

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)
)

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR EXISTING CASH
MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO, (C) MAINTAIN THEIR BANK ACCOUNTS AND EXISTING
BUSINESS FORMS, (D) IMPLEMENT CHANGES TO THE EXISTING CASH
MANAGEMENT SYSTEM AS NECESSARY, AND (E) CONTINUE ORDINARY
COURSE INTERCOMPANY TRANSACTIONS, (II) WAIVING THE REQUIREMENTS
OF 11 U.S.C. § 345(b) AND THE U.S. TRUSTEE’S OPERATING GUIDELINES,
AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (the “Debtors”), by and through their undersigned counsel, respectfully move (the “Motion”) as follows:

RELIEF REQUESTED

1. The Debtors respectfully seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order,” and together with the Interim Order, the “Proposed Orders”), (i) authorizing, but not directing, the Debtors to (a) continue their existing cash management system, (b) honor certain prepetition obligations related thereto, (c) maintain their existing bank accounts and business forms, (d) implement any changes to the existing cash management system as set forth in the Motion including, without limitation, opening new bank accounts or closing existing bank accounts, and (e) continue ordinary course Intercompany Transactions (as defined below); (ii) waiving the

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.



requirements of section 345(b) of the Bankruptcy Code and the operating guidelines (the “U.S. Trustee Guidelines”) established by the Office of the United States Trustee (the “U.S. Trustee”) on an interim basis; and (iii) granting any related relief that is necessary to carry out the foregoing, or is otherwise appropriate under the circumstances.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these chapter 11 cases and this Motion pursuant to 28 U.S.C. §§ 157 and 1334 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 title 11 of the United States Code (the “Bankruptcy Code”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 2015-2.

BACKGROUND

5. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions 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.

THE CASH MANAGEMENT SYSTEM

7. The Debtors maintain an integrated, centralized cash management system (the "Cash Management System") to collect, transfer, manage and disburse funds generated and used. The Cash Management System comprises eleven (11) bank accounts (collectively, the "Bank Accounts"), maintained at Silicon Valley Bank, PNC Bank, Stone Castle Management LLC, and Bank of America (collectively, the "Banks").

8. The Cash Management System is centrally managed by the Debtors out of the Debtors' principal offices in Durham, North Carolina and all funds in the Bank Accounts are denominated and held in U.S. Dollars. The Debtors maintain daily oversight of the Cash Management System and implement cash management controls for entering, processing, and releasing funds. Additionally, the Debtors regularly reconcile books and records to ensure that all transfers are accounted for properly.

I. The Bank Accounts

9. In early December 2022, EPI Health entered into an accounts receivable-backed factoring agreement (the "Factoring Agreement") with Bay View Funding, a wholly-owned subsidiary of Heritage Bank of Commerce ("Bay View"). Pursuant to the Factoring

Agreement, EPI Health sells certain trade accounts receivable to Bay View from time to time, with recourse. The factoring facility provides for EPI Health to have access to the lesser of (i) \$15.0 million, or (ii) the sum of all undisputed receivables purchased by Bay View multiplied by 70% (which percentages may be adjusted by Bay View in its sole discretion), less any reserved funds. Upon receipt of any advance, EPI Health will have sold and assigned all of its rights in such receivables and all proceeds thereof. EPI Health factors the accounts receivable on a recourse basis. The proceeds were used to fund general working capital needs. As payments from the Debtors customers are received, the revenue is deposited into that certain “lockbox” account held by the Debtors at Bank of America, account ending in 1379 (the “Lockbox Account”). Only Bay View is authorized to transfer funds from this account pursuant to a deposit account control agreement that was entered as part of the Factoring Agreement. The Lockbox Account has a balance of approximately \$130,000.00.

10. As of the Petition Date, approximately \$2.6 million of advances were outstanding under the Factoring Agreement. The Debtors believe that Bay View has been paid in full for the current loans under the Factoring Agreement and are in negotiations concerning an appropriate termination that should release the remaining cash to the Debtors’ estates. The Debtors will seek Court approval of such termination agreement at a later date.

11. The Cash Management System is operated primarily through one (1) Bank Account maintained by the Debtors at PNC Bank (the “PNC Operating Account”) and two (2) Bank Accounts at Silicon Valley Bank (the “SVB Operating Account,” and the “SVB EPI Health Operating Account,” together with the PNC Operating Account, the “Operating Accounts”).²

² As detailed below, the Debtors have other accounts at these institutions, but they are inactive.

