

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Joint Administration Requested)  
 )  
\_\_\_\_\_ )

APPLICATION OF DEBTORS FOR AN ORDER AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF KURTZMAN CARSON CONSULTANTS LLC  
AS CLAIMS AND NOTICING AGENT EFFECTIVE  
AS OF THE PETITION DATE

The above-captioned debtors and debtors in possession (the “Debtors”) hereby submit this application (this “Application”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), section 156(c) of title 28 of the United States Code (the “Judicial Code”), Rule 2002-1(f) and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), and the Court’s *Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c)*, instituted by the Clerk on February 1, 2021 the “Claims Agent Protocol”) appointing Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent (“Claims and Noticing Agent”) in the Debtors’ chapter 11 cases (the “Chapter 11 Cases”) effective as of the Petition Date (as defined below). In support of this Application, the Debtors submit the declaration of Evan Gershbein (the “Gershbein Declaration”), attached hereto as **Exhibit B**. Certain facts supporting this Application are also set forth in the *Declaration of Paula Brown Stafford in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the

<sup>1</sup> 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.



“First Day Declaration”). In further support of this Application, the Debtors respectfully state as follows:

### **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these Chapter 11 Cases, the Debtors and their estates and this matter 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. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order or judgment by the Court in connection with this Application to the extent 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 Application in this District is 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are section 105(a) of the Bankruptcy Code, section 156(c) of the Judicial Code, Local Rules 2002-1(f) and 9013-1(m) and the Claims Agent Protocol.

### **BACKGROUND**

5. The Debtors are a Delaware corporation with their headquarters in Durham, North Carolina. The Debtors are a pharmaceutical development company focused primarily on the research and development of clinical stage product candidates for potential medical dermatology application.

6. On the date hereof (the “Petition Date”), the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) voluntary petitions for relief under

the Bankruptcy Code. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no creditors' committee, trustee or examiner has been appointed in these Chapter 11 Cases.

7. Additional factual background relating to the Debtors' business and the commencement of these Chapter 11 Cases is set forth in the First Day Declaration.

### **RELIEF REQUESTED**

8. By this Application, the Debtors request entry of the proposed order (the "Proposed Order"), substantially in the form attached hereto as **Exhibit A**, appointing KCC as Claims and Noticing Agent in these Chapter 11 Cases effective as of the Petition Date.

### **KCC's QUALIFICATIONS**

9. KCC is a leading chapter 11 administrator comprised of industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases. Indeed, KCC has acted as the official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide. KCC's cases in this district include: *In re Lordstown Motors Corp., et al.*, Case No. 23-10831 (MFW) (Bankr. D. Del. Jun. 28, 2023); *In re PGX Holdings, Inc., et al.*, Case No. 23-10718 (CTG) (Bankr. D. Del. Jun. 6, 2023); *In re Plastiq Inc., et al.*, Case No. 23-10671 (BLS) (Bankr. D. Del. May 25, 2023); *In re Christmas Tree Shops, LLC, et al.*, Case No. 23-10576 (TMH) (Bankr. D. Del. May 9, 2023); *In re Structurlam Mass Timber U.S., Inc., et al.*, Case No. 23-10497 (CTG) (Bankr. D. Del. Apr. 26, 2023); *In re CBC Restaurant Corp., et al.*, Case No. 23-10245 (KBO) (Bankr. D. Del. Mar. 3, 2023); *In re Starry Group Holdings, Inc., et al.*, Case No. 23-10219 (KBO) (Bankr. D. Del. Feb. 22, 2023); *In re Standayne LLC, et al.*,

Case No. 23-10207 (JTD) (Bankr. D. Del. Feb. 22, 2023); *In re Tricida, Inc.*, Case No. 23-10024 (JTD) (Bankr. D. Del. Jan. 13, 2023); *In re Carestream Health, Inc.*, et al., Case No. 22-10778 (JKS) (Bankr. D. Del. Aug. 26, 2022); *In re First Guaranty Mortgage Corp.*, et al., Case No. 22-10584 (CTG) (Bankr. D. Del. Jul. 1, 2022); *In re Zosano Pharma Corp.*, Case No. 22-10506 (JKS) (Bankr. D. Del. Jun. 6, 2022); *In re Sequential Brands Group, Inc.*, et al., Case No. 21-11194 (JTD) (Bankr. D. Del. Sep. 1, 2021); *In re Alex and Ani, LLC, et al.*, Case No. 21-10746 (CTG) (Bankr. D. Del. Jun. 11, 2021); *In re TECT Aerospace Group Holdings, Inc., et al.*, Case No. 21-10670 (KBO) (Bankr. D. Del. Apr. 7, 2021); *In re JetFleet Holding Corp. (f/k/a AeroCentury Corp.)*, Case No. 21-10637 (JTD) (Bankr. D. Del. Mar. 31, 2021); *In re Medley LLC*, Case No. 21-10525 (KBO) (Bankr. D. Del. Mar. 10, 2021); *In re Chaparral Energy, Inc.*, Case No. 20-11947 (MFW) (Bank. D. Del. Aug. 18, 2020).

