Attorney Code: 56028

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

DANIEL OCHOA, Individually and on Behalf All Others Similarly Situated, and Derivatively on Behalf of AKORN, INC., Plaintiff, v. JOHN N. KAPOOR, RONALD M. JOHNSON, STEVEN J. MEYER, BRIAN TAMBI, ALAN WEINSTEIN, KENNETH S. ABRAMOWITZ, ADRIENNE L. GRAVES, TERRY A. RAPPUHN, FRESENIUS KABI AG, FRESENIUS SE & CO. KGAA, and QUERCUS ACQUISITION, INC., Defendants, -and- AKORN, INC., a Louisiana corporation, Nominal Defendant.	Case No. DERIVATIVE AND CLASS ACTION DEMAND FOR JURY TRIAL

VERIFIED STOCKHOLDER DERIVATIVE AND CLASS ACTION COMPLAINT BASED UPON SELF-DEALING AND BREACH OF FIDUCIARY DUTY

Plaintiff, by his undersigned counsel, submits this Verified Stockholder Derivative and Class Action Complaint against the defendants named herein.

SUMMARY OF THE ACTION

1. This is a stockholder derivative and class action brought by plaintiff individually and on behalf of holders of the common stock of Akorn, Inc. ("Akorn" or the "Company") and derivatively on behalf of Akorn against the members of the Akorn Board of Directors (the "Board"), Fresenius Kabi AG ("Fresenius"), Quercus Acquisition, Inc. ("Quercus"), and Fresenius SE & Co.

KGaA ("Parent Fresenius"), arising out of the proposed acquisition of Akorn by Fresenius (the "Proposed Acquisition"). In pursuing the Proposed Acquisition, each defendant has violated applicable law by directly breaching and/or aiding and abetting the other defendants' breaches of their fiduciary duties of care, loyalty, good faith, candor, and independence owed to Akorn and its stockholders.

2. Akorn is a specialty pharmaceutical company that develops, manufactures, and markets specialized generic and branded pharmaceuticals, over-the-counter (OTC) drug products, and animal health products in the United States and internationally. It has a diversified portfolio of more than 180 generic, branded, OTC, and animal health products.

3. The Company's recent financial results have been stellar. On March 1, 2017, Akorn announced that its revenues for the year ended December 31, 2016 were $1.1 billion, an increase of over 13% compared to its results of the same time period the previous year. In addition, the Company's net income increased almost 22% to $184 million. Discussing these results, Rajat Rai ("Rai"), the Company's Chief Executive Officer ("CEO"), stated "In 2016, we achieved record revenues, surpassing a billion dollars and solidifying Akorn's position among the top specialty generics companies with manufacturing roots in the United States...." Finally, Akorn beat Wall Street's consensus estimates for adjusted earnings per share and adjusted net income four quarters in a row.

4. Nevertheless, the Individual Defendants (as defined herein) chose to sell the Company now, despite its recent strong results and well positioned future. On information and belief, the decision to sell Akorn was pushed by defendant John N. Kapoor ("Kapoor"). Kapoor is Akorn's Chairman of the Board and has been a director since 1990. Defendant Kapoor owns an illiquid block of approximately 25% of Akorn through his direct and indirect holdings. On

January 10, 2017, defendant Kapoor announced that he would step down as CEO and Chairman of Insys Therapeutics, Inc. At age seventy-three, defendant Kapoor now is looking to also exit from the oversight of Akorn and cash out his substantial holdings. Defendant Kapoor, however, cannot just sell his stock on the open market. His transactions in the market are closely monitored, and any substantial sales of Akorn stock by defendant Kapoor would drive down the Company's stock price. Rather, the only way to cash out his holdings without significantly driving down Akorn's stock price is through a sale of the Company, despite the inopportune timing.

5. Under pressure from defendant Kapoor, the Board entered into a definitive merger agreement with Fresenius (the "Merger Agreement"), pursuant to which Fresenius would acquire Akorn for roughly $4.3 billion. Under the terms of the Merger Agreement, Akorn stockholders will receive only $34 in cash for each share of Akorn common stock they hold (the "Proposed Consideration").

6. The Proposed Consideration drastically undervalues the Company. Over the past five years, transactions in the pharmaceuticals industry worth between $3.5 billion and $5 billion occurred at an average premium of 107% to the target company's stock price the previous day. In contrast, the premium in the Proposed Acquisition is only 35%.

