

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (A) FILE A CONSOLIDATED LIST OF CREDITORS IN LIEU OF SUBMITTING A SEPARATE MAILING MATRIX FOR EACH DEBTOR, (B) FILE A CONSOLIDATED LIST OF THE DEBTORS’ THIRTY LARGEST UNSECURED CREDITORS AND (C) FILE UNDER SEAL PORTIONS OF THE CREDITOR MATRIX AND OTHER FILINGS CONTAINING CERTAIN PERSONAL IDENTIFICATION INFORMATION

The debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) hereby move (the “Motion”) as follows:

RELIEF REQUESTED

1. The Debtors respectfully seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 521 of title 11 of the United States Code (the “Bankruptcy Code”), Rule 1007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 1007-1 and 1007-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtors to (a) file a single, consolidated list of creditors (the “Creditor Matrix”) in lieu of submitting an individual mailing matrix for each Debtor, (b) file a single, consolidated list of the Debtors’ 30 largest unsecured creditors that are not insiders (the “Consolidated Top 30 Creditor List”) in lieu of submitting a separate list of 20 largest creditors for each Debtor and (c)

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.



file under seal and redact certain personal identification information. In support of the Motion, the Debtors respectfully submit as follows:

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these chapter 11 cases (these “Chapter 11 Cases”) and this Motion 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. 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.

4. The statutory bases for the relief requested in this Motion are sections 105, 345, 363, 503, 1107(a) and 1108 of Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2.

BACKGROUND

5. On the date hereof (the “Petition Date”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in this Court. The Debtors continue to manage their assets as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee has been appointed in these cases.

6. Additional details regarding the Debtors, their business, the events leading to the commencement of these cases, and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Paula Brown Stafford in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), filed concurrently herewith and incorporated herein by reference.

BASIS FOR RELIEF

A. Ample Cause Exists to Authorize the Debtors to File a Consolidated List of Creditors in Lieu of Submitting a Separate Mailing Matrix for each Debtor.

7. Local Rule 1007-2(a) provides that, in a voluntary chapter 11 case, the debtor must file "a list containing the name and complete address of each creditor in such format as directed by the Clerk's Office Procedures." Local Rule 2002-1(f)(v) further requires "a separate claims register and separate creditor mailing matrix for each debtor in jointly administered cases." However, Local Rule 1001-1(c) permits the modification of the Local Rules by the Court "in the interest of justice." The Debtors submit that modifying the requirements of Local Rule 2002-1(f)(v) and authorizing the Debtors to file and maintain a consolidated Creditor Matrix, in lieu of individual matrices for each Debtor, is warranted in the interest of justice.

8. The Debtors have identified a large number of entities and individuals to which numerous notices of certain matters in these Chapter 11 Cases must be provided. The Debtors anticipate that such notices will include the notice of the commencement of these Chapter 11 Cases, the hearings on the motions requesting first and second day relief, and the hearings on the bidding procedures and sale motion, to name a few.

9. Segregating the Debtors' records to a specific creditor matrix format would be an unnecessarily burdensome task and, because certain of the creditors are or may be creditors of more than one Debtor, failure to maintain a single, consolidated Creditor Matrix would result in

duplicate mailings. Under these circumstances, the exercise of satisfying the literal requirements of Bankruptcy Rule 1007(d) would only serve to frustrate its intended purpose. Accordingly, the Debtors submit that filing a consolidated Creditor Matrix in lieu of separate mailing matrices for each Debtor is appropriate under the facts and circumstances present here, and consistent with the applicable provisions of the Local Rules.