10. By appointing KCC as the Claims and Noticing Agent in these Chapter 11 Cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court for the District of Delaware (the “Clerk”) will be relieved of the administrative burden of processing any such claims.

**SERVICES TO BE PROVIDED BY KCC**

11. This Application pertains only to the work to be performed by KCC under the Clerk’s delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f). Any work to be performed by KCC outside of this scope is not covered by this Application or by any order granting approval hereof. Specifically, KCC will perform the following tasks, as necessary, in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- (a) Prepare and serve required notices and documents in these Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these Chapter 11 Cases and

the initial meeting of creditors under Bankruptcy Code § 341(a), (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors' plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of these Chapter 11 Cases;

- (b) Maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules"), listing the Debtors' known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders, and other parties-in-interest and (ii) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party-in-interest or the Clerk;
- (d) Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in the case where the Schedule indicates no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) Maintain an electronic platform for purposes of filing proofs of claim;
- (g) For all notices, motions, orders, or other pleadings or documents served, prepare and file, or cause to be filed with the Clerk, an affidavit or certificate of service within seven business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- (h) Process all proofs of claim received, including those received by the Clerk, check said processing for accuracy, and maintain the original proofs of claim in a secure area;

- (i) Maintain the official claims register for the Debtors (the “Claims Register”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Register; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned; (ii) the date received; (iii) the name and address of the claimant and agent, if applicable, who filed the claim; (iv) the amount asserted; (v) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.); (vi) the applicable Debtor; and (vii) any disposition of the claim;
- (j) Provide public access to the Claims Register, including complete proofs of claim with attachments, if any, without charge;
- (k) Implement necessary security measures to ensure the completeness and integrity of the Claims Register and the safekeeping of the original claims;
- (l) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (m) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of KCC, not less than weekly;
- (n) Upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk copies of the Claims Register for the Clerk’s review (upon the Clerk’s request);
- (o) Monitor the Court’s docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the claims register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- (p) Assist in the dissemination of information to the public and respond to requests for administrative information regarding these Chapter 11 Cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (q) If these Chapter 11 Cases are converted to a case under chapter 7 of the Bankruptcy Code, contact the Clerk’s office within three (3) days of notice to KCC of entry of the order converting the case;
- (r) Thirty (30) days prior to the close of these Chapter 11 Cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing KCC as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of these Chapter 11 Cases;

- (s) Within seven (7) days of notice to KCC of entry of an order closing these Chapter 11 Cases, provide to the Court the final version of the Claims Register as of the date immediately before the close of these Chapter 11 Cases; and
- (t) At the close of these Chapter 11 Cases, box and transport all original documents, in proper format, as provided by the Clerk's office, to (i) the Federal Archives Record Administration, located at 14700 Townsend Road, Philadelphia, PA 19154-1096 or (ii) any other location requested by the Clerk's office.

12. The Claims Register shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by KCC.

### **KCC'S COMPENSATION**

13. The Debtors request that the undisputed fees and expenses incurred by KCC in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. KCC agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Services Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

14. Prior to the Petition Date, the Debtors provided KCC an advance in the amount of \$20,000. KCC seeks to first apply the advance to all prepetition invoices, and thereafter, to have the advance replenished to the original advance amount, and thereafter, to hold the advance

under the Services Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

15. Additionally, under the terms of the Services Agreement, the Debtors have agreed to indemnify, defend, and hold harmless KCC and its members, officers, employees, representatives, and agents under certain circumstances specified in the Services Agreement, except in circumstances resulting solely from KCC's gross negligence or willful misconduct or as otherwise provided in the Services Agreement or Proposed Order. The Debtors believe that such an indemnification obligation is customary, reasonable, and necessary to retain the services of a Claims and Noticing Agent in these Chapter 11 Cases.