7. In connection with the Proposed Acquisition, each Akorn Board member breached of his or her fiduciary duties to plaintiff and the rest of Akorn's common stockholders by, among other things: (i) prioritizing significant personal benefits above ensuring that stockholders receive maximum value for their shares; (ii) adopting preclusive deal protection devices that effectively prevent any alternative bidder from surfacing; and (iii) failing to conduct an appropriate sales process that protected against conflicts.

8. As explained in more detail below, each member of the Board breached his or her fiduciary duties of care, loyalty, good faith, candor, and independence in connection with the Proposed Acquisition. Defendants Fresenius, Quercus, and Parent Fresenius each aided and abetted the Board's breaches of fiduciary duty. Such conduct has harmed plaintiff and the other public stockholders of Akorn, as well as Akorn itself, and further threatens each with imminent harm. Plaintiff, therefore, seeks to enjoin the consummation of the Proposed Acquisition unless and until the Board complies with its duties to maximize stockholder value.

JURISDICTION AND VENUE

9. This Court has jurisdiction over defendants and the subject matter of this action, as Akorn maintains its principal place of business in the state of Illinois, Fresenius maintains its U.S. headquarters in the state of Illinois, and at least some of the Individual Defendants either reside or work in the state of Illinois. All other defendants have purposefully directed actions related to the Proposed Acquisition toward the state of Illinois. In fact, the Board adopted an exclusive forum provision in the Company's bylaws stating that any claim governed by the internal affairs doctrine must be brought in the Circuit Court of Cook County, Chancery Division, state of Illinois.

10. Venue is proper pursuant to 735 ILCS 5/2-101, as one or more of the defendants is a resident of Cook County and the complained of transactions, or some part thereof, occurred in Cook County.

PARTIES

Plaintiff

11. Plaintiff Daniel Ochoa is, and has been at all relevant times, an owner of the common stock of Akorn.

Nominal Defendant

12. Nominal defendant Akorn is a Louisiana corporation with principal executive offices located at 1925 W. Field Court, Suite 300, Lake Forest, Illinois. Akorn is a specialty generic pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, OTC consumer health products, and animal health pharmaceuticals. As of December 31, 2016, Akorn employed 2,388 people worldwide. Upon completion of the Proposed Acquisition, Akorn will become a wholly owned subsidiary of defendant Fresenius.

Defendants

13. Defendant Kapoor is Akorn's Chairman of the Board and a director and has been since October 1990. Defendant Kapoor was also Akorn's CEO from May 2002 to December 2002, and interim CEO from March 2001 to May 2002. In connection with the Proposed Acquisition, defendant Kapoor entered into a voting agreement with defendant Fresenius, pursuant to which he agreed to vote his shares in favor of the Proposed Acquisition and against any competing proposals.

14. Defendant Ronald M. Johnson ("Johnson") is an Akorn director and has been since May 2003.

15. Defendant Steven J. Meyer ("Meyer") is an Akorn director and has been since June 2009.

16. Defendant Brian Tambi ("Tambi") is an Akorn director and has been since June 2009.

17. Defendant Alan Weinstein ("Weinstein") is an Akorn director and has been since July 2009.

18. Defendant Kenneth S. Abramowitz ("Abramowitz") is an Akorn director and has been since May 2010.

19. Defendant Adrienne L. Graves ("Graves") is an Akorn director and has been since March 2012.

20. Defendant Terry A. Rappuhn ("Rappuhn") is an Akorn director and has been since April 2015.

21. Defendant Fresenius is a German stock corporation with corporate headquarters located in Bad Homburg, Germany. Defendant Fresenius is a global healthcare company that offers a portfolio of products which consists of a range of I.V. generic drugs, infusion therapies, and clinical nutrition products. Upon completion of the Proposed Acquisition, Akorn will become a wholly owned subsidiary of defendant Fresenius.

22. Defendant Parent Fresenius is a German partnership limited by shares and the parent of defendant Fresenius.

23. Defendant Quercus is a Louisiana corporation and a wholly owned subsidiary of defendant Fresenius. Upon completion of the Proposed Acquisition, defendant Quercus will merge with and into Akorn and cease its separate corporate existence.

24. The defendants identified in ¶¶13-20 are collectively referred to as the "Individual Defendants."

DEFENDANTS' FIDUCIARY DUTIES

25. Under applicable Louisiana law, directors of a Louisiana corporation are deemed to stand in a fiduciary relation to the corporation and its stockholders, and are required to discharge the duties of their respective positions in good faith, and with the diligence, care, judgment, and skill that ordinary prudent men would exercise under similar circumstances in like positions.