12. In addition to the above accounts, the Debtors also use one (1) additional account at Silicon Valley Bank to allow the Debtors' payroll provider, Paycom Software, Inc., to draw upon the account to cover the costs associated with payroll (the "SVB Payroll Account"). This includes payments on behalf of the Debtors' 401(k) and employee and employer taxes. Further, the Debtors hold an investment account at Silicon Valley Bank that maintains excess funds invested in money market funds (the "SVB Investment Account"), in addition to a cash sweep account (the "SVB Sweep Account"). Finally, the Debtors hold one (1) bank account at PNC Bank which contains approximately \$590,000.00 that is used to support a letter of credit for a facility that is leased by the Debtors (the "PNC Leased Facility Account") and two (2) inactive accounts at PNC Bank. Both PNC Bank and Silicon Valley Bank are an authorized depository with the Office of the United States Trustee (the "U.S. Trustee").³ PNC Bank and Silicon Valley Bank are insured by the Federal Deposit Insurance Corporation ("FDIC").

13. The Debtors also maintain a FICA account managed by StoneCastle Management, LLC (the "FICA Account"). The FICA Account is an investment account that invests in various banking institutions.

14. A schedule of the Bank Accounts, including the last four digits of each Bank Account number, is attached as **Exhibit 1** to each of the Proposed Orders. The following table summarizes the nature and purposes of the Bank Accounts:

³ Although Silicon Valley Bank is not listed as an authorized depository, its assets were purchased in March 2023 by First Citizens Bank & Trust who is an authorized depository.

Bank Accounts	
Account(s)	Description of Account(s)
<p>PNC Operating Account</p> <p>Account ending in 0299.</p>	<p>The Debtors maintain the PNC Operating Account in the name of Novan, Inc., in which funds generated by the Debtors' operations are deposited and held. The PNC Operating Account disburses funds on account of the Debtors' operating expenses, accounts payable, and other obligations.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the PNC Operating Account is approximately \$3,090,000.00.</p>
<p>PNC - Inactive Accounts</p> <p>Account ending in 3407 and 3423.</p>	<p>These accounts were opened after the Silicon Valley Bank financial distress in March 2023 for the purposes of the Debtor potentially transitioning all banking relationships from Silicon Valley Bank. They were never operationalized, are inactive and not currently used.</p> <p>Status = Non-operational</p> <p>As of the Petition Date, the balance in the PNC Inactive Accounts is approximately \$0.00.</p>
<p>PNC -Leased Facility Account</p> <p>Account ending in 3374</p>	<p>The Debtors maintain the PNC Leased Facility Account at PNC Bank in the name of Novan, Inc. in which to support a letter of credit for a facility leased by the Debtors.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the PNC Leased Facility Account is approximately \$590,000.00.</p>
<p>SVB Operating Account</p> <p>Account ending in 7949.</p>	<p>The Debtors maintain the SVB Payroll Operating Account at Silicon Valley Bank in the name of Novan, Inc., in which funds generated by the Debtors' operations are deposited and held. The SVB Payroll Account disburses funds on account of the Debtors' operating expenses, accounts payable, and other obligations. The SVB Payroll Operating Account also disperses money into the SVB Payroll Account.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the SVB Operating Account is approximately \$28,000.00.</p>

<p>SVB EPI Health Operating Account</p> <p>Account ending in 9086</p>	<p>The Debtors maintain the Operating Account at Silicon Valley Bank in the name of Novan, Inc., in which funds generated by the Debtors' operations are deposited and held. The Operating Account disburses funds on account of the Debtors' operating expenses, accounts payable, and other obligations for EPI Health, LLC.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the SVB EPI Health Operating Account is approximately \$24,000.00.</p>
<p>SVB Payroll Account</p> <p>Account ending in 9616</p>	<p>The Debtors maintain the SVB Payroll Account at Silicon Valley Bank in the name of Novan, Inc., which is funded from cash from the SVB Payroll Operating Account. The SVB Payroll Account disperses funds to Paycom Software Inc. to cover the costs of payroll, employer and employee taxes, and 401(k) distributions to Fidelity Investments.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the SVB Payroll Account is approximately \$0.00.</p>
<p>SVB Investment Account</p> <p>Account ending in 9620.</p>	<p>An investment account where the Debtors maintains excess funds, as applicable, invested in Money Market Funds.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the SVB Investment Account is approximately \$26,000.00.</p>
<p>FICA Account</p> <p>Account ending in 1607</p>	<p>An investment account where the Debtors maintains excess funds, as applicable, which are effectively divided amongst various banking institutions for the purposes of having the entirety of the deposit balance FDIC insured (under \$250,000 per institution). The FICA Account is administered by StoneCastle Cash Management, LLC.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the FICA Account is approximately \$0.00.</p>
<p>SVB Sweep Account</p> <p>Account ending in 1484.</p>	<p>A sweep account which swept funds from operating accounts to cash investments, as applicable.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the SVB Sweep Account is approximately \$0.00.</p>

