section 8.2. Collection by the Trustee; the Trustee May Prove Payment Obligations. The Company covenants that in case default shall be made in the payment of all or any part of the Securities when the same shall have become due and payable, whether at a Payment Date or otherwise, then upon demand of the Trustee, the Company will pay to the Trustee for the benefit of the Holders the whole amount that then shall have become due and payable on all Securities; and in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee and each predecessor Trustee, their respective agents, attorneys and counsel, and any expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of its negligence, bad faith or willful misconduct.

The Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this CVR Agreement or in aid of the exercise of any power granted herein, or to enforce any other remedy.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at Law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon such Securities and collect in the manner provided by Law out of the property of the Company or other obligor upon such Securities, wherever situated, the moneys adjudged or decreed to be payable.

In any judicial proceedings relative to the Company or other obligor upon the Securities, irrespective of whether any amount is then due and payable with respect to the Securities, the Trustee is authorized:

(a) to file and prove a claim or claims for the whole amount owing and unpaid in respect of the Securities, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee and each predecessor Trustee, and their respective agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of negligence, bad faith or willful misconduct) and of the Holders allowed in any judicial proceedings relative to the Company or other obligor upon the Securities, or to their respective property;

(b) unless prohibited by and only to the extent required by applicable Law, to vote on behalf of the Holders in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings; and

(c) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the Holders and of the Trustee on their behalf; and any trustee, receiver, or liquidator, custodian or other similar official is hereby authorized by each of the Holders to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the Holders, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, each predecessor Trustee and their respective agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of its negligence, bad faith or willful misconduct, and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 4.7. To the extent that such payment of reasonable compensation, expenses, disbursements, advances and other amounts out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, moneys, securities and other property which the Holders may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or vote for or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities, or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding except, as aforesaid, to vote for the election of a trustee in bankruptcy or similar person.

All rights of action and of asserting claims under this CVR Agreement, or under any of the Securities, may be enforced by the Trustee without the possession of any of the Securities or the production thereof and any trial or other proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment, subject to the payment of the expenses, disbursements and compensation of the Trustee, each predecessor Trustee and their respective agents and attorneys, shall be for the ratable benefit of the Holders.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this CVR Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders, and it shall not be necessary to make any Holders of such Securities parties to any such proceedings.

Section 8.3. Application of Proceeds. Any monies collected by the Trustee pursuant to this Article 8 in respect of any Securities shall be applied in the following order at the date or dates fixed by the Trustee upon presentation of the several Securities in respect of which monies have been collected and stamping (or otherwise noting) thereon the payment in exchange for the presented Securities if only partially paid or upon surrender thereof if fully paid:

FIRST: To the payment of costs and expenses in respect of which monies have been collected, including reasonable compensation to the Trustee and each predecessor Trustee and their respective agents and attorneys and of all expenses and liabilities incurred, and all advances made, by the Trustee and each predecessor Trustee, except as a result of its negligence, bad faith or willful misconduct, and all other amounts due to the Trustee or any predecessor Trustee pursuant to Section 4.7;

SECOND: To the payment of the whole amount then owing and unpaid upon all the Securities, and in case such monies shall be insufficient to pay in full the whole amount so due and unpaid upon the Securities, then to the payment of such amounts without preference or priority of any security over any other Security, ratably to the aggregate of such amounts due and payable; and

THIRD: To the payment of the remainder, if any, to the Company or any other person lawfully entitled thereto.

Section 8.4. Suits for Enforcement. In case an Event of Default has occurred, has not been waived and is continuing, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this CVR Agreement by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either at Law or in equity or in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this CVR Agreement or in aid of the exercise of any power granted in this CVR Agreement or to enforce any other legal or equitable right vested in the Trustee by this CVR Agreement or by Law.

Section 8.5. Restoration of Rights on Abandonment of Proceedings. In case the Trustee or any Holder shall have proceeded to enforce any right under this CVR Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee or to such Holder, then and in every such case the Company and the Trustee and the Holders shall be restored respectively to their former positions and rights hereunder, and all rights, remedies and powers of the Company, the Trustee and the Holders shall continue as though no such proceedings had been taken.

Section 8.6. Limitations on Suits by Holders. Subject to the rights of the Holders under Section 8.7, no Holder of any Security shall have any right, by virtue or by availing of any provision of this CVR Agreement, to institute any action or proceeding at Law or in equity or in bankruptcy or otherwise upon or under or with respect to this CVR Agreement, or for the appointment of a trustee, receiver, liquidator, custodian or other similar official or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless the Majority Holders also shall have made written request upon the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby and the Trustee for thirty (30) days after receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 8.9; it being understood and intended, and being expressly covenanted by the Holder of every Security with every other Holder and the Trustee, that no one or more Holders of the Securities shall have any right in any manner whatsoever by virtue or by availing of any provision of this CVR Agreement to effect, disturb or prejudice the rights of any other such Holder of Securities, or to obtain or seek to obtain priority over or preference to any other such Holder or to enforce any right under this CVR Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of the Securities. For the protection and enforcement of the provisions of this Section 8.6, each and every Holder and the Trustee shall be entitled to such relief as can be given either at Law or in equity.

Section 8.7. Unconditional Right of Holders to Institute Certain Suits. Notwithstanding any other provision in this CVR Agreement and any provision of any Security, but subject to Article 10, the right of any Holder of any Security to receive payment of the amounts payable in respect of such Security on or after the respective due dates expressed in such Security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 8.8. Powers and Remedies Cumulative; Delay or Omission Not Waiver of Default.

(a) Except as provided in Section 8.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by Law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at Law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

(b) No delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any Event of Default occurring and continuing as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and, subject to Section 8.6, every power and remedy given by this CVR Agreement or by Law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 8.9. Control by Holders.

(a) The Majority Holders shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any power conferred on the Trustee with respect to the Securities by this CVR Agreement; provided that such direction shall not be otherwise than in accordance with Law and the provisions of this CVR Agreement; and provided further that (subject to the provisions of Section 4.1) the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors, the executive committee, or a committee of directors or Responsible Officers of the Trustee shall determine that the action or proceedings so directed would involve the Trustee in personal liability or if the Trustee in good faith shall so determine that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Securities not joining in the giving of said direction.

(b) Nothing in this CVR Agreement shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction or directions by Holders.

Section 8.10. Waiver of Past Defaults.

(a) In the case of a default or an Event of Default specified in clause (b) of Section 8.1, the Majority Holders may waive any such default or Event of Default, and its consequences except a default in respect of a covenant or provisions hereof which cannot be modified or amended without the consent of the Holder of each Security affected. In the case of any such waiver, the Company, the Trustee and the Holders shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

(b) Upon any such waiver, such default shall cease to exist and be deemed to have been cured and not to have occurred, and any Event of Default arising therefrom shall be deemed to have been cured, and not to have occurred for every purpose of this CVR Agreement; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 8.11. The Trustee to Give Notice of Default, But May Withhold in Certain Circumstances. The Trustee shall mail or otherwise deliver to the Holders, as the names and addresses of such Holders appear on the Security Register (as provided under Section 313(c) of the Trust Indenture Act, if applicable), written notice of all defaults which have occurred and are known to the Trustee, such notice to be transmitted within ninety (90) days after the occurrence thereof, unless such defaults shall have been cured before the giving of such notice (the term "default" for the purpose of this Section 8.11 being hereby defined to mean any event or condition which is, or with notice or lapse of time or both would become, an Event of Default); provided that, except in the case of default in the payment of the amounts payable in respect of any of the Securities, the Trustee shall be protected in withholding such notice if and for so long as the board of directors, the executive committee, or a trust committee of directors or trustees and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders; provided further, that in the case of any breach of the character specified in Section 8.1(b) with respect to the Securities, no notice to Holders shall be given until at least thirty (30) days after the occurrence thereof.

Section 8.12. Right of Court to Require Filing of Undertaking to Pay Costs. All Parties to this CVR Agreement agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this CVR Agreement or in any suit against the Trustee for any action taken, suffered or omitted by it as the Trustee, the filing by any party litigant in such suit of an undertaking to pay the reasonable and documented out-of-pocket costs of such suit, and that such court may in its discretion assess reasonable and documented out-of-pocket costs, including reasonable and documented out-of-pocket attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 8.12 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder or group of Holders holding in the aggregate more than ten percent (10%) of the Securities Outstanding or to any suit instituted by any Holder for the enforcement of the payment of any Security on or after the due date expressed in such Security.

ARTICLE 9 CONSOLIDATION OR MERGER

Section 9.1. Company May Consolidate or Merge on Certain Terms. Subject to the provisions of Section 1.16, the Company covenants that it will not consolidate or merge with or into any other Person unless (a) the Company shall be the continuing Person or (b) the successor Person shall expressly assume, by an instrument supplemental hereto, executed and delivered to the Trustee in form reasonably satisfactory to the Trustee, the due and punctual performance and observance of all covenants and conditions of this CVR Agreement to be performed by the Company.

Section 9.2. Successor Person Substituted.

(a) In case of any consolidation or merger and, following such, assumption by the successor Person pursuant to Section 9.1, such successor Person shall succeed to and be substituted for the Company with the same effect as if it had been named herein. Such successor Person may cause to be signed, and may issue either in its own name (or, if it is the successor to the Company, in the name of the Company prior to such succession) any or all of the Securities issuable hereunder, in the case of Global Securities, which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this CVR Agreement prescribed, the Trustee shall authenticate and shall deliver any Securities which previously shall have been signed and delivered to the Trustee for authentication, and any Securities which such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All of the Securities so issued shall in all respects have the same legal rank and benefit under this CVR Agreement as the Securities theretofore or thereafter issued in accordance with the terms of this CVR Agreement as though all of such Securities had been issued at the date of the execution hereof.

(b) In case of any such consolidation or merger and, following such, assumption by the successor Person pursuant to Section 9.1, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

(c) In the event of any such consolidation or merger and following such, assumption by the successor Person pursuant to Section 9.1, the Company or any Person which shall theretofore have become such in the manner described in this Article 9 shall be discharged from all obligations and covenants under this CVR Agreement and the Securities and may be liquidated and dissolved.

Section 9.3. Officer's Certificate to the Trustee. The Trustee, subject to the provisions of Sections 4.1 and 4.2, shall receive an Officer's Certificate, prepared in accordance with Section 1.2 and Section 1.3, as conclusive evidence that any such consolidation or merger, and any such assumption, complies with the applicable provisions of this CVR Agreement, and if a supplemental agreement is required in connection with such transaction, such supplemental agreement complies with this Article 9 and that there has been compliance with all conditions precedent herein provided for or relating to such transaction.

Section 9.4. Successors and Assigns. All covenants, provisions and agreements in this CVR Agreement by or for the benefit of the Company, the Trustee or the Holders shall bind and inure to the benefit of their respective successors, assigns, heirs and personal representatives, whether so expressed or not.

ARTICLE 10 SUBORDINATION

Section 10.1. Agreement to Subordinate. The Company agrees, and each Holder by accepting a Security hereunder agrees, that the CVR Payments, the Bankruptcy Claims and all other obligations under this CVR Agreement and the Securities and any rights or claims relating thereto (collectively, the “Junior Obligations”) are subordinated in right of payment, to the extent and in the manner provided in this Article 10, to the prior payment in full in cash of all Senior Obligations of the Company (whether outstanding on the date hereof or hereafter created, incurred, assumed or guaranteed), and that the subordination is for the benefit of the holders of such Senior Obligations.

Section 10.2. Liquidation; Dissolution; Bankruptcy. Upon any distribution to creditors of the Company in a liquidation or dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property, in an assignment for the benefit of creditors or any marshaling of the Company’s assets and liabilities:

(a) holders of Senior Obligations will be entitled to receive payment in full in cash of all Senior Obligations of the Company before the Holders will be entitled to receive any payment of any kind with respect to the Junior Obligations; and

(b) until all Senior Obligations of the Company (as provided in clause (a) above) are paid in full in cash, any distribution to which Holders would be entitled but for this Article 10 will be made to holders of Senior Obligations of the Company, as their interests may appear.