26. Accordingly, by virtue of their positions as directors of Akorn, the Individual Defendants are in a fiduciary relationship with plaintiff and the other common stockholders of Akorn, and owe them the duties of care, loyalty, good faith, candor, and independence.

27. Also by virtue of their positions as directors of Akorn, the Individual Defendants have, and at all relevant times had, the power to control and influence and did control and influence Akorn, and caused Akorn to engage in the actions complained of herein. Each Individual Defendant herein is sued individually in his or her capacity as a director of Akorn. The liability of each of the Individual Defendants arises from the fact that they have engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of herein.

28. Anytime directors of a publicly traded corporation, such as Akorn, enter into a transaction that will result in a change in corporate control, such as the Proposed Acquisition, the directors have an affirmative fiduciary obligation to act in a manner consistent with the best interests of the company's stockholders. The directors' affirmative fiduciary obligation includes obtaining the highest value reasonably available for stockholders in a change of corporate control transaction. To diligently comply with these duties, the directors may not take any action that:

(a) adversely affects the corporation's value;

(b) will discourage or inhibit alternative offers to purchase control of the corporation or its assets;

(c) contractually prohibits themselves from complying with their fiduciary duties to obtain the highest value reasonably available for stockholders;

(d) is not adequately informed or considered;

(e) will otherwise adversely affect their duty to act in a manner consistent with the interests of the company and its stockholders, including their interests in securing the best value reasonably available under the circumstances for the corporation; and/or

(f) will provide the directors and/or officers with preferential treatment at the expense of, or separate from, the public stockholders.

29. In accordance with their fiduciary duties of loyalty and good faith, the Individual Defendants, as directors of Akorn, are obligated under applicable Louisiana law to refrain from:

(a) participating in any transaction where the directors' loyalties are divided;

(b) participating in any transaction where the directors or officers receive or are entitled to receive, a personal financial benefit not equally shared at the Company's expense;

(c) unjustly enriching themselves at the expense or to the detriment of the Company, or permitting other officers or directors to do so;

(d) structuring a sales process for the Company to favor directors, officers, or other Company insiders for reasons unrelated to and/or conflicting with the directors' duty to seek the best price available for the Company;

(e) making ill-informed decisions harming the interests of the Company or its stockholders; and/or

(f) failing to disclose and/or misrepresenting material information about the Company, the sales process for the Company and the Company's financial prospects going forward when seeking stockholder support of a merger transaction.

30. Plaintiff alleges herein that the Individual Defendants, separately and together, in connection with the Proposed Acquisition, knowingly or recklessly violated, and continue to violate, their fiduciary duties of loyalty, good faith, and independence owed to Akorn, plaintiff,

and the other members of the Class (as defined herein). Specifically, among other things, the Individual Defendants have:

(a) engaged in a deficient process in soliciting and consummating the Proposed Acquisition and Merger Agreement; and

(b) accepted a merger price that significantly undervalues the Company and fails to take into account the Company's growth potential and likely future success, thereby denying Akorn and the Class the opportunity to receive fair and adequate value for the Company in the Proposed Acquisition.

SUBSTANTIVE ALLEGATIONS

The Proposed Acquisition

31. Akorn, together with its wholly-owned subsidiaries, is a specialty pharmaceutical company that develops, manufactures, and markets generic and branded prescription pharmaceuticals, branded as well as private-label OTC consumer health products and animal health pharmaceuticals. The Company focuses on difficult-to-manufacture sterile and non-sterile dosage forms including, but not limited to, ophthalmics, injectables, oral liquids, otics, topicals, inhalants, and nasal sprays.

32. On April 7, 2016, Fresenius, Europe's biggest publicly traded health-care provider, announced it was in talks to buy Akorn. Before this announcement, the Company's stock price was on the rise, increasing 16% year to date.

33. On April 24, 2017, Akorn announced it had entered into the Merger Agreement, pursuant to which Fresenius would acquire Akorn for $4.3 billion. Under the terms of the Merger Agreement, Fresenius will acquire all outstanding shares of Akorn for the unfair price of $34 per

share. Specifically, the Merger Agreement provides for the merger of Quercus into Akorn, with Akorn surviving the merger as a wholly owned subsidiary of Fresenius.