<p>BoA - Lockbox Account (EPI Health)</p> <p>Account ending in 1379.</p>	<p>This is a depository account for the Debtors commercial business. Customers remit payments to this account. As described above, as part of the Bay View Factoring Agreement, only Bay View is authorized to transfer funds from this account as a Deposit Account Control Agreement was entered as part of the execution of the Bay View Factoring Agreement.</p> <p>Status = Operational</p> <p>As of the Petition Date, the balance in the Lockbox Account is approximately \$130,000.00.</p>
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II. Service Charges

15. In the ordinary course of business, the Banks charge, and the Debtors pay, honor or allow deduction from the appropriate account, certain service charges, fees and other costs and expenses associated with maintaining the Bank Accounts in accordance with the applicable agreements or schedules of fees governing the Bank Accounts (collectively, the “Service Charges”), which historically have not exceeded approximately \$1,400.00 per month. The Debtors estimate that there are approximately \$1,338.33 of accrued but unpaid Service Charges outstanding as of the Petition Date, all of which will become due and owing during the first 21 days of these Chapter 11 Cases (the “Interim Period”). Accordingly, the Debtors request authority, but not direction, to honor and pay prepetition Services Charges in an amount not to exceed \$3,000.00.

III. Intercompany Transactions

16. In the ordinary course of business, the Debtors engage in routine business transactions (the “Intercompany Transactions”) related to funds flowing through the Operating Account. These Intercompany Transactions may result in intercompany receivables and payables (the “Intercompany Claims”). These Intercompany Transactions occur as part of the regular

business operations, and at any given time, there may be Intercompany Claims owing between the Debtors.

IV. Funds Flow within the Cash Management System

17. Historically, the Cash Management System generally facilitated the following primary cash management functions: (a) cash collection; (b) disbursements to fund the Debtors' operations; (c) disbursement of funds to the Payroll Account and (d) Intercompany Transactions. Receipts from the Debtors' capital contributions and other fundraising were historically collected into the Operating Accounts. In the ordinary course of business, the Operating Accounts fund the Debtors' disbursements on account of all operating expenses (such as vendor, utility, tax, and insurance obligations). Capital used to fund payroll obligations is then transferred from the PNC Operating Account into the Payroll Account.

18. Maintaining certain processes of the prepetition Cash Management System is critical to the Debtors' ability to continue operations and preserve the value of their businesses. Specifically, the Debtors intend to utilize their existing Cash Management System throughout these Chapter 11 Cases in the ordinary course of business and in accordance with historical practices. The existing Cash Management System is crucial for managing the Debtors' remaining business processes throughout these Chapter 11 Cases, including processing payroll and paying key parties in interest, such as critical vendors and utility providers, which is necessary to preserve and maximize the value of the Debtors' estates.

V. Existing Business Forms

19. As part of the Cash Management System, the Debtors utilize a variety of business forms in the ordinary course, including checks (the "Business Forms"). The Debtors do not typically print their own checks and instead rely on existing check stock from their Banks. To minimize expense and disruption, the Debtors seek authority to continue to use all Business Forms

in substantially the form used immediately before the Petition Date, without reference to the Debtors' status as debtors in possession. The Debtors will communicate with various vendors and counterparties to notify them of the commencement of these cases, which the Debtors believe will provide adequate notice of the Debtors' status as debtors in possession. In accordance with Local Rule 2015-2(a), to the extent the Debtors exhaust their existing supply of checks during these cases and require new checks, the Debtors will order checks with a notation indicating the designation "debtor in possession" and the case number of the applicable case.

BASIS FOR RELIEF

I. The Court should approve the Debtors' request to continue to utilize their Cash Management System, including authorizing continued use of existing Bank Accounts and implementing changes to the Cash Management System.