#### **KCC'S DISINTERESTEDNESS**

16. Although the Debtors do not propose to employ KCC under section 327 of the Bankruptcy Code pursuant to this Application, KCC has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Gershbein Declaration, KCC has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

17. Moreover, in connection with its retention as Claims and Noticing Agent, KCC represents in the Gershein Declaration, among other things, that:

- (a) KCC is not a creditor, equity security holder, or insider of the Debtors;
- (b) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
- (c) By accepting employment in these Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;



- (d) In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (e) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;
- (f) KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- (g) In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- (h) KCC shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- (i) KCC will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) None of the services provided by KCC as Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s office.

18. KCC will supplement its disclosure to the Court if any new facts or circumstances are discovered that require additional disclosure.

**BASIS FOR RELIEF REQUESTED**

**A. Retention and Employment of KCC as Claims and Noticing Agent is Permitted**

19. Bankruptcy Rule 2002 generally regulates what notices must be given to creditors and other parties-in-interest in bankruptcy cases. Fed. R. Bankr. P. 2002(f). Under Bankruptcy Rule 2002(f), the Court may direct that some person other than the Clerk give notice of the various matters described below. Moreover, section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use “facilities” or “services” other than the Clerk for administration of bankruptcy cases. 28 U.S.C. § 156(c). Specifically, the statute states, in relevant part:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

20. In addition, Local Rule 2002 1(f) provides:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (which can be found on the Court's website) and shall perform the [claims and noticing services].

Del. Bankr. L.R. 2002-1(f). Accordingly, Bankruptcy Rule 2002, Local Rule 2002-1(f), and section 156(c) of title 28 of the United States Code empower the Court to utilize outside agents and facilities for notice and claims purposes, provided that the Debtors' estates bear the cost of such services.

21. Accordingly, for all of the foregoing reasons, the Debtors believe that the appointment of KCC as the Claims and Noticing Agent in these Chapter 11 Cases is necessary and in the best interests of the Debtors, their estates and creditors, and all parties-in-interest. Furthermore, the Debtors submit that the fees and expenses that would be incurred by KCC under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

22. By separate application, the Debtors intend to seek authorization to retain and employ KCC as the administrative agent in these Chapter 11 Cases, pursuant to section 327(a) of the Bankruptcy Code, because the administration of these Chapter 11 Cases will require KCC to perform duties outside the scope of 28 U.S.C. § 156(c).

**B. Retroactive Relief is Appropriate**

23. Pursuant to the Debtors' request, KCC has agreed to serve as the Claims and Noticing Agent on and after the Petition Date with assurances that the Debtors would seek approval of its employment and retention effective as of the Petition Date, so that KCC may be compensated for its services prior to approval of this Application. The Debtors believe that no party in interest will be prejudiced by the granting of the retroactive employment, as provided in this application, because KCC has provided and continues to provide valuable services to the Debtors' estates in the interim period. The Local Rules empower courts in this district to approve retroactive employment, and the Debtors submit that such approval is justified here. *See, e.g.*, Del. Bankr. L.R. 2014-1(b) ("If the retention application is granted, the retention shall be effective as of the date the application was filed, unless the Court orders otherwise."). Accordingly, the Debtors respectfully request entry of the Order authorizing the Debtors to retain and employ KCC as Claims and Noticing Agent, effective as of the Petition Date.

**COMPLIANCE WITH CLAIMS AND NOTICING AGENT PROTOCOL**

24. This Application complies with the Claims Agent Protocol, in that the Debtors have obtained and reviewed engagement proposals from at least two other Court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that KCC's rates are competitive and reasonable given KCC's quality of services and expertise.

25. To the extent that there is any inconsistency between this Application, the order granting the relief in the Application, and the Services Agreement, the order granting relief in the Application shall govern.

**WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)**

26. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**NOTICE**

27. Notice (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 lenders; (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 state attorneys general in states where the Debtors are authorized to do business; and (g) all parties entitled to notice pursuant to Bankruptcy Rule 2002-1. Notice of this Motion and any order entered in connection with this Motion will be served on all parties in accordance with Local Rule 9013-1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice of this Motion is required.

*[Remainder of page left intentionally blank]*

**CONCLUSION**

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (a) enter the Proposed Order substantially in the form attached hereto as **Exhibit A**, and (b) grant such other and further relief as is just and proper.