34. The press release announcing the Proposed Acquisition states:

FRESENIUS KABI TO ACQUIRE AKORN

* * *

Strategically complementary combination to enhance and diversify Fresenius Kabi's business and portfolio

* * *

At $34.00 a share, transaction valued at approximately $4.3 billion, plus the assumption of debt

* * *

Transaction expected to close by early 2018

...Fresenius Kabi has agreed to acquire Akorn (NASDAQ:AKRX), a U.S.-based manufacturer and marketer of prescription and over-the-counter pharmaceutical products, for approximately $4.3 billion, or $34.00 a share, plus the assumption of approximately $450 million of debt. The transaction is expected to close by early 2018 and to be accretive in 2018 to Fresenius Group net income and EPS, excluding integration costs.

The agreement and transaction have been approved by the boards of both companies and will be recommended by Akorn's board to its shareholders. Akorn's largest shareholder has committed to supporting the transaction. The transaction is subject to approval by Akorn shareholders and other customary closing conditions, including regulatory review under the Hart-Scott-Rodino Antitrust Improvements Act.

"Joining our two companies and product portfolios will strengthen and diversify both businesses," said John Ducker, president and CEO of Fresenius Kabi USA. "Akorn brings to Fresenius Kabi specialized expertise in development, manufacturing and marketing of alternate dosage forms, as well as access to new customer segments like retail, ophthalmology and veterinary practices. Its pipeline is also impressive, with approximately 85 ANDAs filed and pending with the FDA and dozens more in development."

"Fresenius Kabi is an excellent fit for Akorn, strategically and culturally," said Raj Rai, Akorn's Chief Executive Officer. "Fresenius brings to Akorn the strength and resources of a global leader with an experienced U.S. team and an outstanding record of growth and award-winning service in the United States. We look forward to

working with Fresenius Kabi on this next phase of our growth. When the transaction closes, we will strive to ensure a smooth transition for our employees and customers."

Akorn also announced today that based on a preliminary review of Q1results, it is reaffirming its previously announced 2017 guidance, excluding any one-time costs related to the transaction with Fresenius Kabi.

Fresenius Kabi specializes in sterile injectable medicines. Akorn produces a diverse portfolio comprising sterile ophthalmics, topical creams, ointments and gels, oral liquids, otic solutions (for the ear), nasal sprays and respiratory drugs in addition to sterile injectables, which made up just 35% of Akorn sales last year.

Akorn products are sold in retail pharmacies (prescription and over-the- counter) and directly to physician and veterinary distributors, in addition to hospitals and clinics - virtually all in North America. Fresenius Kabi is a global health care company with a worldwide network for pharmaceutical and medical devices R&D, manufacturing, sourcing, sales and supply chain that will be a valuable resource to grow Akorn's portfolio in the U.S. and abroad.

The U.S. headquarters for Akorn and Fresenius Kabi are both in Northern Illinois, located in close proximity. Akorn employs more than 2,000 people worldwide. Fresenius Kabi employs more than 30,000 worldwide.

Fresenius Kabi has a successful track record of growing pharmaceutical acquisitions in the United States. Fresenius Kabi acquired APP Pharmaceuticals in 2008 and has more than tripled its sales to nearly $2 billion. The company acquired the Simplist™ line of prefilled syringes from BD last year and has already doubled the sales of this portfolio.

35. Notably, there is no indication that the Board looked at any other suitors for Akorn.

The Proposed Consideration Undervalues Akorn

36. The Proposed Consideration undervalues Akorn based on the Company's strong financial results and compared to similar deals. Rather, the Proposed Consideration is an attempt to take advantage of Akorn's temporarily depressed stock price and defendant Kapoor's desire to sell the Company.

37. On November 3, 2016, Akorn reported its financial results for the third quarter of 2016. Though the Company beat analyst expectations again, its stock price fell 17% as a result of announcing that the FDA would need to conduct a second inspection of Akorn's Decatur, Illinois,

facility. A month later, on December 12, 2016, Akorn announced that the FDA conducted a second inspection of the facility and found no problems. However, the damage was done to the Company's stock price, and it slowly climbed back to its correct level.