Section 10.3. Default on Senior Obligations. The Company shall not be required to (and may not) make any payment or distribution to any Holder in respect of Junior Obligations or acquire from any Holder for cash or property any Junior Obligations:

(a) if any default on any Senior Obligations exceeding one million dollars (\$1,000,000) in aggregate principal amount would occur as a result of such payment, distribution or acquisition;

(b) during the continuance of any payment default in respect of any Senior Obligations exceeding one million dollars (\$1,000,000) in aggregate principal amount (after expiration of any applicable grace period);

(c) if the maturity of any Senior Obligations representing more than one million dollars (\$1,000,000) in aggregate principal amount is accelerated in accordance with its terms and such acceleration has not been rescinded; or

(d) following the occurrence of any default (other than a payment default, and after the expiration of any applicable grace period) with respect to any Senior Obligations with an aggregate principal amount of more than one million dollars (\$1,000,000), the effect of which is to permit the holders of such Senior Obligations (or a trustee or agent acting on their behalf) to cause, with the giving of notice if required, the maturity of such Senior Obligations to be accelerated, for a period commencing upon the receipt by the Trustee (with a copy to the Company) of a written notice of such default from the representative of the holders of such Senior Obligations and ending when such Senior Obligations are paid in full in cash or, if earlier, when such default is cured or waived.

Section 10.4. When Distribution Must Be Paid Over.

(a) In the event that the Trustee or any Holder receives any payment of any Junior Obligations at a time when such payment is prohibited by this Article 10, such payment will be held by the Trustee or such Holder in trust for the benefit of, and will be paid forthwith over and delivered, upon written request, to the holders of Senior Obligations of the Company as their interests may appear or their representative under the agreement, indenture or other document (if any) pursuant to which such Senior Obligations may have been issued, as their respective interests may appear, for application to the payment of all such Senior Obligations remaining unpaid to the extent necessary to pay such Senior Obligations in full in accordance with their terms, after giving effect to any concurrent payment or distribution to or for the holders of Senior Obligations.

(b) Any amount received by any Holder as a result of direct or indirect credit support for the Junior Obligations from any Affiliate of the Company shall be treated as payments received by such Holder from the Company that are subject to the provisions of this Article 10.

(c) With respect to the holders of Senior Obligations, the Trustee undertakes to perform only those obligations on the part of the Trustee as are specifically set forth in this Article 10, and no implied covenants or obligations with respect to the holders of Senior Obligations will be read into this CVR Agreement against the Trustee. The Trustee will not be deemed to owe any fiduciary duty to the holders of Senior Obligations, and will not be liable to any such holders if the Trustee pays over or distributes to or on behalf of Holders or the Company or any other Person money or assets to which any holders of Senior Obligations are then entitled by virtue of this Article 10, except if such payment is made as a result of the willful misconduct or gross negligence of the Trustee.

Section 10.5. Notice by Company. The Company will promptly notify the Trustee of any facts known to the Company that would cause a payment of any Junior Obligations to violate this Article 10, but failure to give such notice will not affect the subordination of the Junior Obligations to the Senior Obligations as provided in this Article 10.

Section 10.6. Subordination Effective Notwithstanding Deficiencies with Respect to Senior Obligations; Waiver of Right to Contest Senior Obligation; Reinstatement of Subordination Provisions.

(a) The Holders hereby agree that subordination provisions contained in this Article 10 are unconditional, irrespective of the validity, regularity or enforceability of the Senior Obligations, the absence of any action to enforce the same, any waiver or consent by any holder of Senior Obligations with respect to any provisions thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense. Without limiting the foregoing, and notwithstanding anything to the contrary contained elsewhere in this CVR Agreement, in the event that the amount of Senior Obligations are reduced or diminished for any reason (other than as a result of the payment in cash thereof), whether because of the applicability of fraudulent conveyance or other applicable Laws, or any other invalidity or limitation on the amount of Senior Obligations, the subordination provisions thereof shall apply to the full amount of Senior Obligations (without giving effect to any reduction, invalidity or diminution thereof), and the turnover provisions hereunder shall be fully enforceable with respect to the full amount of Senior Obligations (without giving effect to any such reduction, invalidity or diminution thereof), even if the effect thereof is that there will be no (or a limited amount of) Senior Obligations to which the Junior Obligations are subrogated after the payment in full in cash of any of the remaining Senior Obligations (without giving effect to any reductions, invalidity or diminution thereof, except for reductions as a result of payments thereof in cash).

(b) The Trustee and the Holders agree that they shall not (and hereby waive any right to) take any action to contest or challenge (or assist or support any other Person in contesting or challenging), directly or indirectly, whether or not in any proceeding (including in any proceeding commenced by or against any Person under any provision of the Bankruptcy Code, as now and hereinafter in effect, or any successor statute or under any other state or federal bankruptcy or insolvency Law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief), the validity or enforceability of the Senior Obligations.

(c) If any payment made or in respect of the Senior Obligations must be disgorged or returned for any reason, the Senior Obligations shall be reinstated hereunder and for all purposes of this Article 10 (including the turnover provisions hereof) such payment shall be deemed to have never been made with respect to the Senior Obligations.

Section 10.7. Relative Rights. This Article 10 defines the relative rights of Holders and holders of Senior Obligations. Nothing in this CVR Agreement will (a) impair, as between the Company and Holders, the obligations of the Company under this CVR Agreement and the Securities or (b) affect the relative rights of Holders and creditors of the Company other than their rights in relation to holders of Senior Obligations. If the Company fails because of this Article 10 to pay any amounts due in respect of the Securities on a Payment Date in violation of Section 8.1, such failure is still an Event of Default.

Section 10.8. Subordination May Not Be Impaired by Company. No right of any holder of Senior Obligations to enforce the subordination of the Junior Obligations may be impaired by any act or failure to act by the Company or any Holder or by the failure of the Company or any Holder to comply with this CVR Agreement.

Section 10.9. Distribution or Notice to Representative. Whenever a distribution is to be made or a notice given to holders of Senior Obligations, the distribution may be made and the notice given to such holders' representatives in accordance with the terms of the instrument or other agreement governing such Senior Obligations. Upon any payment or distribution of assets of the Company referred to in this Article 10, the Trustee and the Holders will be entitled to rely upon any order or decree made by any court of competent jurisdiction or upon any certificate of such representative or of the liquidating trustee or agent or other Person making any distribution to the Trustee or to the Holders for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Obligations and other obligations of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 10.

Section 10.10. Rights of the Trustee. Notwithstanding the provisions of this Article 10 or any other provision of this CVR Agreement, the Trustee will not be charged with knowledge of the existence of any facts that would prohibit the making of any payment or distribution by the Trustee, and the Trustee may continue to make payments on the Securities, unless the Trustee has received at its Corporate Trust Office at least one (1) Business Day prior to the date of such payment written notice of facts that would cause the payment of any Junior Obligations to violate this Article 10. Only the Company or a representative of Senior Obligations may give the notice. Nothing in this Article 10 will impair the claims of, or payments to, the Trustee under or pursuant to Section 4.7. The Trustee in its individual or any other capacity may hold Senior Obligations with the same rights it would have if it were not the Trustee.

Section 10.11. Authorization to Effect Subordination. Each Holder, by the Holder's acceptance of the Securities, authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 10, and appoints the Trustee to act as such Holder's attorney-in-fact for any and all such purposes. If the Trustee (or any other Person acting on behalf of and at the direction of the Majority Holders) does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in Section 8.2 hereof at least thirty (30) days before the expiration of the time to file such claim, the representatives of the Senior Obligations are hereby authorized to file an appropriate claim for and on behalf of the Holders of the Securities.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this CVR Agreement to be duly executed, all as of the day and year first above written.

AKORN, INC.

By: _____

Name:

Title:

[], as the Trustee

By: _____

Name:

Title:

[Signature Page to CVR Agreement]

ANNEX A

EXAMPLE CALCULATIONS OF EBITDA, EXCESS EBITDA AND ANNUAL PAYMENT ⁽¹⁾
(dollars in millions)

	For the Twelve Months Ended December 31,		
	2018	20XX	20XX
Calculation of EBITDA:			
Net income (loss)	(\$ 402)	\$ 158	\$ 208
plus: Interest expense, net	46	46	46
minus: Income tax benefit	(36)	(36)	(36)
plus: Depreciation expense	29	29	29
plus: Amortization expense	53	53	53
EBITDA	(\$ 309)	\$ 250	\$ 300
Calculation of Excess EBITDA:			
Total short-term and long-term debt	\$ 820	\$ 820	\$ 820
plus: Deferred financing costs	12	12	12
minus: Unrestricted cash and cash equivalents	(225)	(225)	(225)
plus: Minimum cash	100	100	100
Net Debt	\$ 707	\$ 707	\$ 707
Excess EBITDA denominator	3.0	3.0	3.0
Excess EBITDA threshold	\$ 236	\$ 236	\$ 236
EBITDA	(\$ 309)	\$ 250	\$ 300
minus: Excess EBITDA threshold	(236)	(236)	(236)
Excess EBITDA	\$ 0	\$ 15	\$ 65
Calculation of Annual Payment:			
Excess EBITDA	\$ 0	\$ 15	\$ 65
multiplied by: Payment percentage	33.3%	33.3%	33.3%
Annual Payment before adjustment for Annual Payment Cap	\$ 0	\$ 5	\$ 22
Annual Payment Cap	\$ 12	\$ 12	\$ 12
Aggregate Annual Payment ⁽²⁾	\$ 0	\$ 5	\$ 12

- (1) Calculations for the twelve (12) months ended December 31, 2018 are based on financial information reported in the Company's annual report on Form 10-K for such fiscal year. The other calculations are illustrative figures selected solely for the purpose of illustrating Annual Payment calculations that are above and below the Annual Payment Cap.
- (2) Pursuant to the definition of "Annual Payment" in [Section 1.1](#), this amount will be divided by the Initial CVR Settlement Amount to determine the payments in respect of each Outstanding CVR.

ANNEX B

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE CONTINGENT VALUE RIGHTS AGREEMENT (THE "CVR AGREEMENT") HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF. THIS SECURITY IS NOT EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE CVR AGREEMENT, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY) MAY BE REGISTERED EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE CVR AGREEMENT.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN DIRECT REGISTRATION FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC") TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

AKORN, INC.

No. Certificate for Contingent Value Rights
CUSIP []

This certifies that _____, or registered assigns (the "Holder"), is the registered holder of the number of Contingent Value Rights ("CVRs" or "Securities") set forth above. Each CVR entitles the Holder, subject to the provisions contained herein and in the CVR Agreement referred to on the reverse hereof, to payments from Akorn, Inc., a Louisiana corporation (the "Company"), in an amount and in the form determined pursuant to the provisions set forth on the reverse hereof and as more fully described in the CVR Agreement referred to on the reverse hereof. Such payments shall be made by the Company on the applicable Payment Date, as defined in the CVR Agreement referred to on the reverse hereof, in accordance with the terms of the CVR Agreement.

Payment of any amounts pursuant to this CVR certificate shall be made only to the registered Holder (as defined in the CVR Agreement) of this CVR certificate. Such payment shall be made at the office or agency maintained by the Company for such purpose, in such coin or currency of the United States of America as at the time is legal tender for the payment of public and private debts; provided, however, that the Company may pay such amounts by wire transfer or check payable in such money. [] has been initially appointed as Paying Agent at its office or agency in [].

Reference is hereby made to the further provisions of this CVR certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been duly executed by the Trustee referred to on the reverse hereof by manual signature, this CVR certificate shall not be entitled to any benefit under the CVR Agreement, or be valid or obligatory for any purpose.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: [•]

By: _____
Name:
Title:

[Form of Reverse of CVR certificate]

1. This CVR certificate is issued under and in accordance with the Contingent Value Rights Agreement, dated as of [____], 2019 (the “CVR Agreement”), between the Company and [], as trustee (the “Trustee,” which term includes any successor Trustee under the CVR Agreement), and is subject to the terms and provisions contained in the CVR Agreement, to all of which terms and provisions the Holder of this CVR certificate consents by acceptance hereof. The CVR Agreement is hereby incorporated herein by reference and made a part hereof. Reference is hereby made to the CVR Agreement for a full statement of the respective rights, limitations of rights, duties, obligations and immunities thereunder of the Company, the Trustee and the Holders of the CVRs. All capitalized terms used in this CVR certificate without definition shall have the respective meanings ascribed to them in the CVR Agreement. Copies of the CVR Agreement can be obtained by contacting the Trustee.