Dated: July 17, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Derek C. Abbott

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*Proposed Counsel for 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., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10937 (LSS)
Debtors.	)	
	)	(Joint Administration Requested)
	)	
	)	<b>Re: D.I</b> __
	)	

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**ORDER AUTHORIZING THE DEBTORS TO EMPLOY AND RETAIN KURTZMAN  
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT  
EFFECTIVE AS OF THE PETITION DATE**

Upon the application (the “Application”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”), for entry of an order (this “Order”) for authority to employ and retain Kurtzman Carson Consultants LLC (“KCC”) as claims and noticing agent in the Debtors’ chapter 11 cases (the “Claims and Noticing Agent”) effective as of the Petition Date, all as more fully set forth in the Application; and upon the First Day Declaration and the Gershbein Declaration; and this Court having jurisdiction to consider the Application pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases and the Application in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Application and the relief requested therein

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<sup>1</sup> The Debtors in these chapter 11 cases, along with 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.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Application.

has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Application having been withdrawn, resolved or overruled on the merits; and this Court having found and determined that the relief sought in the Application is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Application establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Application is GRANTED as set forth herein.
2. The Debtors are authorized, pursuant to 28 U.S.C. § 156(c) and Local Rule 2002-1(f), to retain KCC, and KCC is appointed as the Claims and Noticing Agent, effective as of the Petition Date, under the terms and conditions of the Services Agreement, attached hereto as **Exhibit 1**. Notwithstanding any terms of the Services Agreement, the Application is approved solely as set forth in this Order.
3. KCC, as the Claims and Noticing Agent, is directed to perform noticing and services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these cases (if any), and all related tasks, all as described in the Application (collectively, the “Claims and Noticing Services”).
4. KCC shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these Chapter 11 Cases (if any) and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court, and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.



5. KCC is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

6. KCC is authorized to take such other action to comply with all duties set forth in the Application.

7. Without further order of this Court, the Debtors are authorized to compensate KCC in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged for each, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

8. KCC shall maintain records of all services performed showing dates, categories of services, fees charged, and expenses incurred. With respect to services provided prior to the effective date of a chapter 11 plan in these Chapter 11 Cases, KCC shall serve monthly invoices on the Debtors, the U.S. Trustee, counsel for the Debtors, counsel for any official statutory committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices.

9. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or monthly invoices; *provided* that the parties may seek resolution of the matter from the Court if resolution is not achieved.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates.

11. KCC may apply its advance to all prepetition invoices, which advance shall be replenished to the original advance amount, and, thereafter, KCC may hold its advance under the

Services Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

12. The Debtors are authorized to indemnify the Indemnified Parties (as defined in the Services Agreement) under the terms of the Services Agreement, subject to the following modifications.

- (a) The Indemnified Parties shall not be entitled to indemnification, contribution or reimbursement pursuant to the Services Agreement for services other than the Claims and Noticing Services provided under the Services Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by the Court.
- (b) Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify the Indemnified Parties, or provide contribution or reimbursement to the Indemnified Parties, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from the Indemnified Parties' gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of the Indemnified Parties' contractual obligations if the Court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003), or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which the Claims and Noticing Agent should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement as modified; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 Cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these Chapter 11 Cases, the Indemnified Parties believe that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Services Agreement (as modified by this Order), including without limitation the advancement of defense costs, the Indemnified Parties must file an application therefor in this Court, and the Debtors may not pay any such amounts to the Indemnified Parties before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by the Indemnified Parties for indemnification, contribution, or reimbursement, and not a provision

limiting the duration of the Debtors' obligation to indemnify the Indemnified Parties. All parties in interest shall retain the right to object to any demand by the Indemnified Parties for indemnification, contribution, or reimbursement.

13. In the event KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk and the Debtors' counsel and cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' counsel.

14. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by KCC but are not specifically authorized by this Order.

15. KCC shall not cease providing claims processing services during these Chapter 11 Cases for any reason, including nonpayment, without an order of the Court authorizing KCC to do so.

16. The Debtors and KCC are authorized and empowered to execute and deliver any such documents and to take and perform all actions necessary to implement and effectuate the relief granted pursuant to this Order in accordance with the Application.

17. Notice of the Application shall be deemed good and sufficient notice of such application.

18. In the event of any inconsistency between the Services Agreement, the Application and this Order, this Order shall govern.

19. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

20. The Debtors are authorized to enforce the terms of this Order.

21. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Application or the implementation of this Order.

**EXHIBIT 1**

**Services Agreement**



## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the \_\_ day of July 2023, between Novan, Inc. (together with its affiliates and subsidiaries, the “Company”), and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **Terms and Conditions**

#### **I. SERVICES**

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals authorized to act on behalf of the Company (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may reasonably rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.



## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate to be mutually agreed by KCC and the Company.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable



## KCC AGREEMENT FOR SERVICES

following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the “Retention Order”). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$20,000 (the “Retainer”) that may be held by KCC as security for the Company’s payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid, undisputed invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term “program” shall include, without limitation, data processing programs, specifications, applications, routines, and documentation not including any data supplied by the Company. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC’s performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company’s use during and in connection with the services provided by KCC under this Agreement.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the





## KCC AGREEMENT FOR SERVICES

services provided under this Agreement during the term of this Agreement and for a period of two (2) years after the expiration or termination of the Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



## KCC AGREEMENT FOR SERVICES

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company in the event of fraud or during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or



## KCC AGREEMENT FOR SERVICES

express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

### XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: dfoster@kccllc.com

Novan, Inc.  
4020 Stirrup Creek Drive, Suite 110  
Durham, NC 27703  
Attn: John M. Gay  
Tel: (919) 908-2422  
Fax: (919) 237-9212  
Email: Jgay@novan.com

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement



## **KCC AGREEMENT FOR SERVICES**

between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### **XV. COUNTERPARTS; EFFECTIVENESS**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### **XVI. ASSIGNMENT**

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### **XVII. ATTORNEYS' FEES**

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's (as determined by a final, nonappealable decision) reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



## KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

*Evan Gershbein*

BY: Evan Gershbein DATE: 7/13/2023  
TITLE: EVP, Corporate Restructuring Services

Company

DocuSigned by:

*John M. Gay*

BY: John M. Gay DATE: 7/12/2023  
TITLE: Chief Financial Officer

**EXHIBIT B**

**Gershbein Declaration**

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

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

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**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF APPLICATION OF  
DEBTORS FOR AN ORDER AUTHORIZING THE RETENTION AND  
EMPLOYMENT OF KURTZMAN CARSON CONSULTANTS LLC  
AS CLAIMS AND NOTICING AGENT EFFECTIVE  
AS OF THE PETITION DATE**

Pursuant to 28 U.S.C. § 1746, I, Evan Gershbein, declare under penalty of perjury that the following is true and correct to the best of my knowledge, information, and belief:

1. I am an Executive Vice President of Corporate Restructuring Services at Kurtzman Carson Consultants LLC (“KCC”), a chapter 11 administrative services firm whose offices are located at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This Declaration is made in support of the above-captioned debtors (the “Debtors”) *Application of Debtors for an Order Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date*, to which this declaration is attached (the “Application”).<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in the Application.

### Qualifications

3. KCC comprises leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC's professionals have experience in noticing, claims administration, solicitation, balloting and facilitating other administrative aspects of chapter 11 cases. KCC has acted as official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide. KCC's cases in this district include: *In re Lordstown Motors Corp., et al.*, Case No. 23-10831 (MFW) (Bankr. D. Del. Jun. 28, 2023); *In re PGX Holdings, Inc., et al.*, Case No. 23-10718 (CTG) (Bankr. D. Del. Jun. 6, 2023); *In re Plastiq Inc., et al.*, Case No. 23-10671 (BLS) (Bankr. D. Del. May 25, 2023); *In re Christmas Tree Shops, LLC, et al.*, Case No. 23-10576 (TMH) (Bankr. D. Del. May 9, 2023); *In re Structurlam Mass Timber U.S., Inc., et al.*, Case No. 23-10497 (CTG) (Bankr. D. Del. Apr. 26, 2023); *In re CBC Restaurant Corp., et al.*, Case No. 23-10245 (KBO) (Bankr. D. Del. Mar. 3, 2023); *In re Starry Group Holdings, Inc., et al.*, Case No. 23-10219 (KBO) (Bankr. D. Del. Feb. 22, 2023); *In re Standayne LLC, et al.*, Case No. 23-10207 (JTD) (Bankr. D. Del. Feb. 22, 2023); *In re Tricida, Inc.*, Case No. 23-10024 (JTD) (Bankr. D. Del. Jan. 13, 2023); *In re Carestream Health, Inc.*, et al., Case No. 22-10778 (JKS) (Bankr. D. Del. Aug. 26, 2022); *In re First Guaranty Mortgage Corp.*, et al., Case No. 22-10584 (CTG) (Bankr. D. Del. Jul. 1, 2022); *In re Zosano Pharma Corp.*, Case No. 22-10506 (JKS) (Bankr. D. Del. Jun. 6, 2022); *In re Sequential Brands Group, Inc.*, et al., Case No. 21-11194 (JTD) (Bankr. D. Del. Sep. 1, 2021); *In re Alex and Ani, LLC, et al.*, Case No. 21-10746 (CTG) (Bankr. D. Del. Jun. 11, 2021); *In re TECT Aerospace Group Holdings, Inc., et al.*, Case No. 21-10670 (KBO) (Bankr. D. Del. Apr. 7, 2021); *In re JetFleet Holding Corp. (f/k/a AeroCentury Corp.)*, Case No. 21-10637 (JTD) (Bankr. D. Del. Mar. 31, 2021); *In re Medley LLC*, Case No. 21-10525 (KBO) (Bankr. D. Del.



