

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

In re:)	Chapter 11
)	
NOVAN, INC.,)	Case No. 23-10937 (LSS)
)	
Debtor.)	
)	
<hr/>		
In re:)	Chapter 11
)	
EPI HEALTH, LLC,)	Case No. 23-10938 (LSS)
)	
Debtor.)	
)	
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**MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING
THE JOINT ADMINISTRATION OF DEBTORS’ CHAPTER 11 CASES**

Novan, Inc. and its debtor affiliate in the above-captioned chapter 11 cases (these “Chapter 11 Cases”), as debtors and debtors in possession (collectively, the “Debtors”), hereby submit this motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing and directing the procedural consolidation and joint administration of these Chapter 11 Cases. In support of this Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of Paula Brown Stafford in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”),¹ filed contemporaneously with this Motion. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these Chapter 11 Cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334

¹ Capitalized terms used but not otherwise defined in this Motion shall have the meaning ascribed to them in the First Day Declaration.



and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final order with respect to this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 1005 and 1015 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 1015-1.

BACKGROUND

5. On the date hereof (the “Petition Date”), the Debtors filed with the Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors are authorized to operate their businesses and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in these Chapter 11 Cases.

7. Additional factual background regarding the Debtors, including their business operations, capital structure, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration, which is fully incorporated by reference herein.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an order, pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rules 1005 and 1015, and Local Rule 1015-1, substantially in the form attached hereto as **Exhibit A**, (i) authorizing joint administration of these Chapter 11 Cases for procedural purposes only, and (ii) directing parties in interest to use a consolidated caption, indicating that any pleading they file relates to the jointly administered bankruptcy cases of *Novan, Inc., et al.*

9. Specifically, the Debtors request that the Court maintain one file and one docket for all of the jointly administered cases in the case of Novan, Inc., and that the cases be administered under the following consolidated caption:

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

In re:)	
)	Chapter 11
NOVAN, INC., <i>et al.</i> , ¹)	
)	Case No. 23-10937 (LSS)
Debtors.)	
)	(Jointly Administered)
)	

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

10. In addition, the Debtors seek the Court's direction that a separate docket entry be made on the docket of each of the Debtors' chapter 11 cases (except that of Novan, Inc.) substantially as follows:

An order has been entered in this case directing the consolidation and joint administration for procedural purposes only of the chapter 11 cases of Novan, Inc., Case No. 23-10937 (LSS), and EPI Health, LLC, Case No. 23-10938 (LSS). **The docket in the chapter 11 cases of Novan, Inc., Case**

No. 23-10937 (LSS), should be consulted for all matters affecting these cases.

BASIS FOR RELIEF

11. Bankruptcy Rule 1015(b)(4) provides that “if . . . two or more petitions are pending in the same court by or against . . . a debtor and an affiliate, the court may order joint administration of the estates” of the debtor and such affiliates. *See* Bankruptcy Rule 1015(b)(4). Section 101(2) of the Bankruptcy Code, defines the term “affiliate,” in pertinent part, as:

(A) an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor

(C) a person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

(D) an entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

See 11 U.S.C. § 101(2).

12. Local Rule 1015-1 provides that an order of joint administration may be entered, upon the filing of a motion for joint administration pursuant to Bankruptcy Rule 1015, provided it is supported by a declaration which establishes that the proposed joint administration is warranted and will ease the administrative burden for the Court and the parties.

13. As set forth in the First Day Declaration, the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Debtor Novan, Inc. directly or indirectly owns or controls 100% of the membership interests of EPI Health, LLC. As such, the Debtors are “affiliates” as that term is defined in section 101(2) of the Bankruptcy Code. Accordingly, the Court is authorized to

jointly administer these Chapter 11 Cases for procedural purposes under Bankruptcy Rule 1015(b) and Local Rule 1015-1.

14. The Debtors operate as an integrated business with common ownership and control. The Debtors also share the same financial and operational systems. As a result, many—if not all—of the motions, hearings, and orders that will arise in these cases will affect all Debtors. Joint administration of these Chapter 11 Cases, therefore, will reduce fees and administrative burdens by avoiding duplicative filings, objections, notices, and hearings.