2. On each Payment Date, if any, the Company shall make the payments required by Section 3.1(c)(i) or (ii), as applicable, of the CVR Agreement.

3. In the event of any conflict between this CVR certificate and the CVR Agreement, the CVR Agreement shall govern and prevail.

4. Each CVR Payment, if any, and interest thereon, if any, shall be payable by the Company in such coin or currency of the United States of America as at the time is legal tender for the payment of public and private debts; provided, however, that such amounts may be paid by check or wire transfer payable in such money. [] has been initially appointed as Paying Agent at its office or agency in [].

5. If an Event of Default occurs and is continuing, either the Trustee may or the Majority Holders, by notice to the Company and to the Trustee, may bring suit in accordance with the terms and conditions of the CVR Agreement to protect the rights of the Holders, including to obtain payment of all amounts then due and payable.

6. The CVR Agreement permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the holders of CVRs under the CVR Agreement at any time by the Company and the Trustee with the consent of the Majority Holders of the CVRs at the time outstanding.

7. No reference herein to the CVR Agreement and no provision of this CVR certificate or of the CVR Agreement shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay any amounts determined pursuant to the terms hereof and of the CVR Agreement at the times, place and amount, and in the manner, herein prescribed.

8. Each CVR Payment or any other right, claim or payment of any kind under this CVR certificate, if any, shall be subordinated in right of payment, as set forth in Article 10 of the CVR Agreement, to the prior payment in full in cash of all Senior Obligations whether outstanding on the date of the CVR Agreement or thereafter incurred.

9. As provided in the CVR Agreement and subject to certain limitations therein set forth, the transfer of the CVRs represented by this CVR certificate is registrable on the Security Register, upon surrender of this CVR certificate for registration of transfer at the office or agency of the Company maintained for such purpose duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by the Holder hereof or his or her attorney duly authorized in writing, and thereupon one or more new CVR certificates or Direct Registration Securities, for the same amount of CVRs, will be issued to the designated transferee or transferees. The Company hereby initially designates the office of [] at [] as the office for registration of transfer of this CVR certificate.

10. As provided in the CVR Agreement and subject to certain limitations therein set forth, this CVR certificate is exchangeable for one or more CVR certificates or Direct Registration Securities representing the same number of CVRs as represented by this CVR certificate as requested by the Holder surrendering the same.

11. No service charge will be made for any registration of transfer or exchange of CVRs, but the Company may require payment of a sum sufficient to cover all documentary, stamp or similar issue or transfer taxes or other governmental charges payable in connection with any registration of transfer or exchange.

12. Prior to the time of due presentment of this CVR certificate for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this CVR certificate is registered as the owner hereof for all purposes, and neither the Company, the Trustee nor any agent shall be affected by notice to the contrary.

13. Neither the Company nor the Trustee has any duty or obligation to the holder of this CVR certificate, except as expressly set forth herein or in the CVR Agreement.

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Global Securities referred to in the within-mentioned CVR Agreement.

[], as the Trustee

Dated: []

By: _____
Authorized Signatory

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE AKORN, INC. DATA INTEGRITY
SECURITIES LITIGATION

Civ. A. No. 1:18-cv-01713

Hon. Matthew F. Kennelly

ORDER PRELIMINARILY APPROVING SETTLEMENT, APPROVING FORM OF CLASS NOTICE, AND SETTING HEARING DATE FOR FINAL APPROVAL OF SETTLEMENT

WHEREAS, a consolidated class action is pending before this Court entitled *In re Akorn, Inc. Data Integrity Securities Litigation*, Civ. A. No. 1:18-cv-01713 (the "Action");

WHEREAS, the parties to the Action consist of (a) lead plaintiffs Gabelli & Co. Investment Advisors, Inc. and Gabelli Funds, LLC (the "Lead Plaintiffs"), on behalf of themselves and the Settlement Class; and (b) defendants Akorn, Inc., ("Akorn") and individual defendants Ronald M. Johnson, Duane A. Portwood, Rajat Rai, Brian Tambi and Alan Weinstein (collectively, the "Defendants" and, together with Lead Plaintiffs, the "Litigation Parties"), have determined to settle all claims asserted against Defendants in this Action with prejudice (the "Settlement") on the terms and conditions set forth in the Stipulation and Agreement of Settlement filed with the Court on August 9, 2019 (the "Stipulation"),¹ subject to approval of this Court;

WHEREAS, On May 31, 2019, plaintiffs Twin Master Fund, Ltd., Twin Opportunities Fund, LP and Twin Securities, Inc. filed a complaint against Defendants in the Northern District of Illinois, alleging violations of Sections 10(b), 18 and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder, as well as one count of common law fraud (the "*Twin Funds* Action");

¹ All capitalized words or terms not otherwise defined in this Order shall have the meanings ascribed to those words or terms in the Stipulation.

WHEREAS, On July 11, 2019, plaintiffs Manikay Master Fund, LP and Manikay Merger Fund, LP filed a complaint against Defendants in the Northern District of Illinois, alleging violations of Sections 10(b), 18 and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder, as well as one count of common law fraud (the “*Manikay Funds* Action”);

WHEREAS, both the *Twin Funds* Action and *Manikay Funds* Action have been found related to the Action and reassigned to the Hon. Matthew F. Kennelly;

WHEREAS, Lead Plaintiffs have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Stipulation, certifying the Settlement Class for purpose of the Settlement only, and authorizing notice to Settlement Class Members as more fully described herein; and

WHEREAS, the Court has read and considered: (a) Lead Plaintiffs’ Motion for Preliminary Approval of Settlement, Approval of Form of Class Notice, and a Hearing Date for Final Approval of Settlement and the Memorandum of Law in support thereof; and (b) the Stipulation and the exhibits attached thereto;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Settlement, a class consisting of all persons and entities that purchased or otherwise acquired shares of Akorn’s common stock during the period from November 3, 2016 through January 8, 2019, inclusive (the “Class Period”), and were damaged thereby, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them (the “Settlement Class” and its members the “Settlement Class Members”). Excluded from the Settlement Class are: (i) Defendants; (ii) any person who was an officer, director or managing agent of Akorn or any of its subsidiaries or affiliates at any point during the Class Period; (iii) members of the immediate family of any of the foregoing individuals; (iv) any affiliate of Akorn; (v) any entity in which any Defendant has or had a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing. Also excluded from the Settlement Class are any persons and entities who validly exclude themselves from the Settlement Class by timely filing a request for exclusion in accordance with the requirements set forth in paragraph 14 herein and the Notice.

2. **Class Findings** – Pursuant to Rule 23(e)(1)(B)(ii) of the Federal Rules of Civil Procedure, the Court finds that, for purposes of the proposed Settlement only, it will likely be able to certify the Settlement Class. Specifically, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met or will likely be met for purposes of the proposed Settlement only: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Lead Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiffs and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

3. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Lead Plaintiffs Gabelli & Co. Investment Advisors, Inc. and Gabelli Funds, LLC are adequate class representatives and certifies them as class representatives for the Settlement Class. The Court also appoints Lead Counsel Entwistle & Cappucci LLP as class counsel for the Settlement Class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

4. **Preliminary Approval of the Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, and finds, pursuant to Rule 23(e)(1)(B)(i) of the Federal Rules of Civil Procedure, that it will likely be able to finally approve the Settlement under Rule 23(e)(2) as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on December 3, 2019 at 9:30 a.m. in Courtroom 2103, 219 South Dearborn Street, Chicago, Illinois, for the following purposes:

(a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be granted final approval by the Court;

(b) to determine, for purposes of the Settlement only, whether: (i) the Settlement Class should be finally certified; (ii) Lead Plaintiffs should be finally certified as the Class Representatives for the Settlement Class; (iii) the law firm of Entwistle & Cappucci LLP should be finally appointed as Class Counsel for the Settlement Class;

(c) to determine whether an Order and Final Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered providing for the form of release set forth therein and dismissing the Action with prejudice;

(d) to determine whether the terms and conditions of the issuance of the Settlement Shares and Settlement CVRs pursuant to an exemption from registration requirements under Section 3(a)(10) of the Securities Act are fair to all persons and entities to whom the shares will be issued;

(e) to determine whether the proposed Plan of Allocation should be approved as fair and reasonable;

(f) to determine whether Lead Counsel's anticipated application for an award of attorneys' fees and reimbursement of expenses should be approved; and

(g) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Settlement Class Members as set forth in paragraph 8 of this Order.

6. The Court may adjourn the Settlement Hearing without further notice to the Settlement Class and may approve the proposed Settlement with such modifications as the Litigation Parties may agree to, if appropriate, without further notice to the Settlement Class.

7. **CAFA Notice** – At least seven (7) calendar days before the Settlement Hearing, Defendants shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit or declaration, of compliance with 28 U.S.C. § 1715(b), requiring Defendants to serve within ten (10) calendar days following the filing of the Stipulation with the Court notice of the proposed Settlement on the appropriate State official of each state in which a class member resides and the appropriate federal official ("**CAFA Notice**"). The Defendants shall be solely responsible for the costs and administration of the CAFA Notice.

8. **Retention of Claims Administrator and Manner of Giving Notice** – Lead Counsel is hereby authorized to retain JND Legal Administration as claims administrator to supervise and administer the notice procedure in connection with the proposed Settlement as well as the processing of Claims for the proceeds of the Settlement, as more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be given by Lead Counsel as follows:

(a) within ten (10) business days of the date of entry of this Order, Akom shall use its reasonable best efforts to provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator) its security list (consisting of last known names and addresses) of the holders of Akom common stock during the Class Period maintained by the Transfer Agent;

(b) not later than twenty (20) business days after the date of entry of this Order (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Proof of Claim Form, substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the "Notice Packet"), to be mailed by first-class mail to all potential Settlement Class Members who could be identified through reasonable effort;

(c) contemporaneously with the mailing of the Notice Packet, the Claims Administrator shall cause copies of the Notice and Proof of Claim Form to be posted on a website to be developed for the Settlement, from which copies of the Notice and Proof of Claim Form can be downloaded;

(d) not later than ten (10) business days after the Notice Date, the Claims Administrator shall cause the Publication Notice, substantially in the form attached hereto as Exhibit 3, to be published once in *Investor's Business Daily* and to be transmitted once over the *PR Newswire*; and

(e) not later than seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

9. **Approval of Form and Content of Notice** – The Court: (a) approves, as to form and content, the Notice, Proof of Claim Form, and Publication Notice, attached hereto as Exhibits 1, 2, and 3, respectively; and (b) finds that the mailing and distribution of the Notice and Proof of Claim Form and the publication of the Publication Notice in the manner and form set forth in paragraph 8 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to object to the Settlement, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the notice requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as amended, Section 3(a)(10) of the Securities Act, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Publication Notice before they are mailed and published, respectively.

10. **Nominee Procedures** – Brokers and other nominees who purchased or otherwise acquired Akorn common stock during the Class Period for the benefit of another person or entity shall: (a) within seven (7) business days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and within seven (7) business days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within seven (7) business days of receipt of the Notice, send a list of the names and addresses of all such beneficial owners to the Claims Administrator in which event the Claims Administrator shall promptly mail the Notice Packet to such individuals or entities. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

11. **Participation in the Settlement** – Settlement Class Members who wish to participate in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund must complete and submit a Proof of Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim Forms must be postmarked no later than one hundred twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at its discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Proof of Claim Form, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim and the subject matter of the Settlement.