38. In fact, on March 1, 2017, the Company announced stellar results for the fourth quarter and the 2016 fiscal year. Some of the highlights for the quarter, including:

(a) revenues of $284 million for the fourth quarter ended December 31, 2016, a 1% increase over the same period of the prior year;

(b) revenues of $1.1 billion for the fiscal year ended December 31, 2016, a 13.4% increase over the same period of the prior year;

(c) generally accepted accounting principles net income of $184 million for the fiscal year ended December 31, 2016, a 21.9% increase over the same period of the prior year;

(d) adjusted diluted earnings per share of $2.25 for the fiscal year ended December 31, 2016, an 11.4% increase over the same period of the prior year;

(e) earnings before interest, taxes, depreciation, and amortization ("EBITDA") of $442 million for the fiscal year ended December 31, 2016, a 10.2% increase over the same period of the prior year; and

(f) adjusted EBITDA of $509 million for the fiscal year ended December 31, 2016, a 10.7% increase over the same period of the prior year.

39. Akorn's growth was so substantial, it was actually ***years*** ahead of its 2014 long-term plan, and also ahead of its internal target set in 2016.

40. Commenting on Akorn's 2016 financial performance, Rai stated:

> I'm very pleased to report solid results for the fourth quarter and record revenue and earnings for the year 2016.

For the full year of 2016, we reported revenues of nearly $1.12 billion, or an increase of 13% from the previous year, and the GAAP earnings per share up 20% from the same period in the previous year. ***It is important to note that this is a significant milestone for Akorn as we crossed $1 billion in revenues for the year. This milestone was reached a couple years ahead of the schedule based on our long-term plan that was developed in 2014.***

Our financial results were also ahead of the internal target set for 2016. The primary growth driver was an ephedrine, which represented approximately 19% of our fourth-quarter sales. The margins remained stable from [the] previous year despite pricing challenges and a drop in market share for handful of our key products such as clobetasol, lidocaine ointment and hydralazine due to competitive and other market dynamics.

41. In addition, Rai stated:

In 2016, we achieved record revenues, surpassing a billion dollars and solidifying Akorn's position among the top specialty generics companies with manufacturing roots in the United States.... Our focus in 2017 and beyond remains consistent with our growth strategy of diversifying our portfolio, thus reducing product concentration through harvesting and replenishing our pipeline, deploying capital to consummate smart acquisitions through business development efforts and continuing to invest in our infrastructure. Finally, we remain optimistic about both the short and long-term prospects of our business despite the headwinds in our industry.

42. In addition, the market of drug companies with a demonstrated track record like Akorn is extremely frothy. Over the past five years, transactions in the pharmaceutical industry worth between $3.5 billion and $5 billion averaged a 107% premium over the Company's stock price the day before the announcement of the transaction. The Proposed Consideration here represents a premium of only 35%.

The Proposed Acquisition Is the Product of a Conflicted Sales Process

43. The Proposed Acquisition is the product of a fundamentally flawed process that was designed to ensure the acquisition of Akorn by Fresenius on terms preferential to defendants and detrimental to Akorn stockholders. Indeed, if the Proposed Acquisition is consummated, each of the defendants will receive substantial benefits not shared by the Company or its public stockholders.

44. The Proposed Acquisition is being driven by Akorn's heavily conflicted directors. In particular, defendant Kapoor owns nearly $1.1 billion worth of the Company's stock at the Proposed Consideration price. The Board as a whole owns nearly 26% of the total outstanding shares of Akorn. These holdings are effectively illiquid. If defendant Kapoor tried to sell a substantial amount of his stock, he would significantly drive down the price of Akorn. Accordingly, in order to cash out his shares quickly, defendant Kapoor is willing to sell Akorn at an unfair price rather than hold onto the illiquid stock block or push down the price of the stock through a sale on the open market.

45. In addition to liquidity for their illiquid stock, each member of the Board will receive immediate cash for their unvested restricted stock units ("RSUs") and stock options. This fact is particularly significant because the Board receives a large portion of its annual compensation in the form of RSUs and stock options that are subject to vesting restrictions. For example, in 2016, the Board received roughly 70% of its total compensation in the form of RSUs and stock options, which do not fully vest until July 1, 2019.

46. The following table represents the benefits defendant Kapoor and the rest of the directors will receive as a result of supported the Proposed Acquisition at this unfair price.