Mar. 10, 2021); *In re Chaparral Energy, Inc.*, Case No. 20-11947 (MFW) (Bank. D. Del. Aug. 18, 2020).

**Services to be Rendered**

4. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), KCC will perform, at the request of the Clerk, the noticing and claims related services specified in the Application and the Services Agreement. In addition, at the Debtors' request, KCC will perform such other noticing, claims, administrative, technical, and support services specified in the Application and the Services Agreement.

5. Prior to the Petition Date, the Debtors provided KCC a retainer in the amount of \$20,000.00. KCC seeks to first apply the retainer to all prepetition invoices and, thereafter, to have the retainer replenished to the original retainer amount, and thereafter, to hold the retainer under the Services Agreement during these Chapter 11 Cases as security for the payment of fees and expenses incurred under the Services Agreement.

6. In connection with its retention as Claims and Noticing Agent, KCC represents, among other things, the following:

- (a) KCC is not a creditor of the Debtors;
- (b) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these Chapter 11 Cases;
- (c) By accepting employment in these Chapter 11 Cases, KCC waives any rights to receive compensation from the United States government in connection with these Chapter 11 Cases;
- (d) In its capacity as the Claims and Noticing Agent in these Chapter 11 Cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (e) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these Chapter 11 Cases;

- (f) KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- (g) In its capacity as Claims and Noticing Agent in these Chapter 11 Cases, KCC will not intentionally misrepresent any fact to any person;
- (h) KCC shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- (i) KCC will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) None of the services provided by KCC as Claims and Noticing Agent in these Chapter 11 Cases shall be at the expense of the Clerk’s office.

7. Although the Debtors do not propose to retain KCC under section 327 of the Bankruptcy Code pursuant to the Application (such retention will be sought by separate application), I caused to be submitted for review by our conflicts system the names of potential parties-in-interest (the “Potential Parties in Interest”) in these Chapter 11 Cases. A list of Potential Parties in Interest was provided by the Debtors and included, among other parties, the Debtors, non-Debtor affiliates, current and former directors and officers of the Debtors, significant stockholders, secured creditors, lenders, unsecured creditors, the U.S. Trustee and persons employed in the office of the U.S. Trustee, and other parties. The Potential Parties in Interest list was provided by the Debtors and is attached hereto as **Schedule 1**. KCC is not aware of any relationship that would present a disqualifying conflict of interest.

8. To the best of my knowledge, none of KCC’s employees are related to bankruptcy judges in the District of Delaware, the United States Trustee for Region 3, any attorney known by KCC to be employed in the Office of the United States Trustee serving in the District of Delaware, or are equity security holders of the Debtors.

9. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither KCC, nor any of its professionals, has any materially adverse connection to the Debtors, their creditors or other relevant parties. KCC has and will continue to represent clients in matters unrelated to these Chapter 11 Cases. In addition, in matters unrelated to these Chapter 11 Cases, KCC and its personnel have and will continue to have relationships personally or in the ordinary course of business with certain vendors, professionals, financial institutions, and other parties-in-interest that may be involved in the Debtors' Chapter 11 Cases. KCC may also provide professional services to entities or persons that may be creditors or parties-in-interest in these Chapter 11 Cases, which services do not directly relate to, or have any direct connection with, these Chapter 11 Cases or the Debtors.