12. Each Proof of Claim Form submitted must satisfy the following conditions: (a) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the transactions and holdings reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional and holding information found in a broker confirmation slip or account statement, or such other documentation as is deemed adequate by Lead Counsel or the Claims Administrator; (c) if the person executing the Proof of Claim Form is acting in a representative capacity, a certification of his, her or its current authority to act on behalf of the Claimant must be included in the Proof of Claim Form to the satisfaction of Lead Counsel or the Claims Administrator; and (d) the Proof of Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

13. Any Settlement Class Member that does not timely and validly submit a Proof of Claim Form: (a) shall be deemed to have waived his, her, or its right to share in the Net Settlement Fund; (b) shall be forever barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders, and judgments in the Action relating thereto, including, without limitation, the Order and Final Judgment, and the releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining, or prosecuting any of the Settled Claims against each and all of the Released Persons, as more fully described in the Stipulation and Notice. Notwithstanding the foregoing, late Proof of Claim Forms may be accepted for processing as set forth in paragraph 11 above.

14. **Exclusion From the Settlement Class** – Any Settlement Class Member who wishes to exclude himself, herself, or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that:

(a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, to: Claims Administrator at *In re Akorn, Inc. Data Integrity Securities Litigation* c/o JND Legal Administration, PO Box 91207, Seattle, WA 98111-9307; and

(b) each request for exclusion must: (i) state the name, address, and telephone number of the person or entity requesting exclusion, and, in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity "requests exclusion from the Settlement Class in *In re Akorn, Inc. Data Integrity Securities Litigation*, Civ. A. No. 1:18-cv-01713"; (iii) state the number of Akorn common shares purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares, and prices paid or proceeds received for each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above.

15. Any person or entity who or which timely and validly requests exclusion in compliance with the terms stated in this Order and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or judgments in the Action relating to the Settlement, and shall not receive any payment out of the Settlement Fund.

16. Any Settlement Class Member that does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation, the Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Settlement, including, but not limited to, the Order and Final Judgment, and the releases provided for therein whether favorable or unfavorable to the Settlement Class; and (d) shall be barred from commencing, maintaining, or prosecuting any of the Settled Claims against any of the Released Persons, as more fully described in the Stipulation and Notice.

17. **Appearance and Objections at Settlement Hearing** – Any Settlement Class Member who does not request exclusion from the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to both Lead Counsel and Defendants’ Counsel, at the addresses set forth in ¶ 18 below, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Lead Counsel.

18. Any Settlement Class Member who does not request exclusion from the Settlement Class may file a written objection to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses and show cause, if he, she, or it has any cause, why the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses unless that person or entity has filed a written objection with the Court and served copies of such objection on Lead Counsel and Defendants’ Counsel at the addresses set forth below such that they are received no later than twenty-one (21) calendar days prior to the Settlement Hearing.

Lead Counsel

Entwistle & Cappucci LLP
Andrew J. Entwistle, Esq.
500 W. 2nd Street, Suite 1900-16
Austin, Texas 78701

Entwistle & Cappucci LLP
Joshua K. Porter, Esq.
299 Park Avenue, 20th Floor
New York, New York 10171

Defendants' Counsel

Cravath, Swaine & Moore LLP
Robert H. Baron, Esq.
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7475

19. Any objections, filings, and other submissions by the objecting Settlement Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Akom common stock that the objecting Settlement Class Member purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares, and prices of each such purchase/acquisition and sale. Objectors who enter an appearance and desire to present evidence at the Settlement Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

20. Any Settlement Class Member who or which does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

21. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying Settlement Class Members and notifying them of the Settlement as well as in administering the Settlement shall be paid as set forth in the Stipulation without further order of the Court.

22. **Settlement Fund** – The contents of the Settlement Fund held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court. No person who is not a Settlement Class Member or Lead Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless ordered by the Court or otherwise provided in the Stipulation.

23. Neither Defendants, their counsel, nor any Released Person shall have any liability or responsibility for the Plan of Allocation or any application for attorneys' fees or Litigation Expenses submitted by Lead Counsel or Lead Plaintiff, and such matters shall be considered separately from the fairness, reasonableness and adequacy of the Settlement.

24. **Taxes** – Lead Counsel is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes or Tax Expenses owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and Tax Expenses and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

25. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation, the Settlement is not approved, or the Effective Date of the Settlement otherwise fails to occur, this Order (including the certification of the Settlement Class) shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of Lead Plaintiffs, the other Settlement Class Members, or Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation on August 9, 2019, as provided in the Stipulation.

26. **Use of this Order** – Except as necessary to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement, neither this Order, the Stipulation (whether or not consummated), including the exhibits thereto, the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered or received against any Defendant or Released Person as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any Defendant or Released Person with respect to the truth of any fact alleged by any of the Plaintiffs or the validity of any Settled Claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of any Defendant or Released Person;

(b) shall be offered or received against any Defendant or Released Person as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by any Defendant or Released Person;

(c) shall be offered or received against any Defendant or Released Person as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against any Defendant or Released Person, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(d) shall be construed against any Defendant or Released Person as an admission or concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial; or

(e) shall be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiffs or any of the Releasing Persons that any of their claims are without merit, or that any defenses asserted by any Defendants have any merit, or that damages recoverable under the Second Amended Complaint would not have exceeded the Settlement Consideration or the Settlement Fund.

27. **Supporting Papers** – Lead Counsel shall file and serve the opening papers in support of the proposed Settlement, the proposed Plan of Allocation and Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses no later than thirty-five (35) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

28. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this 26th day of August, 2019.

/s/ The Honorable Matthew F. Kennelly
The Honorable Matthew F. Kennelly
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE AKORN, INC. DATA INTEGRITY
SECURITIES LITIGATION

Civ. A. No. 1:18-cv-01713

Hon. Matthew F. Kennelly

NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash or securities from a settlement in the above class action that, if approved by the Court, will resolve all claims. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.

WHAT THIS NOTICE CONTAINS

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NOTICE OF CLASS ACTION, NOTICE OF SETTLEMENT AND IDENTITY OF LITIGATION PARTIES, AND SUMMARY OF RECOVERY FROM SETTLEMENT

Notice of Pendency of Class Action: Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”) pending in the United States District Court for the Northern District of Illinois (the “Court”) if, during the period from November 3, 2016 through January 8, 2019, inclusive (the “Class Period”), you purchased or otherwise acquired the common stock of Akorn, Inc. (“Akorn”), and were damaged thereby.¹

Notice of Settlement and Identity of Litigation Parties: Please also be advised that the Court-appointed lead plaintiffs Gabelli & Co. Investment Advisors, Inc. and Gabelli Funds, LLC (together, the “Gabelli Entities” or “Lead Plaintiffs”), on behalf of themselves and the Settlement Class (as defined in ¶ 20 below), have reached a proposed settlement (the “Settlement”) with the defendants named in the Action, Akorn, Ronald M. Johnson, Duane A. Portwood, Rajat Rai, Brian Tambi and Alan Weinstein (collectively, the “Defendants” and, with Lead Plaintiffs and the Settlement Class, the “Litigation Parties”) which, if approved by the Court, will resolve all claims asserted by Lead Plaintiffs in the Action on behalf of the Settlement Class.

Settlement Class Recovery: The Settlement will resolve all claims in the Action. In exchange for mutual releases by the Litigation Parties, including release by the Settlement Class of any claims against the Defendants, the Settlement Class will receive recovery consisting of cash, common shares, and contingent value rights. In total, the Settlement will provide from approximately \$53.6 million to \$155.4 million in recovery to the Settlement Class, as described below. The ultimate total value of the Settlement will be determined by the price of Akorn common shares on the dates they are issued to (or sold on behalf of) the Settlement Class as partial consideration for the Settlement and whether other conditions are met for the contingent future components of the Settlement. The components of the Settlement include:

1. **Cash:** Up to \$30.0 million upon final approval, consisting of 100% of the proceeds from Defendants’ primary and excess director and officer (D&O) insurance policies (subject to a small defense cost reserve that reverts to the Settlement Class shortly after the Effective Date if unused), to be escrowed, if possible, for distribution to Settlement Class Members following the final approval of the Settlement by the Court;

¹ Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement, dated August 9, 2019 (including all exhibits attached thereto, the “Stipulation”), which is available for viewing and/or downloading at www.Akorn2019SecuritiesSettlement.com. This Notice provides only a summary of the Settlement, and you are encouraged to consult the full Stipulation, which sets forth the complete terms of the Settlement. The Stipulation governs any discrepancy between this Notice and the Stipulation.

2. **Common Stock:** Up to approximately 8,735,705 shares of Akom common stock worth \$23.6 million to \$65.4 million (estimated using \$2.70 to \$7.49 per share closing price range since the Delaware Court of Chancery’s unfavorable October 1, 2018 decision allowing Fresenius Kabi AG (“Fresenius”) to terminate its merger agreement with Akom), consisting of:
 - Approximately 6,486,375 shares upon the final approval of the Settlement by the Court to be escrowed, if possible, for distribution to Settlement Class Members (or sold and the cash proceeds distributed);
 - Approximately 2,249,330 shares to be issued to the Settlement Class (or sold and the cash proceeds distributed) between the Effective Date and December 31, 2024, inclusive, as the shares become available due to the expiration of out-of-the-money options issued under Akom compensation plans;
3. **Contingent Value Rights:** Contingent value rights (“CVRs”) issued by Akom that entitle the holders to the following:
 - **Cash Payments:** Annual cash payments over the CVRs’ five-year term in an amount for any year equal to 33.3% of Akom’s “Excess EBITDA” (i.e., earnings before interest, taxes, depreciation and amortization (EBITDA) above the amount of EBITDA required to meet a 3.0x net leverage ratio, assuming a \$100.0 million minimum cash cushion, before any such CVR payment is triggered), if any, for any such year. To the extent any such annual payments are triggered under the CVRs, they are capped at an aggregate of \$12.0 million per year and \$60.0 million in the aggregate during the term of the CVRs. If cumulative annual payments from the CVRs after 5 years are less than \$60.0 million, the term of the CVRs would be extended for up to two (2) years.
 - **Change in Control Payment or Bankruptcy Protection Claim:** Either (a) a cash payment to the holders of the CVRs in the aggregate amount of \$30.0 million upon certain change of control transactions during the term of the CVRs, provided the senior obligations and other debt for borrowed money of Akom and its subsidiaries are repaid in full in cash; or (b) a general unsecured claim on account of all CVRs in the aggregate amount of \$30.0 million if the Company is the subject of a voluntary or involuntary bankruptcy filing during the term of the CVRs (which general unsecured claim will be subordinated to certain debt obligations of Akom and its subsidiaries in accordance with the terms of the CVR Agreement). Following the making of the Change in Control Payment or receipt by the CVR holders of the Bankruptcy Claim, no further annual payments shall be required. Additionally, CVR holders shall not be entitled to receive both the Change in Control Payment and the Bankruptcy Claim.

The CVRs will be distributed to Settlement Class Members and Akorn has agreed to work in good faith to cause the CVRs to be traded on the NASDAQ Global Market or another national securities exchange. The securities will be distributed *pro rata* to Settlement Class Members in a form and denominations to be determined in the sole discretion of Lead Counsel in consultation with Akorn, the claims administrator that administers the Settlement fund (the “Claims Administrator”), and a trustee for the CVRs (the “Trustee”) to be selected by Akorn, in consultation with court-appointed counsel for Plaintiffs (“Lead Counsel”).

The operation of the CVRs will be governed by the Contingent Value Rights Agreement (the “CVR Agreement”) between Akorn and the Trustee. A form of the CVR Agreement is available as Exhibit C to the Stipulation and Agreement of Settlement entered into by Defendants and Plaintiffs (the “Stipulation”), and is subject to modification as set forth in the Stipulation.

In its July 30, 2019 Form 8-K filed with the Commission disclosing the terms of the non-binding agreement in principle entered into by the Litigation Parties to the market and investors, Akorn disclosed that it had recorded an estimated charge and corresponding liability of \$74 million associated with such non-binding agreement in principle, as required by generally accepted accounting principles.