10. Moreover, courts in this District have granted similar relief to that requested in this Motion. *See, e.g., In re Clovis Oncology Inc.*, Case No. 22-11292 (JKS) [D.I. 78] (Bankr. D. Del. Dec. 14, 2022); *Sequential Brands Group, Inc., et al.*, Case No. 21-11194 (JTD) [D.I. 65] (Bankr. D. Del. Sept. 1, 2021); *In re Alex and Ani, LLC*, Case No. 21-10918 (CTG) [D.I. 62] (Bankr. D. Del. June 11, 2021); *In re Secure Home Holdings LLC, et al.*, Case No. 21-10745 (JKS) [D.I. 54] (Bankr. D. Del. Apr. 27, 2021); *In re Highpoint Resources Corp.*, No. 21-10565 (CSS) [D.I. 78]; (Bankr. D. Del. Mar. 16, 2021); *In re MobiTV, Inc.*, Case No. 21-10457 (LSS) [D.I. 47] (Bankr. D. Del. Mar. 2, 2021); *In re Pennsylvania Real Estate Investment Trust*, Case No. 20-12737 (KBO) [D.I. 187] (Bankr. D. Del. Nov. 2, 2020); *In re Destination Maternity Corp.*, Case No. 19- 12256 (BLS) [D.I. 76] (Bankr. D. Del. Oct. 22, 2019); *In re Southcross Energy Partners, L.P.*, Case No. 19-10702 (MFW) [D.I. 149] (Bankr. D. Del. Apr. 25, 2019).²

² The referenced orders are voluminous in nature and, therefore, are not attached to this Motion; however, in accordance with Local Rule 7007-2(a)(vii), the Debtors' proposed counsel has copies of each order and will make them available to this Court or to any party that requests them. Additionally, the orders are available on this Court's CM/ECF PACER site at the cited docket numbers and on the dates specified above.

B. Ample Cause Exists to Authorize the Debtors to File a Consolidated List of the Debtors' 30 Largest Unsecured Creditors in Lieu of Submitting a Separate List of 20 Largest Creditors for Each Debtor.

11. Bankruptcy Rule 1007(d) provides that a debtor shall file “a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders.” FED. R. BANKR. P. 1007(d). This list primarily is used by the U.S. Trustee to evaluate the types and amounts of unsecured claims against a debtor and thus identify potential candidates to serve on an official committee of unsecured creditors appointed in a debtor’s case under section 1102 of the Bankruptcy Code. *See, e.g., In re Dandy Doughboy Donuts, Inc.*, 66 B.R. 457, 458 (Bankr. S.D. Fla. 1986) (“The purpose of the separate list of 20 largest creditors required by this provision in the rules is to enable the [U.S. Trustee] to identify members and . . . to appoint immediately an unsecured creditors’ committee in compliance with 11 U.S.C. § 1102(a)(1).”); 9 *Collier on Bankruptcy* ¶ 1007.04 (16th ed. 2018) (“[T]he larger [unsecured creditor] list and information about the claims of the creditors on the list enables the United States Trustee to determine the different types of claims existing in order to assure that a fully representative committee is appointed.”).

12. The Debtors request authority to file the Consolidated Top 30 Creditor List in lieu of filing a top 20 unsecured creditor list for each Debtor. Notably, one of the primary purposes of filing a list of a debtor’s largest unsecured creditors is to facilitate the U.S. Trustee’s evaluation of the types and amounts of unsecured claims asserted against a debtor so that the U.S. Trustee can make an informed decision when identifying potential candidates to serve on an official committee of unsecured creditors. Because the Debtors’ significant unsecured creditors are captured on the Consolidated Top 30 Creditors List, it will provide the U.S. Trustee with a sufficiently clear picture of the Debtors’ unsecured creditor constituency and, in fact, will aid the U.S. Trustee in its efforts to communicate with these creditors.

13. In addition, the Consolidated Top 30 Creditors List will help alleviate administrative burdens, costs and the possibility of duplicative service because the exercise of compiling separate lists for each Debtor would unnecessarily consume the Debtors' and their advisors' limited time and resources. Accordingly, the Debtors submit that filing the Consolidated Top 30 Creditor List is necessary for the efficient and orderly administration of these Chapter 11 Cases, appropriate under the facts and circumstances present here, consistent with the applicable provisions of the Local Rules and in the best interests of the Debtors' estates.

C. The Debtors or KCC Should be Permitted to Complete All Mailings.

14. In lieu of effecting service through the Office of the Clerk of this Court, the Debtors also request that they or their proposed claims and noticing agent, Kurtzman Carson Consultants LLC ("KCC"), be approved and authorized to complete all mailings to creditors and equity holders in these cases, including notice of the commencement of these cases and notice of the meeting of creditors pursuant to section 341 of the Bankruptcy Code. Indeed, Local Rule 2002-1(f) requires the Debtors to file a motion for the retention of a claims and noticing agent because the Debtors have more than 200 creditors. Allowing the Debtors or KCC to complete their own mailings will save significant time, cost and expense.