10. On May 1, 2023, funds affiliated with GCP Capital Partners LLC ("GCP") indirectly acquired a controlling equity interest in KCC (the "Acquisition"). Pursuant to the Acquisition, an indirect, non-controlling, beneficial minority interest in KCC was acquired by funds affiliated with J.P. Morgan Investment Management Inc. ("JPMIM"). GCP is a middle market private equity investment firm based in New York. GCP has made investments in a number of industries, including tech-enabled business services, payments, and select financials. JPMIM is a U.S. registered investment adviser. Designees of GCP are members of the Board of Managers (the "Board") of KCC's ultimate parent company, KCC Parent LLC ("Parent"). Parent wholly owns KCC Intermediate LLC, which in turn wholly owns KCC Buyer LLC, which in turn wholly owns KCC Topco LLC, which in turn wholly owns KCC. One representative of JPMIM is entitled to attend and observe (but not vote) at all meetings of the Board, but no designee of JPMIM is a member of the Board.

11. KCC searched all entities listed in the list of Potential Parties in Interest against an internal database that includes (i) KCC's parent entities, affiliates, and subsidiaries and (ii) GCP, GCP's funds, and each such fund's respective portfolio companies and investments as set forth in the list most recently provided to KCC by GCP. Based solely on the foregoing search, KCC has determined, to the best of its knowledge, that there are no material connections.

12. To the extent KCC learns of any other material connections between the funds or investments included in the above-described conflicts search and the Debtors, KCC will promptly file a supplemental disclosure. In addition, KCC may have had, may currently have, or may in the future have business relationships unrelated to the Debtors with one or more GCP or JPMIM entities including, among others, portfolio companies of GCP.

13. KCC has no contract or relationship with XClaim Inc. or with any other party under which KCC provides or will provide exclusive access to claims data and/or under which KCC will be compensated for claims data that is made available by KCC.

14. Based on the foregoing, I believe that KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged. Moreover, to the best of my knowledge and belief, neither KCC nor any of its partners or employees hold or represent any interest materially adverse to the Debtors' estates with respect to any matter upon which KCC is to be engaged.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: July 17, 2023

*/s/ Evan Gershbein*

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Evan Gershbein  
Executive Vice President  
Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor,  
El Segundo, California 90245

**Schedule 1**

**Potential Parties-in-Interest**

**Non-Debtor Affiliates**

Arminda Pharmaceuticals, LLC  
Novan Therapeutics, LLC  
Novan Therapeutics, Limited

**Bankruptcy Judges - District of Delaware**

Chief Judge Laurie Selber Silverstein  
Judge Ashely M. Chan  
Judge Brendan L. Shannon  
Judge Craig T. Goldblatt  
Judge J. Kate Stickles  
Judge John T. Dorsey  
Judge Karen B. Owens  
Judge Mary F. Walrath  
Judge Thomas M. Horan

**Banks**

Bank of America  
PNC Bank  
Silicon Valley Bank  
StoneCastle Management, LLC

**Benefit Providers**

Aetna Life Insurance Company  
Fidelity Investments  
Flores & Associates  
Guardian Life Insurance Company  
Paycom Software, Inc.  
PayFlex

**Contract Counterparties**

Ligand Pharmaceuticals

**Directors and Officers (former)**

**Factoring Agreement Counterparty**

CSNK Working Capital Finance Corp. d/b/a  
Bayview Funding

**Governmental Regulatory**

**Authorities/Agencies**

U.S. Food and Drug Administration  
U.S. Securities and Exchange Commission

**Taxing Authorities**

City of Durham North Carolina  
Delaware Secretary of State  
Durham County North Carolina  
North Carolina Department of Revenue  
South Carolina Department of Revenue  
State of Alabama  
State of Arizona  
State of California  
State of Connecticut  
State of Delaware  
State of Georgia  
State of Kentucky  
State of Maryland  
State of Massachusetts  
State of New Jersey  
State of New York  
State of North Carolina  
State of Pennsylvania  
State of South Carolina  
State of Tennessee  
State of Texas

**Debtors' Bankruptcy Professionals**

Kurtzman Carson Consultants LLC  
Morris, Nichols, Arsht & Tunnell LLP  
Raymond James  
SierraConstellation Partners, LLC

**Directors and Officers (current)**

John Donofrio  
John W. Gay  
Carri Geer  
W. Kent Geer  
Robert J. Keegan  
Tomoko Maeda-Chubachi  
Machelle Sanders  
Steven D. Skolsky  
Paula Brown Stafford

**Insurance Providers & Brokers**

AIG  
Allied World Insurance Company  
Axon Underwriting  
Beazley Group  
Berkshire Hathaway Specialty Insurance

Continental Casualty Company (CNA)  
Falvey Cargo Underwriting  
Generali Global Assistance  
Hudson Insurance Group  
Medmarc  
Old Republic Professional Liability, Inc.  
The Traveler's Indemnity Company  
Traveler's Property Casualty Company of  
America  
XL Specialty Insurance Company