PLEASE NOTE: Assuming the Court grants Lead Counsel’s anticipated motion for an award of attorneys’ fees and reimbursement of litigation expenses that will accompany Lead Plaintiffs’ motion for final approval and judgment, the Settlement Class’s recovery from the cash, common shares and CVRs will be subject to: (i) an award of attorneys’ fees to Plaintiffs’ Counsel of up to 25% (payable in the form of 25% of each of the cash, shares upfront and as they become available, and CVRs); and (ii) reimbursement of litigation expenses of up to \$1.5 million.

If you have any questions about this Notice, the Settlement, or your eligibility to participate in the Settlement, please DO NOT contact the Court, Akorn, the other Defendants in the Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (see ¶ 51 below).

GENERAL INFORMATION

1. **Description of the Action and the Settlement Class:** This Notice relates to the proposed Settlement in the pending securities class action brought by Lead Plaintiffs on behalf of investors in Akorn common stock alleging that the Defendants violated the federal securities laws. The Action asserts fraudulent conduct arising from Akorn's alleged material misrepresentations and omissions during the Class Period that, among other things, Akorn was in compliance with regulations established by the U.S. Food and Drug Administration ("FDA").

A more detailed description of the Action and the claims asserted against the Defendants is set forth in ¶¶ 10-19 below. The proposed Settlement, if approved by the Court, will settle the claims of the Settlement Class, as defined in ¶ 20 below, as against all Defendants and bring the Action to a close, unless any Defendant terminates or withdraws from the Settlement under certain provisions in the Stipulations.

2. **Estimate of Average Amount of Recovery Per Share:** Based on Lead Plaintiffs' damages expert's estimates of the number of shares of Akorn common stock purchased during the Class Period that may have been affected by the conduct at issue in the Action and assuming that the Settlement is approved and 100% of Settlement Class Members elect to participate in the Settlement, the estimated average recovery per damaged share of Akorn common stock (before the deduction of any Court-approved fees, expenses and costs from the Settlement Fund as described herein) is \$0.21 to \$0.61.²

Settlement Class Members should note, however, that the foregoing average recovery per share is only an estimate. Some Settlement Class Members may recover more or less than this estimated amount depending on, among other factors, when and at what prices they purchased/acquired and sold their Akorn common stock and the total allowed claims submitted by Settlement Class Members of the valid Proof of Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth in Appendix A below (*see* pages 19-26 below) or such other plan of allocation as may be ordered by the Court.

3. **Statement of Potential Outcome of Case and Potential Damages:** Lead Plaintiffs and the Defendants do not agree on the average amount of damages per share that would be recoverable if Lead Plaintiffs were to prevail on the claims asserted against the Defendants at trial in the Action. Among other things, the Defendants do not agree with Lead Plaintiffs' assertions that: (i) they violated the federal securities laws; (ii) they made false or misleading statements; or (iii) damages were suffered by members of the Settlement Class as a result of the Defendants' alleged conduct.

² The estimated recovery per-common share is given as a range because of the prospective nature of the common share recovery and CVRs.

4. **Attorneys' Fees and Expenses:** Plaintiffs' Counsel, which have been prosecuting the Action on a wholly contingent basis since 2018, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Entwistle & Cappucci LLP will apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of each component of the Settlement Fund. In addition, Plaintiffs' Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$1,500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. If the Court approves Lead Counsel's fee and expense application and the Settlement, the estimated average cost for these fees and expenses would be \$0.05 to \$0.15 per damaged share.

5. **Identification of Attorneys' Representatives:** The Settlement Class is represented by (i) Andrew J. Entwistle, Esq. of Entwistle & Cappucci LLP, 500 W. 2nd Street, Suite 1900-16, Austin, Texas 7870, (512) 710-5960, awentwistle@entwistle-law.com; and (ii) Vincent R. Cappucci, Esq. of Entwistle & Cappucci LLP, 299 Park Avenue, 20th Floor, New York, NY 10171, (212) 894-7200, vcappucci@entwistle-law.com.

6. **Reasons for the Settlement:** Lead Plaintiffs' principal reason for entering into the Settlement is the substantial current and prospective recovery for the Settlement Class without the risk or the delays inherent in further litigation against the Defendants. First and foremost, Akorn currently lacks the ability to pay a significant judgment should one be obtained following a trial. Moreover, the substantial benefits provided under the proposed Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action against the Defendants, and likely appeals that would follow a trial, a process that could be expected to last several years. The Defendants deny all allegations of wrongdoing or liability whatsoever and are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:

SUBMIT A PROOF OF CLAIM FORM POSTMARKED NO LATER THAN _____. ONLY ONE PROOF OF CLAIM FORM NEEDS TO BE SUBMITTED.

This is the only way to be eligible to receive a payment from the proceeds of the Settlement. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 27 below) that you have against the Defendants and the other Released Persons (defined in ¶ 28 below), so it is in your interest to submit a Proof of Claim Form.

EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN _____.

If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Defendants or the other Released Persons concerning the Released Plaintiffs' Claims.

OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN _____.

If you do not like the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation, or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.

GO TO A HEARING ON _____ AT _____, AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN _____.

Filing a written objection and notice of intention to appear by _____ allows you to speak in Court, at the discretion of the Court, about the fairness of one or more of the Settlement, the Plan of Allocation, and/or the request for attorneys' fees and expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.

DO NOTHING.

If you are a member of the Settlement Class and you do not submit a valid Proof of Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

WHY DID I GET THIS NOTICE?

7. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have purchased or otherwise acquired Akorn common stock during the Class Period (from November 3, 2016 through January 8, 2019, inclusive). The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights.

8. The purpose of this Notice is to inform you of the existence of the Action, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to so do. It is also being sent to inform you of the terms of the Settlement and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement (the "Settlement Hearing"). See ¶¶ 42-49 below for details about the Settlement Hearing, including the date and location of the hearing.

9. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement.

WHAT IS THIS CASE ABOUT?

10. Defendant Akom develops, manufactures and markets generic and branded pharmaceuticals. Akom's business depends on obtaining timely new product approvals from FDA, which requires Akom to comply with rigorous FDA data integrity and current Good Manufacturing Practices ("cGMP") regulations. Lead Plaintiffs' complaint alleges that, during the Class Period, Defendant Akom made, and the other Defendants made or caused to be made, material misrepresentations and omissions that, among other things, Akom was in compliance with FDA data integrity and cGMP regulations and, consequently, valuable drugs in Akom's product pipeline would soon obtain FDA approval. Lead Plaintiffs allege these material misrepresentations and omissions violated federal securities laws and that Akom investors suffered economic harm when the truth about the nature of Akom's lack of regulatory compliance was revealed through a series of disclosures, including documents and testimony during a trial in the Delaware Court of Chancery in connection with Akom's failed merger with Fresenius.

11. On March 8, 2018, a securities class action complaint was filed in the Court by purchasers of Akom common stock. On May 31, 2018, the Court appointed the Gabelli Entities to serve as Lead Plaintiffs in the Action, and approved Lead Plaintiffs' selection of the law firms of Entwistle & Cappucci LLP as Lead Counsel for the putative class and Bernstein Litowitz Berger & Grossmann LLP as Liaison Counsel.

12. On September 5, 2018, Lead Plaintiffs filed the Consolidated Amended Class Action Complaint (the "Amended Complaint"). The relevant claims asserted in the Amended Complaint were (a) claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Securities and Exchange Commission ("SEC") Rule 10b-5 promulgated thereunder, against Akom and certain of the other Litigation Parties who served as senior management and/or directors of Akom; and (b) claims under Section 20(a) of the Exchange Act against certain of the Litigation Parties who served a senior management and/or directors of Akom.

13. On December 10, 2018, the Defendants filed an answer to the Amended Complaint that denied liability and the essential factual allegations therein and asserted eighteen (18) separate affirmative defenses.

14. Discovery in the Action commenced in December 2018. Through the date the agreement to settle with the Defendants was reached, discovery included, among other things: (i) the review and analysis of more than 12 million pages of documents produced by Plaintiffs, Defendants and third parties; and (ii) a comprehensive review and analysis of the record in an action in the Delaware Court of Chancery concerning many of the same issues, including reviewing all pleadings, motions, deposition transcripts, joint trial exhibits and appellate briefs, as well as in-person attendance at the five-day bench trial and all public Chancery Court hearings. The Litigation Parties also served 15 subpoenas on non-parties, and exchanged initial disclosures and letters concerning discovery issues. In addition, Lead Plaintiffs consulted a world-renowned expert economist and submitted a detailed report concerning the issues of market efficiency and class-wide damages for Akom Securities sold during the Class Period.

15. On April 22, 2019, Lead Plaintiffs filed a Second Consolidated Amended Complaint (the “Operative Complaint” or “Complaint”), which (1) added allegations related to information that came to light in connection with the action in the Delaware Court of Chancery, and (2) alleged a class period of November 3, 2016 through January 8, 2019, inclusive.

16. On July 5, 2019, Plaintiffs moved to certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. The Court had not ruled on that motion when the Litigation Parties reached a settlement. Consistent with the Complaint, Lead Plaintiffs sought to certify a class of all persons and entities who purchased or otherwise acquired Akom’s common stock between November 3, 2016 and January 8, 2019, inclusive, and were damaged thereby (with certain exclusions).

17. On August 9, 2019, after extensive arm’s-length negotiations facilitated by former United States District Judge Layn R. Phillips, acting as mediator, the Litigation Parties entered into the Stipulation, which sets forth the terms and conditions of the Settlement. The Stipulation can be viewed at www.Akom2019SecuritiesSettlement.com.

18. Based upon their investigation, prosecution, and settlement of the case, Lead Plaintiffs and Lead Counsel have concluded that the terms and conditions of the Stipulations are fair, reasonable, and adequate to Plaintiffs and the Settlement Class, and in their best interests.

19. The Defendants are entering into the Stipulation solely to eliminate the uncertainty, risk, burden, and expense of further protracted litigation. Each of the Defendants denies any wrongdoing.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

20. If you are a member of the Settlement Class, you are subject to the terms of the Settlement, unless you timely request to be excluded. The “Settlement Class” consists of all persons and entities that purchased or otherwise acquired Akom, Inc.’s common stock from November 3, 2016 through January 8, 2019, inclusive, and were damaged thereby, including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them.

Excluded from the Settlement Class are: (i) Defendants; (ii) any person who was an officer, director or managing agent of Akom or any of its subsidiaries or affiliates at any point during the Class Period; (iii) members of the immediate family of any of the foregoing individuals (including all trusts and other entities related to, owned or controlled by such individuals); (iv) any affiliate of Akom; (v) any entity in which any Defendant has or had a controlling interest; and (vi) the legal representatives, heirs, predecessors, successors or assigns of any of the foregoing. Also excluded from the Settlement Class are any persons or entities who or which validly exclude themselves by submitting a request for exclusion from the Settlement Class in accordance with the requirements set forth in this Notice. *See* “What if I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself” (¶¶ 38-41 below).

RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.

IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE PROOF OF CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN _____.

WHAT ARE PLAINTIFFS' REASONS FOR THE SETTLEMENT?

21. Lead Plaintiffs and Lead Counsel believe that the claims asserted against the Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. Such risks include the potential challenges associated with proving that there were material misstatements and omissions in Defendants' public statements. There were also risks related to damages, including the risk that a jury would conclude that most or all of the decline in Akom's stock price related to factors other than the alleged fraud. Lead Plaintiffs would have to prevail at several stages – motions for class certification and summary judgment, a trial, and if they prevailed on those, on the appeals that were likely to follow. In addition, Akom's precarious financial condition seriously limited the sources of recovery in this proceeding. Thus, there were very significant risks attendant to the continued prosecution of the claims against the Defendants.

22. In light of these risks, the amount of the Settlement, the certainty of an initial recovery to the Settlement Class, and the prospect for additional recovery if certain conditions are met, Lead Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Plaintiffs and Lead Counsel believe that the Settlement provides a substantial benefit to the Settlement Class, namely approximately \$30.0 million in cash (less the various deductions described in this Notice) and potential additional recoveries of \$125.4 million from Settlement Shares and CVRs, as compared to the risk that the claims in the Action against the Defendants might produce a smaller, or no, recovery, after summary judgment, trial, and appeals.