D. Ample Cause Exists to Authorize the Debtors to File Certain Portions of the Creditor Matrix and Other Filings Under Seal.

15. Included among the Debtors' creditors are current and former employees and equity holders. The Debtors respectfully submit that it is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases, including Creditor Matrix, Consolidated Top 30 Creditors List, the list of equity holders attached to the Debtors' chapter 11 petitions (the "Equity Holders List") and the schedules of assets and liabilities and statements of financial affairs the home addresses of individuals — including the Debtors'

employees, former employees, and equity holders (the “Personal Identification Information”) because such information could be used to perpetrate identity theft or locate survivors of domestic violence, harassment, or stalking.

16. Section 107(c) of the Bankruptcy Code provides:

The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual’s property:

(A) Any means of identification (as defined in section 1028(d) of title 18 [of the United States Code]) contained in a paper filed, or to be filed, in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1).

17. Therefore, if a debtor can show that disclosure of any “means of identification,” or some “other information,” creates “undue risk of identity theft” or “other unlawful injury,” courts may intervene to curtail disclosure of that information. *Id.*

18. Here, the Debtors submit that the personal mailing addresses of their individual employees, former employees and equity holders fit squarely within section 1028(d)(7)(A) of Title 18 of the United States Code and that disclosure of such information would create an undue risk of identity theft contemplated by section 107(c) and (ii) would potentially cause other types of unlawful injury to these individuals, including potential future harassment from the Debtors’ creditors.

19. Moreover, as noted above, section 1028(d)(7)(A) contemplates as a “means of identification” any “name or number . . . used alone or in conjunction with any other information” to identify a specific individual. 18 U.S.C. § 1028(d)(7). A personal address is precisely that: a

combination of names and numbers used to identify a specific individual. Therefore, although not specifically enumerated, a personal address fits squarely within the types of “means of identification” set forth by section 1028(d)(7)(A).

20. Courts in this district agree that section 1028(d)(7) is not exhaustive and that personal mailing addresses are a means of identification. Most recently, the Court overruled the objection of the U.S. Trustee to a similar sealing motion, holding that “the combination of the names and addresses is a means of identification under 28 U.S.C. 1028(d)(7)(a)” and that “[t]he enumerating list in [1028(d)](7)(a) is not exclusive.” Hr’g Tr. 28:10–12, *In re Quorum Health Corp.*, No. 20-10766 (KBO) (Bankr. D. Del. May 6, 2020); see also Hr’g Tr. 24:15-20, *In re Clover Techs. Grp., LLC*, No. 19-12680 (KBO) (Bankr. D. Del. Jan. 22, 2020) [D.I. 146] (“As I have held before[,] I do find that names and/or addresses are a means of identification. The combination of a name and address to me is a means of identification under . . . 28 U.S.C. § 1028(d)(7).”); *In re THG Holdings LLC*, No. 19-11689 (JTD) (Bankr. D. Del. Aug. 22, 2019) [D.I. 180] (“And in terms of 1028(d) not including address[es], I agree. I think that’s an inclusive list. It wouldn’t seem to make much sense that I could order the names not to be disclosed, but the addresses had to be; that wouldn’t make any sense to me.”); *In re L.K. Bennett U.S.A., Inc.*, No. 19-10760 (KG) (Bankr. D. Del. Apr. 9, 2019) [D.I. 58] (“[I] do think that the list of matters to be considered personally identifiable is not exclusive”); *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. June 24, 2019) [D.I. 922] (noting that section 1028(d) specifically mentions a driver’s license, which lists the person’s home address, concluding that “[it] strikes me that section 107(c) does indeed protect this type of information”).

21. Accordingly, the Debtors respectfully submit that it is appropriate to authorize the Debtors to redact from any paper filed or to be filed with the Court in these Chapter 11 Cases the

Personal Identification Information of individuals, including the Debtors' employees, former employees and equity holders, because such information could be used to perpetrate identity theft or stalking. Indeed, the risk to individuals themselves is not merely speculative. In at least one recent chapter 11 case, the abusive former partner of a debtor's employee exploited the publicly accessible creditor and employee information filed in the chapter 11 case to track the employee at her new address that had not been publicly available until then, forcing the employee to change addresses again.³ The Debtors cannot reasonably know with sufficient certainty whether a release of individual creditors' and interest holders' personal information could potentially jeopardize their safety.