15. Joint administration will save time and money and avoid such duplicative and potentially confusing filings by permitting counsel for all parties in interest to, among other things, (a) use a single caption on the numerous documents that will be served and filed in these Chapter 11 Cases and (b) file the pleadings in one case rather than in multiple cases. Moreover, the Court will be relieved of the burden of entering duplicative orders and maintaining duplicative files. Also, joint administration will ease the burden on the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) in supervising these Chapter 11 Cases and will permit the Clerk of the Court to use a main docket for all of the Debtors’ cases, allowing the Debtors and other parties in interest to combine notices to creditors and other interested parties. Further, joint administration also will protect parties in interest by ensuring that parties in each of the Debtors’ respective cases will be apprised of the various matters before the Court in these Chapter 11 Cases.

16. The rights of the respective creditors of each of the Debtors will not be adversely affected by joint administration of these cases, as this Motion only requests administrative—and not substantive—consolidation of the Debtors’ estates. Each creditor and other party in interest will maintain whatever rights it has against the particular estate in which it allegedly has a claim or right. Furthermore, because these cases involve approximately 1000 potential creditors, the

entry of an order of joint administration will: (a) significantly reduce the volume of pleadings that otherwise would be filed with the Clerk of the Court, (b) render the completion of various administrative tasks less costly, and (c) minimize the number of unnecessary delays associated with the administration of numerous separate chapter 11 cases.

17. For these reasons, the Debtors submit that the relief requested herein is in the best interests of the Debtors, their estates, creditors, and other parties in interest and, therefore, should be granted.

NOTICE

18. Notice of this Motion will be provided to: (a) the Office of the United States Trustee (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); (b) counsel to the Debtors' proposed debtor in possession financing lender; (c) the Internal Revenue Service; (d) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (e) the United States Attorney for the District of Delaware; (f) the Securities and Exchange Commission; and (g) all parties entitled to notice pursuant to Bankruptcy Rule 2002-1. As this Motion is seeking first-day relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that no further notice of this Motion is required under the circumstances.

[Remainder of page left intentionally blank]

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court (i) enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion, and (ii) grant such other and further relief as the Court may deem just and proper.

Dated: July 17, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Derek C. Abbott

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Order

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

In re:)	Chapter 11
)	
NOVAN, INC.,)	Case No. 23-10937 (LSS)
)	
Debtor.)	
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In re:)	Chapter 11
)	
EPI HEALTH, LLC,)	Case No. 23-10938 (LSS)
)	
Debtor.)	
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**ORDER DIRECTING THE JOINT
ADMINISTRATION OF THE DEBTORS’ CHAPTER 11 CASES**

Upon the *Motion of the Debtors for Entry of an Order Directing the Joint Administration of the Debtors’ Chapter 11 Cases* (the “Motion”),¹ filed by the above-captioned debtors (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing and directing the joint administration of the Debtors’ Chapter 11 Cases for procedural purposes only, all as further described in the Motion; and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates, and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (iv) venue of this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) due and proper notice of the Motion and the hearing

¹ Capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to them in the Motion.

thereon has been given as set forth in the Motion and no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The above-captioned cases are consolidated for procedural purposes only and shall be administered jointly under Case No. 23-10937 (LSS) in accordance with the provisions of Bankruptcy Rule 1015 and Local Rule 1015-1.
3. The consolidated caption of the jointly administered Chapter 11 Cases shall read as follows:

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

In re:)
) Chapter 11
NOVAN, INC., <i>et al.</i> , ¹)
) Case No. 23-10937 (LSS)
Debtors.)
) (Jointly Administered)
_____)

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

4. The foregoing consolidated caption shall be deemed to satisfy any applicable requirements of section 341(c)(1) of the Bankruptcy Code and Bankruptcy Rule 1005.

5. A docket entry shall be made on the docket in the Chapter 11 Case of each of the Debtors, except Novan, Inc., substantially stating as follows:

An order has been entered in this case directing the consolidation and joint administration for procedural purposes only of the chapter 11 cases of Novan, Inc., Case No. 23-10937 and EPI Health, LLC, Case No. 23-10938 (LSS). **The docket in the chapter 11 cases of Novan, Inc., Case No. 23-10937 (LSS), should be consulted for all matters affecting these cases.**

6. The Clerk of the Court shall maintain one file and one docket for the Debtors' Chapter 11 Cases, which file and docket shall be the file and docket for the chapter 11 case of Novan, Inc., Case No. 23-10937 (LSS).

7. Nothing contained in this Order shall be deemed or construed as directing or otherwise effecting the substantive consolidation of any of the above-captioned cases.

8. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Order shall be immediately effective and enforceable upon its entry.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.