23. The Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. The Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by the Defendants.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

24. If there were no Settlement, and Plaintiffs failed to establish any essential legal or factual element of their claims against the Defendants, neither Lead Plaintiffs nor the other members of the Settlement Class would recover anything. Also, if the Defendants were successful in proving any of their defenses, either at summary judgment, at trial, or on appeal, the Settlement Class could recover substantially less from the Defendants than the amount provided in the Settlement, or nothing at all. Finally, even if Plaintiffs established all elements of their claims and overcame all of Defendants' defenses, and proved all alleged damages, and prevailed in appeals, there is significant doubt as to whether Defendants' would be able to pay a judgment in such an amount. In any bankruptcy proceeding, the Class would likely recover less than the amount of the Settlement and might recover nothing at all.

**HOW ARE SETTLEMENT CLASS MEMBERS
AFFECTED BY THE ACTION AND THE SETTLEMENT?**

25. If you are a Settlement Class Member, you are represented by Lead Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, "When And Where Will The Court Decide Whether To Approve The Settlement?" (¶¶ 42-49 below).

26. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class,³ you will be bound by any orders issued by the Court relating to the Settlement. If the Settlement is approved, the Court will enter a judgment (the "Order and Final Judgment"). The Order and Final Judgment will dismiss with prejudice the claims against the respective Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (as defined in ¶ 27 below) against the Defendants and the other Released Persons (as defined in ¶ 28 below) for that Settlement, and will forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of those Released Persons.

³ If you are a Settlement Class Member and do not wish to remain a class member, you may exclude yourself from the Settlement Class with respect to one or more of the Settlement by following the instructions in the section entitled, "What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?" (¶¶ 38-41 below).

27. "Released Plaintiffs' Claims" means any and all claims demands, rights, actions or causes of action, whether the claims are known or Unknown Claims, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, hidden or concealed, matured or unmatured, accrued or unaccrued, that have been, could have been, or in the future can or might be asserted in the Action or in any court, tribunal or proceeding, including, but not limited to, any claims arising under federal or state statutory or common law or relating to alleged fraud, misrepresentation (negligent, reckless, intentional or otherwise, and including misrepresentations through omission(s)), breach of any duty, negligence, violations of federal or state securities laws or any other claim under any theory by or on behalf of the Lead Plaintiffs and/or any and all Settlement Class Members that any of the Releasing Persons ever had, now has, or hereafter can, shall or may have against the Released Persons by reason of, arising out of, relating to or in connection with (i) the allegations, facts, matters, events, transactions, acts, occurrences, statements, representations, misrepresentations, or omissions or failures to act that were alleged or could have been alleged in the Action; (ii) any disclosures, non-disclosures or public statements made in connection with any of the foregoing; and (iii) the Stipulation and the Settlement. Released Plaintiffs' Claims do not include: (i) any claim by or on behalf of any Defendant against any insurance carrier; (ii) any claim to enforce the Settlement, if approved by the Court, or the Stipulation; and (iii) any claim of or against any Opt-Outs.

28. "Released Persons" refers jointly and severally, individually and collectively to all current or former Defendants in the Action and their current and former directors, officers, shareholders, employees, servants, partners, agents, affiliates, subsidiaries, parents, joint ventures, successors or assigns, and any representatives, trustees, executors, heirs, assigns or transferees, attorneys, accountants, investment bankers, commercial bankers, advisors or insurers of any of the foregoing, as well as all counsel representing such persons or entities in connection with the Action or any transaction from which the Action arises. As used in this definition, "affiliates" means entities controlling, controlled by or under common control with any of the Released Persons.

29. "Unknown Claims" means any and all claims that Defendants, Lead Plaintiffs or any other Settlement Class Member, and any or all other persons and entities whose claims are being released, do not know or suspect to exist, which, if known by him, her, or it, might affect his, her, or its agreement to release the Released Persons or the Released Plaintiffs' Claims, or might affect his, her or its decision to object or not object to the Settlement. With respect to any and all Released Claims, the Litigation Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and Defendants shall expressly waive, and each Released Person and Plaintiffs' Releasees shall be deemed to have waived, and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions, rights, and benefits of or conferred by any law of any state or territory of the United States or by any law of any other country, or principle of common law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs or Defendants may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Plaintiffs' Claims, but hereby stipulate and agree that Lead Plaintiffs and each other Plaintiffs' Releasees shall be deemed to settle and release, and upon the Effective Date and by operation of the Order and Final Judgment shall have settled and released, fully, finally, and forever, all Released Plaintiffs' Claims against Released Persons, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exists, or which heretofore existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent or intentional and with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts.

30. The Order and Final Judgment will also provide that, upon the Effective Date of the Settlement, the Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Defendants' Claim (as defined in ¶ 31 below) against Lead Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 32 below), and will forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiffs' Releasees.

31. "Released Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of, relate in any way to or are connected with the institution, prosecution, assertion, Settlement or resolution of the Action that Defendants have asserted or could have asserted against the Lead Plaintiffs and the other Settlement Class Members. Released Defendants' Claims do not include: (i) any claims against any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the Court; and (ii) any claims relating to the enforcement of the Settlement.

32. "Plaintiffs' Releasees" means Lead Plaintiffs, Settlement Class Members and, to the extent acting as such, Lead Plaintiffs' or any Settlement Class Members' current and former directors, officers, shareholders, employees, servants, partners, agents, affiliates, subsidiaries, parents, joint ventures, successors or assigns, and any representatives, trustees, executors, heirs, assigns or transferees, attorneys, accountants, investment bankers, commercial bankers, advisors or insurers of any of the foregoing, jointly and severally, individually and collectively, whether in an individual, class, representative, legal, equitable or any other type or in any other capacity. As used in this definition, "affiliates" means entities controlling, controlled by or under common control.

WHAT WILL I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?

33. To be eligible for a payment from the Settlement Fund, you must be a member of the Settlement Class and you must timely complete and return the Proof of Claim Form with adequate supporting documentation **postmarked no later than _____, 2019**. A Proof of Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, www.Akorn2019SecuritiesSettlement.com, or you may request that a Proof of Claim Form be mailed to you by calling the Claims Administrator toll free at 1-844-961-0314. Please retain all records of your ownership of and transactions in Akorn common stock, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Proof of Claim Form, you will not be eligible to share in the Net Settlement Fund.

HOW MUCH WILL MY PAYMENT FROM THE SETTLEMENT BE?

34. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

35. The proceeds of the Settlement will be distributed in accordance with a plan of allocation that is approved by the Court. The amounts to be distributed to individual Settlement Class Members will depend on a variety of factors, including: the number of other Settlement Class Members who submit valid Proof of Claim Forms; the number of shares of Akorn stock the claimant purchased during the Class Period, the prices and dates of those purchases; and the prices and dates of any sales of such shares of Akorn stock.

36. The proposed Plan of Allocation, which is subject to Court approval, appears in Appendix A (pages 19-26 of this Notice). Please review the Plan of Allocation carefully.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING?
HOW WILL THE LAWYERS BE PAID?**

37. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of each component of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed \$1,500,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?
HOW DO I EXCLUDE MYSELF?**

38. Each Settlement Class Member will be bound by the determinations, orders, and judgments in this Action relating to the Settlement, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to Claims Administrator at *In re Akorn, Inc. Data Integrity Securities Litigation*, EXCLUSIONS c/o JND Legal Administration, PO Box 91702, Seattle, WA 98111-9307. The exclusion request must be **received** no later than _____, 2019. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must: (a) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such person or entity "requests exclusion" from the Settlement in *In re Akorn, Inc. Data Integrity Securities Litigation*, Case No. 1:18-cv-01713; (c) state the number of shares of Akorn common stock that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from November 3, 2016 through January 8, 2019, inclusive), as well as the dates, number of shares, and prices of each such purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

39. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs' Claim against any of the Released Persons. Excluding yourself from the Settlement Class is the only option that allows you to be part of any other lawsuit against any of the Defendants or the other Released Persons concerning the Released Plaintiffs' Claims.

40. If you exclude yourself from the Settlement Class, you will not be able to request a payment from the Settlement, and you cannot object to the Settlement. You will not be bound by anything that happens in this lawsuit with respect to the Defendants for the Settlement, and you may be able to sue those Defendants on your own in the future.

41. The Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the Settlement Class in an amount that exceeds an amount agreed to by Plaintiffs and the Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE
SETTLEMENT? DO I HAVE TO COME TO THE HEARING? HOW DO I OBJECT?
MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

42. **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a class member does not attend the hearing. Settlement Class Members can participate in the Settlement without attending the Settlement Hearing. Please Note: The date and time of the Settlement Hearing may change without further written notice to the Settlement Class. You should monitor the Court's docket and the website maintained by the Claims Administrator, www.Akorn2019SecuritiesSettlement.com, before making plans to attend the Settlement Hearing. You may also confirm the date and time of the Settlement Hearing by contacting Lead Counsel.**

43. The Settlement Hearing will be held on _____, 2019 at _____, before the Honorable Matthew F. Kennelly at the United States District Court for the Northern District of Illinois, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, Courtroom 2301. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

44. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Northern District of Illinois at the address set forth below on or before _____, 2019. You must also mail the papers to Lead Counsel and to the Defendants' Counsel who represent the Defendants in the Settlement(s) to which you object at the addresses set forth below so that the papers are *received* on or before _____, 2019.

Clerk's Office

U.S. District Court
Northern District of Illinois
Everett McKinley Dirksen
United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

Lead Counsel

Entwistle & Cappucci LLP
Andrew J. Entwistle, Esq.
299 Park Avenue
20th Floor
New York, NY 10171

Defendants' Counsel

Cravath, Swaine & Moore LLP
Robert H. Baron
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

45. Any objection: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention and whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Akorn common stock purchased/acquired and/or sold during the Class Period (*i.e.*, from November 3, 2016 through January 8, 2019, inclusive), as well as the dates, number of shares and prices of each such purchase/acquisition and sale. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

46. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

47. If you wish to be heard orally at the hearing, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 44 above so that the notice is *received* on or before _____, 2019. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

48. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Defendants' Counsel at the addresses set forth in ¶ 44 above so that the notice is *received* on or before _____, 2019.

49. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

WHAT IF I BOUGHT AKORN STOCK ON SOMEONE ELSE'S BEHALF?

50. If during the period from November 3, 2016 through January 8, 2019, inclusive (the "Class Period"), you purchased or otherwise acquired Akorn common stock, for the beneficial interest of persons or organizations other than yourself, you must do at least one of the following with respect to each such beneficial owner:

- (a) within seven (7) business days of receipt of this Notice, request from the Claims Administrator a copy of the Notice and Proof of Claim Form to forward to the beneficial owner and within seven (7) calendar days of receipt of that Notice forward it to the beneficial owner;
- (b) within seven (7) business days of receipt of this Notice, transmit an electronic copy of the Notice and Proof of Claim Form to the beneficial owner by the means and in the manner which you or your affiliates ordinarily transmit important information to the beneficial owner regarding investments made on his, her or its behalf (e.g. by electronic mail to a brokerage client who has opted to receive notifications by electronic mail); or
- (c) within ten (10) business days of receipt of this Notice, provide the name and address of the beneficial owner to *In re Akorn, Inc. Data Integrity Securities Litigation*, c/o JND Legal Administration PO Box 91207 Seattle, WA 98111-9307.

If you choose the first or second option, you must send a statement to the Claims Administrator confirming that all required mailing or electronic transmissions were made and **you must retain your mailing records for use in connection with any further notices that may be provided in the Action**. If you choose the third option, the Claims Administrator will send a copy of the Notice to the beneficial owner. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained from the website maintained by the Claims Administrator, www.Akorn2019SecuritiesSettlement.com, by calling the Claims Administrator toll-free at 1-844-961-0314, or by emailing the Claims Administrator at info@Akorn2019SecuritiesSettlement.com.

**CAN I SEE THE COURT FILE?
WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?**

51. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which will be posted on the website maintained by the Claims Administrator, www.Akom2019SecuritiesSettlement.com. Additionally, copies of the Stipulation and any related orders entered by the Court may be inspected during regular office hours at the Office of the Clerk, Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604.