**US Trustee Office - District of Delaware**

Andrew R. Vara  
Joseph McMahon  
Lauren Attix  
Linda Casey  
Denis Cooke  
Joseph Cudia  
Holly Dice  
Shakima L. Dortch  
Timothy J. Fox, Jr.  
Diane Giordano  
Christine Green  
Benjamin Hackman  
Nyanquoi Jones  
Jane Leamy  
Hannah M. McCollum  
James R. O'Malley  
Michael Panacio  
Linda Richenderfer  
Juliet Sarkessian  
Richard Schepacarter  
Edith A. Serrano  
Rosa Sierra-Fox  
Dion Wynn

**Utility Providers**

Clean Harbors  
Duke Energy  
Dominion Energy North Carolina  
Worksmart  
Level 3 Communications, LLC  
City of Durham  
Republic Services  
Spectrum  
Segra  
Verizon Wireless

**Vendors and Suppliers**

Actalent Services, LLC  
Advanced Recruiting Partners, LLC  
Airgas USA, L.L.C.  
Aon  
Armor HoldCo, Inc.  
Armstrong Relocation Co, Inc - Raleigh  
Barry Wehmiller Design Group  
Bayron Cleaning Services LLC  
BDO USA, LLP  
Brady Trane Service, Inc.  
Broadridge ICS  
Business Ready Solutions, LLC  
Canalta Enterprises LLC  
Canon Solutions America, Inc.  
Carolina Process Piping, Inc.  
Catalent CTS (Kansas City), LLC  
Catalent Pharma Solutions - RTP  
CDW Direct LLC  
CelesTech, Inc.  
Charles River  
Cilatus BioPharma AG  
Clarkton-Potomac Group, Inc.  
Clean Harbors  
Clinical Supplies Management, Inc.  
Cole Rakar  
Commissioning Agents, Inc  
Cross Company Instrumentation Group  
Deloitte Tax LLP  
Doe & Ingalls  
Duke Energy  
Easysnap Technology S.r.l.  
Economy Exterminator  
Edward A. Imbrogno  
ENG Solutions, Inc.  
EPL Archives, Inc.  
Ernst & Young US LLP  
Evergreen Healthcare Consulting LLC  
Fisher Scientific  
Gannett Fleming Inc.  
Gelest, Inc.  
Global Software, LLC  
Grainger  
Hoffman Mechanical Solutions, Inc.  
Infinity CTM Supply Solutions LLC  
Innovative Regulatory Consulting LLC  
Innovea Technologies, LLC  
Intrado Digital Media, LLC  
Intuitive Graphite, Inc.  
IQVIA Inc.  
Iron Mountain  
JAF Consulting, Inc.  
Jeffrey Sugarman  
Jenene Thomas Corporate Communications  
LLC  
Kryosphere Inc.  
Kymanox Corporation  
Latham & Watkins LLP  
Law Office of Kathleen Lynch  
Level 3 Communications  
Littler Mendelson PC  
MasterControl  
McMaster-Carr Supply Company  
Mediant Communications Inc.  
Michael Trempus  
Mobile Mini, Inc.  
MultiCore Program Management Services  
Myers Bigel Sibley & Sajovec, PA  
Nanette Silverberg MD PLLC  
NASDAQ, INC  
Nuventra Pharma Sciences, Inc.  
Orion Corporation  
Pay Governance, LLC  
PCI  
People 2.0 Global, Inc.  
Praxair  
Precision Stability Storage, L.L.C.  
PSNC Energy  
Quality Chemical Laboratories  
Regan Madison Inc.  
Reprints Desk, Inc.  
Research Triangle Institute  
Robert Half Management Resources  
Rolesville Equipment Company  
Saineolai LLC  
SAP America, Inc.  
SAS Institute Inc  
Shimar Recycling, Inc.  
Smith Anderson Blount  
Sonitrol Integrated Security  
Stanek Lemon Crouse & Meeks, P.A.  
Syneos Health Commercial Services, LLC

Synteract, Inc.  
Technical Safety Services, LLC  
Tergus Pharma  
Therapeutics, Inc.  
TimelyText, Inc.  
Two Labs Holdings, LLC  
Uline  
UniFirst Corporation  
University of North Carolina at Chapel Hill  
Verta Life Sciences LLC  
WorkSmart  
World Courier  
Yocom & McKee Inc  
Zacks Investment Research, Inc.  
ZETA USA Inc