Defendants	Common Share Consideration	Accelerated Consideration	Total Merger Consideration
John Kapoor – Direct Holdings	$184,384,516	$689,656	$185,074,172
John Kapoor – Indirect Holdings	$885,310,734	$ 0	$885,310,734
John Kapoor – Subtotal	$1,069,695,250	$689,656	$1,070,384,906
Kenneth Abramowitz	$1,445,102	$689,656	$2,134,758
Adrienne Graves	$1,183,880	$689,656	$1,873,536
Ronald Johnson	$ 4,898,890	$689,656	$5,588,546
Steven Meyer	$3,854,784	$689,656	$4,544,440
Terry Rappuhn	$835,278	$689,656	$1,524,934
Brian Tambi	$2,359,430	$826,200	$3,185,630
Alan Weinstein	$3,191,818	$689,656	$3,881,474
Total	**$1,087,464,432**	**$5,653,792**	**$1,093,118,224**

47. Akorn is currently the defendant in a federal securities class action in the U.S. District Court for the Northern District of Illinois that is based on a series of false and misleading statements in Akorn's U.S. Securities and Exchange Commission ("SEC") filings from May 6, 2014 through April 24, 2015. On March 6, 2017, Akorn's motion to dismiss was denied in its entirety, as the court found both that the alleged misstatements and omissions were material and that the allegations indicated Akorn acted intentionally or recklessly when making the false and misleading statements. *In re Akorn Secs. Litig.*, No. 15 C 1944, 2017 WL 878559, at *4, *13 (N.D. Ill. Mar. 6, 2017).

48. Certain of the Individual Defendants are named defendants in four stockholder derivatives lawsuits brought over similar wrongdoing identified in ***In re Akorn Securities Litigation***. If the Proposed Acquisition closes, these defendants will attempt to argue that any liability they face from the derivative actions is extinguished.

49. In addition, Fresenius is the preferred acquirer of Akorn's management. Fresenius' American headquarters is located less than thirty minutes from Akorn's headquarters.

Rai stated that Fresenius is "an excellent fit for Akorn, strategically and culturally.... We look forward to working with Fresenius Kabi on this next phase of our growth." Thus, Akorn's management plans to continue in their positions (or similar ones) in the same geographical area.

The Merger Agreement Includes Preclusive Deal Protections that Prevent Competing Bids

50. To ensure a quick and unobstructed sale to their preferred bidder, the Individual Defendants agreed to a number of preclusive deal protections that were designed to expedite the sale of the Company to Fresenius and guarantee there would be no competing bids from other potential acquirers.

51. Section 5.02(a) of the Merger Agreement contains a strict "no solicitation" clause. This clause prohibits the Company from supplying any nonpublic information to any potential acquirer and request the return of any confidential information provided to any potential acquirers. The no solicitation clause stated:

> Except as permitted by this Section 5.02, the Company shall and shall cause each of its Subsidiaries and its and their officers and directors to, and shall instruct and use its reasonable best efforts to cause its other Representatives to, (i) immediately cease any solicitation, discussions or negotiations with any Persons with respect to a Takeover Proposal that existed on or prior to the date hereof and (ii) from the date hereof until the Effective Time or, if earlier, the termination of this Agreement in accordance with Article VII, not, directly or indirectly, (A) initiate, solicit, or knowingly encourage (including by way of furnishing non-public information) the submission of any inquiries regarding, or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, a Takeover Proposal, (B) engage in, continue or otherwise participate in any discussions or negotiations regarding (except to notify any Person of the provisions of this Section 5.02), or furnish to any other Person any non-public information in connection with, or for the purpose of, encouraging a Takeover Proposal or (C) enter into any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement or other similar agreement providing for a Takeover Proposal. The Company shall promptly request the return or destruction of all information furnished by or on its behalf to any Person and its Representatives with respect to a Takeover Proposal on or prior to the date hereof.

52. In addition, in the event a potential acquirer makes a competing proposal to acquire Akorn, Akorn is required to provide the material terms of the competing proposal to Fresenius, including the identity of the potential acquirer and any documents delivered in connection with the competing proposal. Further, pursuant to section 5.02(d) of the Merger Agreement, Fresenius has five business days to match any competing proposal before the Board is allowed to change its recommendation.

53. The Board also agreed, in section 7.03(a) of the Merger Agreement, to a substantial termination fee of $129 million, which further reduces the likelihood that another bidder will emerge or that the Akorn stockholders will receive the best possible price for the Company.

54. As a result of the preclusive deal protections, in order for a superior offer to emerge, the potential acquirer must: (i) submit a proposal that exceeds Fresenius' proposal by at least $129 million; (ii) submit this proposal without receiving any nonpublic information from Akorn or conducting any discussions or negotiations regarding the acquisition with Akorn; and (iii) be willing to allow Fresenius to view its competing proposal, including all documents submitted in connection with its competing proposal.