Requests for the Notice or to be added to the mailing list for future notices in the Action should be made to: **Inquiries, other than requests for the Notice, should be made to Lead Counsel:**

*In re Akorn, Inc. Data Integrity
Securities Litigation*
c/o JND Legal Administration
PO Box 91207
Seattle, WA 98111-9307
info@Akorn2019SecuritiesSettlement.com
www.Akom2019SecuritiesSettlement.com

Andrew J. Entwistle, Esq.
c/o ENTWISTLE & CAPPUCCI LLP
500 W. 2nd Street, Suite 1900-16
Austin, Texas 78701
(512) 710-5960
aentwistle@entwistle-law.com

or

Joshua K. Porter, Esq.
c/o ENTWISTLE & CAPPUCCI LLP
299 Park Avenue, 20th Floor
New York, NY 10171
(212) 894-7200
jporter@entwistle-law.com

DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.

Dated: _____, 2019

By Order of the Court
United States District Court
Northern District of Illinois

**APPENDIX A:
PROPOSED PLAN OF ALLOCATION OF NET SETTLEMENT FUND**

GENERAL PROVISIONS

52. This Plan of Allocation will govern the distribution of the Net Settlement Fund.⁴

53. The Plan of Allocation has been prepared by Lead Plaintiffs, and reflects: (i) the allegations in the Complaint that the Defendants committed various violations of the federal securities laws; and (ii) analyses by Plaintiffs' expert on damages to create a framework for equitable distribution of the Net Settlement Fund among Settlement Class Members who suffered economic losses as a result of the Defendants' alleged violations of the federal securities laws.

54. The Plan of Allocation is not a formal damage analysis. The calculations made pursuant to the Plan of Allocation are not intended to estimate the amounts Settlement Class Members might have recovered after a trial. Nor are the calculations intended to estimate the amounts that will be paid to Authorized Claimants pursuant to the Settlement. The computations under the Plan of Allocation are a method to weigh the claims of Authorized Claimants against one another for the purposes of making allocations of the available settlement funds among Authorized Claimants.

55. At this time, it is not possible to make any determination as to how much individual Settlement Class Members may receive from the Settlement. Your share of the Net Settlement Fund will depend on the number of valid and acceptable Proof of Claim Forms submitted by members of the Settlement Class; how many shares of Akorn common stock you purchased, when you purchased them, and the purchase price; the date on which you sold those securities (if you sold them); and the price at which you sold, the value of the Settlement Shares, and the amount paid, if any, pursuant to the CVRs, among other factors.

56. Any payment to an Authorized Claimant that would amount to less than \$10.00 does not meet the minimum threshold set for distributions and no such payments will be made.

57. The Net Settlement Fund will not be distributed unless and until the Court has approved the Settlement and the Plan of Allocation, and such approval shall have become Final.

58. Approval of the Settlement is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlement, if approved.

⁴ The Settlement Shares, less any Settlement Shares awarded to Plaintiffs' Counsel as attorneys' fees, are referred to as the "Class Settlement Shares". Pursuant to the Stipulation, Lead Counsel has the right to decide, in its sole discretion, whether to (i) distribute the Class Settlement Shares or Settlement CVRs to Settlement Class Members who timely submit valid Proof of Claim Forms to the Claims Administrator ("Authorized Claimants") or (ii) sell all or any portion of the Class Settlement Shares or Settlement CVRs and distribute the net cash proceeds from the sale of the shares to Authorized Claimants. No representation can be made as to what the value of the Class Settlement Shares or Settlement CVRs will be at the time the shares are distributed or, if applicable, sold for the benefit of Settlement Class Members.

59. Unless the Court otherwise orders, any Settlement Class Member who fails to submit a Proof of Claim Form postmarked on or before _____ shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Settlement Class Member and be subject to the provisions of the Stipulation governing the Settlement, including the terms of any Judgment entered and the releases given. This means that each Settlement Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 27 of the foregoing Notice) against the Released Persons (as defined in ¶ 28 of the foregoing Notice) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Settled Claims against any of the Released Persons whether or not such Class Member submits a Proof of Claim Form.

60. Participants in and beneficiaries of any employee benefit plan covered by ERISA that is affiliated with Akom ("ERISA Plan") should NOT include any information relating to their transactions in Akom common stock held through the ERISA Plan in any Proof of Claim Form that they may submit in this Action. They should include ONLY those Akom common stock that they purchased outside of the ERISA Plan.

61. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Settlement Class Member.

62. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Proof of Claim Form.

63. Only Settlement Class Members or persons authorized to submit a claim on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are excluded from the Settlement Class by definition or that exclude themselves from the Settlement Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Proof of Claim Forms.

64. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlement, the disbursement of the Net Settlement Fund, or the plan of allocation.

CALCULATION OF RECOGNIZED LOSS

65. For shares of Akom common stock purchased during the Class Period and sold on or before January 8, 2019, the "Recognized Loss" shall be that number of shares multiplied by the lesser of:⁵

- A. the applicable purchase date artificial inflation per share figure less the applicable sales date artificial inflation per share figure, as found in Table A; or
- B. the difference between the purchase price per share and the sales price per share.

⁵ The Recognized Loss for any paired purchase and sale transaction cannot be negative (i.e. there are no offsetting "recognized gains").

66. For shares of Akom common stock purchased during the Class Period and sold from January 9, 2019 through April 8, 2019, the “Recognized Loss” shall be that number of shares multiplied by the least of:

- A. the applicable purchase date artificial inflation per share figure, as found in Table A; or
- B. the difference between the purchase price per share and the sales price per share; or
- C. the difference between the purchase price per share and the average closing price between January 9, 2019 and the date of sale, as found in Table B.⁶

67. For shares of Akom common stock purchased during the Class Period and still held as of the close of trading on April 8, 2019, the “Recognized Loss” shall be that number of shares multiplied by the lesser of:

- A. the applicable purchase date artificial inflation per share figure, as found in Table A; or
- B. the difference between the purchase price per share and \$3.81, the average closing price between January 9, 2019 and April 9, 2019, as set forth in the last entry on Table B.

ADDITIONAL PROVISIONS

68. **FIFO Matching:** All purchases/acquisitions and sales of Akom common stock in the Class Period shall be matched on a First-In-First-Out (“FIFO”) basis. This means that sales of Akom common stock during the Class Period and any time thereafter will be matched first against any holdings of Akom common stock at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period.

69. **Purchase/Sale Dates:** A purchase/acquisition or sale of Akom common stock shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, devise or inheritance of Akom common stock during the Class Period shall not be deemed to be a purchase, acquisition or sale of Akom common stock for the calculation of an Authorized Claimant’s Recognized Loss amounts, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/sale of the Akom common stock unless: (i) the donor or decedent purchased the security during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those share or notes.

⁶ Pursuant to Section 21(D)(e)(2) of the Private Securities Litigation Reform Act of 1995, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff’s damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.”

70. **Short Sales:** The date of covering a “short sale” is deemed to be the date of purchase or acquisition of Akom common stock. The date of a “short sale” is deemed to be the date of sale of Akom common stock. Under the Plan of Allocation, however, the Recognized Loss on all “short sales” is zero. In the event that there is an opening short position in Akom common stock, the earliest Class Period purchases of Akom Common Stock shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.

71. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to Akom common stock purchased or sold through the exercise of an option, the purchase/sale date of the Akom common stock is the exercise date of the option and the purchase/sale price of the Akom common stock is the exercise price of the option.

72. **Schedule of Distributions:** The first distribution will be made as soon as practicable after all claims have been submitted and the Court approves a plan of distribution. The first distribution will be made from the funds available as of the date that the proposed plan of distribution is submitted to the Court. Additional distributions from the Settlement Fund will be made approximately annually thereafter and will consist of funds: (1) remaining in the Settlement Fund after the previous distribution; (2) collected pursuant to the deposit of additional Available Settlement Shares into the Settlement Fund; (3) collected pursuant to any CVRs remaining in the custody of the Escrow Agent for the benefit of the Settlement Class and (4) earned by the Settlement Fund through interest or otherwise, less approved costs of notice and administration, approved attorneys’ fees and any further approved Litigation Expenses. If Lead Counsel determines that it is not economically practical to make an annual distribution because the amount of the distribution is small, the amount that would be distributed shall remain in the Settlement Fund until the next (approximately annual) distribution.

73. **Determination of Distribution Amount:** At the time of each distribution in this Action, the total cash funds, Class Settlement Shares, and Settlement CVRs available for distribution as a result of the Settlement (the “Total Net Settlement Fund”) will be allocated on a *pro rata* basis based on each Claimant’s total Recognized Loss.

74. **Total Distribution Amount Capped by Market Loss:** The sum of all distributions paid to each Claimant shall be that Claimant’s “Total Distribution Amount.” Each Claimant’s Total Distribution Amount shall be limited to the amount of the Claimant’s actual market loss.⁷ To the extent that a Claimant’s *pro-rata* share of a distribution would otherwise cause a Claimant’s Total Distribution Amount to be more than the Claimant’s market loss, the amount of that distribution will be reduced such that the Claimant’s Total Distribution Amount equals the Claimant’s actual market loss. (Such Claimant would not receive further distributions). To the extent that a Claimant had a market gain with respect to all of his, her, or its purchases or acquisitions of Akom common stock, during the Class Period, that Claimant will not be eligible for any payment under the Plan of Allocation (their Total Distribution Amount will be set at \$0). Such Claimants will in any event be bound by the Settlement.

⁷ For purposes of calculating “Total Distribution Amount,” the value of the shares and CVRs distributed will be fixed as of the date of their distribution. In the event there is no trading market from which to value the shares and/or CVRs, Lead Counsel will have discretion to value the shares/CVRs; provided, however, that such valuation will be equal among all Authorized Claimants.

75. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its purchases/acquisitions of Akom common stock during the Class Period or suffered a market loss, the Claims Administrator shall determine the difference between (i) the Total Purchase Amount⁸ and (ii) the sum of the Total Sales Proceeds⁹ and Total Holding Value.¹⁰ This difference will be deemed a Claimant's market gain or loss with respect to his, her, or its overall purchases/acquisitions of Akom common stock during the Class Period.

76. **De Minimis Limitation:** If an Authorized Claimant's Distribution Amount for any distribution calculates to less than \$10.00, no distribution will be made to that Authorized Claimant. Those funds will be included in the distribution to other Authorized Claimants. No fractional Settlement Shares or Settlement CVRs will be issued.

77. **Distribution of Remaining Funds:** This paragraph applies to any funds remaining in the Settlement Fund after the first distribution of recoveries in the Action following: (a) the expiration of the CVRs; and (b) December 31, 2024. After the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, any balance remaining in the Net Settlement Fund nine months after the distribution of such funds shall be redistributed to Authorized Claimants who have cashed their most recent distribution and who would receive at least \$10 from such redistribution, after payment of any unpaid costs or fees incurred in administering the funds, including for such redistribution. Additional redistributions to Authorized Claimants who have cashed a prior distribution and who would receive at least \$10 on such additional redistributions, subject to the conditions previously noted, may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determines that additional redistribution, after the deduction of any additional fees and expenses that would be incurred with respect to such redistributions, is cost-effective. At such time as it is determined that the redistribution of funds remaining in the Settlement Fund is not cost-effective, the remaining balance of the Settlement Fund shall be contributed to non-sectarian, not-for-profit 501(c)(3) organizations recommended by Lead Counsel and approved by the Court.

⁸ The "Total Purchase Amount" is the total amount the Claimant paid (excluding commissions and other charges) for Akom common stock purchased or acquired during the Class Period.

⁹ The Claims Administrator shall match any sales of Akom common stock during the Class Period, first against the Claimant's opening position in Akom common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding commissions and other charges) for sales of Akom common stock, during the Class Period and during the 90 days following the last corrective disclosure (i.e. sold before the close of trading on April 8, 2019) shall be the "Total Sales Proceeds."

¹⁰ "Total Holding Value" shall mean a holding value of \$3.81 per share of Akom common stock purchased or acquired during the Class Period and still held as of the close of trading on April 8, 2019.