COMPLIANCE WITH LOCAL RULE 9018-1(d)

22. Under the circumstances and given the nature of the relief requested in this Motion, the Debtors are unable to confer with the individuals whose information is requested to be sealed. Accordingly, the Debtors submit that there is cause to excuse the Debtors from the meet and confer obligations under Local Rule 9018-1(d).

NOTICE

23. Notice of this Motion has been or 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's Office for the District of Delaware; (f) the state attorneys general in states where the Debtors are authorized to do business; (g) the Securities and Exchange Commission; and (h)

³ The incident, which took place during the first *Charming Charlie* chapter 11 proceedings in 2017, is described in the "creditor matrix motion" filed in *In re Charming Charlie Holdings, Inc.*, Case No. 19-11534 (CSS) (Bankr. D. Del. Jul. 11, 2019) [D.I. 4].

any party that has requested notice pursuant to Bankruptcy Rule 2002. 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.

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CONCLUSION

WHEREFORE, the Debtors request that the Court enter the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: July 17, 2023
Wilmington, Delaware

/s/ Derek C. Abbott

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

ORDER AUTHORIZING THE DEBTORS TO (A) FILE A CONSOLIDATED LIST OF CREDITORS IN LIEU OF SUBMITTING A SEPARATE MAILING MATRIX FOR EACH DEBTOR, (B) FILE A CONSOLIDATED LIST OF THE DEBTORS’ THIRTY LARGEST UNSECURED CREDITORS AND (C) TO FILE UNDER SEAL PORTIONS OF THE CREDITOR MATRIX AND OTHER FILINGS CONTAINING CERTAIN PERSONAL IDENTIFICATION INFORMATION

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an order (this “Order”) authorizing the Debtors to (a) file a single, consolidated Creditor Matrix in lieu of submitting a mailing matrix for each Debtor, (b) file a single Consolidated Top 30 Creditor List, all as further described in the Motion, and (c) file under seal portions of the Creditor Matrix and all other filings containing certain individual creditor information; and upon consideration of the First Day Declaration; 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

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² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion.

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 proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other or further notice need be provided; 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 (the "Hearing"); 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 after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth in this Order.
2. The Debtors are authorized to file a consolidated list of creditors in such a format as directed by the Clerk's Office Procedures; *provided, however* if any of these Chapter 11 Cases convert to a case under chapter 7 of the Bankruptcy Code, the applicable Debtor shall file its own creditor mailing matrix.
3. The Debtors are authorized to file the Consolidated Top 30 Creditor List in lieu of each Debtor filing a list of its 20 largest unsecured creditors.
4. The Debtors or their noticing and claims agent, KCC, are hereby authorized to complete all mailing in these Chapter 11 Cases which are required under the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules of this Court.
5. The Debtors are authorized to seal portions of (a) the consolidated creditor matrix, (b) the list of equity holders, (c) the schedules of assets and liabilities, (d) the statements of financial affairs, and (e) all other filings (each a "Sealed Filing") containing the address

information of the Debtors' individual creditors and interest holders, including employees, former employees and equity holders.

6. The Debtors and KCC are authorized to redact the Personal Identification Information from the claims register.

7. The Sealed Filings shall remain under seal and not be made available to anyone, except that copies shall be provided to this Court, the Office of the United States Trustee for the District of Delaware and others upon further Court order. Each party receiving an unredacted copy of the Sealed Filings shall keep such information confidential.

8. The claims and noticing agent in these Chapter 11 Cases shall maintain a separate, confidential mailing list for service to the Debtors' current and former employees and individual equity holders at their respective residences for the benefit of all parties in interest desiring to serve the Debtors' current and former employees and individual equity holders with pleadings or notices in these Chapter 11 Cases.

9. Notwithstanding any Bankruptcy Rule or Local Rule to the contrary, this Order shall be immediately effective and enforceable upon its entry.

10. The Debtors are hereby authorized to take all actions necessary to effectuate the relief granted in this Order.

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