CLASS ACTION ALLEGATIONS

55. Plaintiff brings this action individually and as a class action on behalf of all owners of Akorn common stock as of April 24, 2017 (the "Class"), the date the Proposed Acquisition was announced. Excluded from the Class are defendants named herein and any person, firm, trust, corporation or other entity related to or affiliated with any defendant.

56. This action is properly maintainable as a class action under 735 ILCS 5/2-801 for the reasons set forth below.

57. The Class is so numerous that joinder of all members is impracticable. The precise number of Class members is unknown to plaintiff at this time, but the names and addresses of the Class members can be ascertained from the books and records of Akorn. According to Akorn's most recent Quarterly Report on Form 10-Q, filed with the SEC on May 4, 2017, Akorn has more than 124 million shares of common stock issued and outstanding as of April 28, 2017, likely held by hundreds, if not thousands, of persons.

58. There are questions of law and fact that are common to the Class that predominate over questions affecting individual Class members, including, inter alia:

(a) whether the Individual Defendants breached their fiduciary duties in connection with the Proposed Acquisition;

(b) whether Fresenius, Quercus, or Parent Fresenius aided and abetted the Board's breaches of fiduciary duty;

(c) whether plaintiff and the other members of the Class would be irreparably harmed were the Proposed Acquisition consummated; and

(d) whether plaintiff and the other Class members were, or will be, injured as a result of defendants' misconduct.

59. Plaintiff's claims are typical of the claims of other Class members, and plaintiff is not subject to any atypical claims or defenses.

60. Plaintiff is an adequate representative of the Class, has no conflicts of interest, and will fairly and adequately protect the interests of the Class.

61. Plaintiff has retained competent counsel experienced in litigation of this nature.

62. The class action is the appropriate method for the fair and efficient adjudication of this controversy. The prosecution of separate actions by individual Class members would create

the risk of inconsistent or varying adjudications for individual Class members and of establishing incompatible standards of conduct for defendants. Conflicting adjudications for individual Class members might be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. Moreover, the parties opposing the Class have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

DERIVATIVE ALLEGATIONS

63. Plaintiff also brings this class action derivatively for the benefit and in the right of Akorn to redress injuries suffered, and to be suffered, by Akorn as a direct result of the breaches of fiduciary duty by the Individual Defendants and the actions by Fresenius, Parent Fresenius, and Quercus in aiding and abetting the Individual Defendants' breaches.

64. Plaintiff will adequately and fairly represent the interests of the Company in enforcing and prosecuting its rights.

65. Plaintiff was a stockholder of Akorn at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Akorn stockholder.

66. The current Board of Akorn consists of the following eight individuals: defendants Kapoor, Abramowitz, Graves, Johnson, Meyer, Rappuhn, Tambi, and Weinstein. Plaintiff did not make any demand on the present Board to institute this action because such a demand would be futile, wasteful, and useless act, as set forth below.

67. As explained above, all the members of the Board are interested in the Proposed Acquisition as a result of the significant personal and unique benefits they will receive if the Proposed Acquisition will close.

68. Further, each member of the Board is named as a defendant in this action and faces a substantial likelihood for placing their own interests (and those of defendant Kapoor) ahead of the interests of the Company and its outside stockholders.

69. Plaintiff will adequately and fairly represent the interests of Akorn in enforcing and prosecuting its rights. Illustrating this point, plaintiff has filed this action and retained counsel experienced in derivative litigation and corporate governance actions.

70. Plaintiff is and was an owner of the common stock of Akorn during all times relevant to defendants' wrongful course of conduct alleged herein, and continues to own Akorn common stock as of the date this action was filed.

71. In bringing this action, plaintiff has satisfied all of the governing statutory requirements of Article 615 of the Louisiana Code of Civil Procedure. First, plaintiff has demonstrated his standing to bring this action as a stockholder of Akorn at the time of the Proposed Acquisition, which is the basis for this Complaint. Second, plaintiff alleges with particularity in the following paragraph the reasons for not making an effort to secure enforcement of a right which the Company may enforce. Third, plaintiff has joined Akorn and the other parties against whom plaintiff seeks to enforce the obligations at issue in this suit. Fourth, plaintiff has included a prayer for judgment in favor of the Company and against defendants. Fifth, plaintiff has agreed to submit a signed verification.

72. This is also a derivative class action under Article 611 of the Louisiana Code of Civil Procedure. Akorn is a publicly traded company with more than 124 million shares of Akorn common stock outstanding as of April 28, 2017, and these shares are held by hundreds, if not thousands, of individuals and entities. Thus, persons constituting the Class are so numerous as to make it impractical to be joined as parties.