78. **Conclusive Effect:** Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Lead Plaintiffs, Lead Counsel, Liaison Counsel for Plaintiffs, Defendants and their respective counsel or any of the other Released Defendant Parties, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulations, the plan of allocation approved by the Court, or further Orders of the Court. Lead Plaintiffs, Defendants and their respective counsel, and all other Released Persons shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, the Total Net Settlement Fund, or the determination, administration, calculation, or payment of any Proof of Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

79. **Approval or Modification by the Court:** The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiffs and Lead Counsel to the Court for approval. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding a modification of the Plan of Allocation will be posted on the settlement website, www.Akom2019SecuritiesSettlement.com.

TABLE A

Artificial Inflation in Akorn Common Stock

From	To		Per-Share Price Inflation
11/3/2016	4/6/2017	\$	12.44
4/7/2017	7/31/2017	\$	16.99
8/1/2017	2/26/2018	\$	26.18
2/27/2018	2/27/2018	\$	15.26
2/28/2018 ¹¹	4/22/2018	\$	14.05
4/23/2018	9/30/2018	\$	7.78
10/1/2018	1/8/2019	\$	0.42

¹¹ This Plan of Allocation treats February 27, 2018 and February 28, 2018 as two separate corrective disclosures, even though the price declines were alleged to be part of the same corrective disclosure. This treatment will improve the efficiency of administration. Furthermore, it is possible that the proof would show that additional information related to the alleged fraud entered the market on February 28, 2018.

TABLE B

Average Closing Price from January 9, 2019 Through the Date Listed per Share of Akorn Common Stock

Sale / Disposition Date	90-Day Lookback Value	Sale / Disposition Date	90-Day Lookback Value	Sale / Disposition Date	90-Day Lookback Value
1/9/2019	\$ 3.48	2/8/2019	\$ 3.90	3/12/2019	\$ 3.97
1/10/2019	3.53	2/11/2019	3.90	3/13/2019	3.96
1/11/2019	3.60	2/12/2019	3.92	3/14/2019	3.95
1/14/2019	3.61	2/13/2019	3.93	3/15/2019	3.94
1/15/2019	3.66	2/14/2019	3.95	3/18/2019	3.93
1/16/2019	3.66	2/15/2019	3.96	3/19/2019	3.92
1/17/2019	3.65	2/19/2019	3.98	3/20/2019	3.91
1/18/2019	3.64	2/20/2019	3.98	3/21/2019	3.90
1/22/2019	3.64	2/21/2019	3.99	3/22/2019	3.89
1/23/2019	3.66	2/22/2019	3.99	3/25/2019	3.88
1/24/2019	3.70	2/25/2019	3.99	3/26/2019	3.87
1/25/2019	3.74	2/26/2019	4.00	3/27/2019	3.86
1/28/2019	3.76	2/27/2019	3.99	3/28/2019	3.85
1/29/2019	3.78	2/28/2019	3.99	3/29/2019	3.85
1/30/2019	3.80	3/1/2019	4.00	4/1/2019	3.84
1/31/2019	3.80	3/4/2019	4.00	4/2/2019	3.83
2/1/2019	3.80	3/5/2019	4.00	4/3/2019	3.83
2/4/2019	3.82	3/6/2019	3.99	4/4/2019	3.82
2/5/2019	3.84	3/7/2019	3.98	4/5/2019	3.81
2/6/2019	3.86	3/8/2019	3.98	4/8/2019	3.81
2/7/2019	3.88	3/11/2019	3.97		

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE AKORN, INC. DATA INTEGRITY SECURITIES LITIGATION

Civ. A. No. 1:18-cv-01713

Hon. Matthew F. Kennelly

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED
SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND
(III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION EXPENSES**

TO: All persons and entities who, during the period from November 3, 2016 through January 8, 2019, inclusive (the "Class Period") purchased or otherwise acquired the common stock of Akorn, Inc. ("Akorn" or the "Company"), and were damaged thereby (the "Settlement Class"):

PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Northern District of Illinois, that the above-captioned litigation (the "Action") has been certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice"), which Notice can be obtained by contacting the Claims Administrator at *In re Akorn Data Integrity Securities Litigation*, c/o JND Legal Administration, PO Box 91207, Seattle, WA 98111-9307, or by visiting the website: www.Akorn2019SecuritiesSettlement.com.

YOU ARE ALSO NOTIFIED that Plaintiffs in the Action have reached a proposed settlement with Defendants (the "Settlement"), that, if approved by the Court, will resolve all claims in the Action. In exchange for mutual releases provided by the Plaintiffs, Defendants and Settlement Class, including release by the Settlement Class of any claims against the Defendants, the Settlement Class will receive recovery consisting of cash, Akorn common shares, and contingent value rights. In total, the Settlement will provide from approximately \$53.6 million to \$155.5 million in recovery to the Settlement Class, as described below. The ultimate total value of the Settlement will be determined by the price of Akorn common shares on the dates they are issued to the Settlement Class as partial consideration for the Settlement and whether other conditions are met for the contingent future components of the Settlement. The components of the Settlement include:

1. **Cash:** Up to \$30.0 million upon final approval, consisting of 100% of the proceeds from Defendants' primary and excess director and officer insurance policies (subject to a small defense cost reserve that reverts to the Settlement Class shortly after the date the Settlement becomes effective (the "Effective Date") if unused), to be escrowed, if possible, for distribution to members of the Settlement Class ("Settlement Class Members") following the final approval of the Settlement by the Court;
2. **Common Stock:** Up to approximately 8,735,705 shares of Akom common stock worth \$23.5 million to \$65.4 million (estimated using \$2.70 to \$7.49 per share closing price range since the Delaware Court of Chancery's unfavorable October 1, 2018 decision allowing Fresenius Kabi AG to terminate its merger agreement with Akom), consisting of:
 - Approximately 6,486,375 shares upon the final approval of the Settlement by the Court to be escrowed, if possible, for distribution to Settlement Class Members (or sold and the cash proceeds distributed);
 - Approximately 2,249,330 shares to be issued to the Settlement Class (or sold and the cash proceeds distributed) between the Effective Date and December 31, 2024, inclusive, as the shares become available due to the expiration of out-of-the-money options issued under Akom compensation plans;
3. **Contingent Value Rights:** Contingent value rights ("CVRs") issued by Akom that entitle the holders to the following:
 - **Cash Payments:** Annual cash payments over the CVRs' five-year term in an amount for any year equal to 33.3% of Akom's "Excess EBITDA" (i.e., earnings before interest, taxes, depreciation and amortization (EBITDA) above the amount of EBITDA required to meet a 3.0x net leverage ratio, assuming a \$100.0 million minimum cash cushion, before any such CVR payment is triggered), if any, for any such year. To the extent any such annual payments are triggered under the CVRs, they are capped at an aggregate of \$12.0 million per year and \$60.0 million in the aggregate during the term of the CVRs. If cumulative annual payments from the CVRs after 5 years are less than \$60.0 million, the term of the CVRs would be extended for up to two (2) years.
 - **Change in Control Payment or Bankruptcy Protection Claim:** Either (a) a cash payment to the holders of the CVRs in the aggregate amount of \$30.0 million upon certain change of control transactions during the term of the CVRs, provided the senior obligations and other debt for borrowed money of Akom and its subsidiaries are repaid in full in cash; or (b) a general unsecured claim on account of all CVRs in the aggregate amount of \$30.0 million if the Company is the subject of a voluntary or involuntary bankruptcy filing during the term of the CVRs (which general unsecured claim will be subordinated to certain debt obligations of Akom and its subsidiaries in accordance with the terms of the CVR Agreement). Following the making of the Change in Control Payment or receipt by the CVR holders of the Bankruptcy Claim, no further annual payments shall be required. Additionally, CVR holders shall not be entitled to receive both the Change in Control Payment and the Bankruptcy Claim.

The CVRs will be distributed to Settlement Class Members and Akorn has agreed to work in good faith to cause the CVRs to be traded on the NASDAQ Global Market or another national securities exchange. The securities will be distributed *pro rata* to Settlement Class Members in a form and denominations to be determined in the sole discretion of Lead Counsel in consultation with Akorn, the claims administrator that administers the Settlement fund (the "Claims Administrator"), and a trustee for the CVRs (the "Trustee") to be selected by Akorn, in consultation with court-appointed counsel for Plaintiffs ("Lead Counsel").

The operation of the CVRs will be governed by the Contingent Value Rights Agreement (the "CVR Agreement") between Akorn and the Trustee. A form of the CVR Agreement is available as Exhibit C to the Stipulation and Agreement of Settlement entered into by Defendants and Plaintiffs (the "Stipulation"), and is subject to modification as set forth in the Stipulation.

PLEASE NOTE: Assuming the Court grants Lead Counsel's anticipated motion for an award of attorneys' fees and reimbursement of litigation expenses that will accompany Plaintiffs' motion for final approval and judgment, the Settlement Class's recovery from the cash, common shares and CVRs will be subject to: (i) an award of attorneys' fees to Lead Counsel of up to 25% (payable in the form of 25% of each of the cash, shares upfront and as they become available, and CVRs); and (ii) reimbursement of litigation expenses of up to \$1.5 million.

The Notice and Stipulation, as well as other documents relevant to this proposed Settlement, are available at www.Akorn2019SecuritiesSettlement.com.

A hearing will be held on _____, 2019 at 10:00 a.m., before the Honorable Matthew F. Kennelly at the United States District Court for the Northern District of Illinois, United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, to determine:

- (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Settlement Class;

- (ii) whether, for purposes of the Settlement only, (a) the Settlement Class should be certified, (b) Plaintiffs should be certified as class representatives for the Settlement Class, (c) the law firm of Entwistle & Cappucci LLP should be appointed as lead counsel for the Settlement Class, and (d) the law firm of Bernstein Litowitz Berger & Grossmann LLP should be appointed as liaison counsel;
- (iii) whether the Action should be dismissed with prejudice against the Defendants, and the releases specified and described in the Stipulation (and in the Notice) should be granted;
- (iv) whether the contemplated issuance of Akorn common stock in connection with the Settlement complies with the exemption from the registration requirements of the Securities Act of 1933 provided by 15 U.S.C. § 77c(a)(10).
- (v) whether the proposed Plan of Allocation (as described in the Notice) should be approved as fair and reasonable to the Settlement Class;
- (vi) whether Lead Counsel's application for an award of attorneys' fees and reimbursement of litigation expenses should be approved; and
- (vii) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement fund. If you have not yet received the Notice and a proof of claim and release form (a "Proof of Claim Form"), you may obtain copies of these documents by contacting the Claims Administrator at *In re Akorn Data Integrity Securities Litigation*, c/o JND Legal Administration, PO Box 91207, Seattle, WA 98111-9307. Copies of the Notice and Proof of Claim Form can also be downloaded from the website maintained by the Claims Administrator, www.Akorn2019SecuritiesSettlement.com.

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Proof of Claim Form *postmarked* no later than _____. If you are a Settlement Class Member and do not submit a proper Proof of Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is *received* no later than _____, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation (as described in the Notice), or Lead Counsel's motion for attorneys' fees and reimbursement of litigation expenses, must be filed with the Court and delivered to Lead Counsel and counsel for Defendants such that they are *received* no later than _____, in accordance with the instructions set forth in the Notice.

Please do not contact the Court, the Clerk's office, Akorn, the other Defendants or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.

Inquiries, other than requests for the Notice and Proof of Claim Form, should be made to Lead Counsel:

Andrew J. Entwistle, Esq.
c/o ENTWISTLE & CAPPUCCI LLP
500 W. 2nd Street, Suite 1900-16
Austin, Texas 78701
(512) 710-5960
aentwistle@entwistle-law.com

or

Joshua K. Porter, Esq.
c/o ENTWISTLE & CAPPUCCI LLP
299 Park Avenue, 20th Floor
New York, NY 10171
(212) 894-7200
jporter@entwistle-law.com

Requests for the Notice and Claim Form should be made to:

In re Akorn, Inc. Data Integrity Securities Litigation, c/o JND Legal Administration,
PO Box 91207, Seattle, WA 98111-9307

By Order of the Court