FIRST CAUSE OF ACTION

Against the Individual Defendants Breach of Fiduciary Duties

73. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

74. The Individual Defendants have knowingly, recklessly, and/or in bad faith violated their fiduciary duties of loyalty, due care, independence, good faith, fair dealing, and/or candor owed to the public stockholders of Akorn and Akorn itself, and have put their personal interests ahead of the interests of Akorn and its stockholders.

75. By the acts, transactions, and courses of conduct alleged herein, the Individual Defendants, individually and acting as a part of a common plan, have breached their fiduciary duties by, among other things:

(a) failing to fully inform themselves of the market value of Akorn before entering into the Proposed Acquisition;

(b) failing to act in the best interests of Akorn's public stockholders by unfairly depriving them of the true value of their investment in Akorn and otherwise refusing to maximize stockholder value in connection with the Proposed Acquisition;

(c) acting to secure significant personal benefits rather than acting to maximize stockholder value in the Proposed Acquisition; and

(d) ignoring or failing to protect against the numerous conflicts of interest resulting from their personal, professional, and/or pecuniary interests in the Proposed Acquisition.

76. As a result of the Individual Defendants' breaches of fiduciary duty, plaintiff, Class members, and Akorn will suffer irreparable injury.

77. Plaintiff, Class members, and Akorn have no adequate remedy at law. Only through the exercise of this Court's equitable powers can plaintiff, Class members, and Akorn be fully protected from the immediate and irreparable injury which defendants' efforts to consummate the Proposed Acquisition threaten to inflict.

SECOND CAUSE OF ACTION

Against Defendants Fresenius, Quercus, and Parent Fresenius for Aiding and Abetting Breaches of Fiduciary Duty

78. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

79. Defendants Fresenius, Quercus, and Parent Fresenius are sued herein as aiders and abettors of the Individual Defendants' breaches of their fiduciary duties of loyalty, due care, independence, good faith, fair dealing, and/or candor as outlined above.

80. Given their comprehensive familiarity with and direct involvement in the Proposed Acquisition, each of Fresenius, Quercus, and Parent Fresenius had knowledge that the Individual Defendants were breaching their fiduciary duties of loyalty, due care, independence, good faith, fair dealing, and candor. Even so, Fresenius, Quercus, and Parent Fresenius knowingly participated in the Individual Defendants' breaches of fiduciary duty. In fact, the Individual Defendants could not have committed their breaches of fiduciary duty outlined herein but for the aiding and abetting of Fresenius, Quercus, and Parent Fresenius.

81. As a result of the unlawful actions of Fresenius, Quercus, and Parent Fresenius, plaintiff, Class members, and Akorn will be irreparably harmed. Unless the actions of Fresenius, Quercus, and Parent Fresenius are enjoined by the Court, they will continue to aid and abet the Individual Defendants' breaches of fiduciary duty and will aid and abet a process that inhibits the maximization of stockholder value and the disclosure of material information.

82. Plaintiff, Class members, and Akorn have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of Akorn and the Class, demands judgment against defendants jointly and severally, as follows:

A. Declaring that this action is properly maintainable as a derivative and class action;

B. Declaring and decreeing that the Merger Agreement was entered into in breach of the fiduciary duties of the Individual Defendants and is therefore unlawful and unenforceable;

C. Enjoining defendants, their agents, counsel, employees, and all persons acting in concert with them from finalizing and consummating the Proposed Acquisition, unless and until the Board: (i) adopts and implements a procedure or process designed to obtain the highest possible value for stockholders; and (ii) provides all material disclosures to Akorn stockholders to enable them to make informed decisions about whether to vote in favor of the Proposed Acquisition;

D. Directing the Individual Defendants to exercise their fiduciary duties to obtain a transaction that is in the best interests of Akorn and its stockholders until the process for the sale or auction of Akorn is completed and the highest possible value is obtained;

E. Rescinding, to the extent already implemented, the Merger Agreement or any of the terms thereof;

F. In the event enjoining the Proposed Acquisition and/or rescinding the Merger Agreement is not feasible, awarding monetary damages in favor of plaintiff, and the other Class members;

G. Awarding plaintiff and Akorn the costs and disbursements of this action, including reasonable attorneys' and experts' fees; and

H. Granting such other and further equitable relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: May 16, 2017

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