20. The U.S. Trustee Guidelines require debtors in possession to, among other things:

- a. establish one debtor in possession bank account for all estate monies required for the payment of taxes, including payroll taxes;
- b. close all existing bank accounts and open new debtor in possession accounts;
- c. maintain a separate debtor in possession account for cash collateral; and
- d. obtain checks that bear the designation "debtor in possession" and reference the bankruptcy case number and type of account on such checks.

21. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. Considering, however, that the Debtors' businesses are complex and their financial affairs require the disbursement and movement of funds through their Bank Accounts, enforcement of the

provisions of the U.S. Trustee Guidelines during these Chapter 11 Cases would severely disrupt and delay the Debtors' ability to continue their operations uninterrupted. Accordingly, the Debtors respectfully request that the Court allow them to operate each of their Bank Accounts as they were maintained in the ordinary course of business before the Petition Date.

22. Continuing the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." Additionally, courts in this and other districts have recognized that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts "would be a huge administrative burden and economically inefficient." *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (finding that a cash management system allows a debtor "to administer more efficiently and effectively its financial operations and assets").

23. Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively "simple matter." *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In *In re Charter Co.*, 778 F.2d 617 (11th Cir. 1985), for example, the bankruptcy court entered an order authorizing the debtor and certain of its subsidiaries "to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors." *Id.* at 620. The Eleventh Circuit Court of Appeals then affirmed a

subsequent district court decision denying a creditor's motion for leave to appeal the bankruptcy court's cash management order, holding that authorizing the debtors to utilize their prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code. *Id.* at 621. Indeed, in large chapter 11 cases, bankruptcy courts in this district routinely grant chapter 11 debtors similar authority to continue using existing cash management systems.

24. Here, the Debtors intend to utilize the Cash Management System in its current form, to the extent applicable, to continue uninterrupted operations and preserve the value of the business and the estates. Appropriate circumstances exist for the Court to authorize the Debtors' continued use of the Cash Management System and Bank Accounts. The Debtors have in place internal controls and procedures to prohibit payments on account of prepetition debts and to account for intercompany transactions within their Cash Management System and Bank Accounts. Decentralizing cash management and creating new bank accounts would unnecessarily complicate such controls and procedures. The Debtors will implement appropriate mechanisms to ensure that unauthorized payments will not be made on account of obligations incurred prior to the Petition Date. Specifically, with the assistance of their professionals and consistent with prior practice, the Debtors will continue to maintain detailed records of all transfers of cash, if any, and record all transactions on applicable accounts. In light of existing protective measures, the Debtors submit that maintaining the Cash Management System will benefit parties in interest and is in the best interests of the Debtors' estates and creditors.

25. Additionally, the relief requested in this Motion will help minimize any disruption in the Debtors' operations, and preserve the value of the Debtors' estates. Indeed, any disruptions in the Cash Management System could lead to delays in satisfying the Debtors'

financial obligations and meeting the demands of creditors. To avoid the potential erosion of value that could ensue from any such interruptions in the Debtors' satisfaction of expense obligations in the ordinary course of business, the Debtors believe it is imperative that it be authorized to continue to use the Cash Management System and the Bank Accounts as detailed above.

26. Strict adherence to the U.S. Trustee Guidelines would be burdensome to the Debtors and reduce efficiencies and cause unnecessary expense. The delays that would result from opening new accounts and revising cash management procedures would disrupt the Debtors' ability to continue operations uninterrupted and preserve the value of the estates, have little or no benefit to the Debtors' estates, and erode the value of the Debtors' estates to the detriment of all creditors.

27. For these reasons, the Debtors should be allowed to continue using the Cash Management System and Bank Accounts as detailed above.

28. The Debtors further request that the Court grant relief from the U.S. Trustee Guidelines to the extent they require the Debtors to make all disbursements by check. In particular, the U.S. Trustee Guidelines require that all receipts and all disbursements of estate funds must be made by check with a notation representing the reason for the disbursement. In the ordinary course, the Debtors conduct transactions through ACH, wire transfer and other similar methods. If the Debtors' ability to conduct transactions according to historical practice is impaired, the Debtors may be unable to timely perform under certain contracts, the Debtors could incur penalties and fines with taxing authorities, their business operations may be unnecessarily disrupted, and their estates will incur additional costs. Accordingly, the Debtors submit that they should be allowed to continue utilizing all existing payment methods.

II. The Court should authorize the Debtors to continue using existing Business Forms.

29. The U.S. Trustee Guidelines require debtors in possession to immediately obtain new checks printed with the designation “debtor in possession” and the corresponding number of the bankruptcy case. To avoid unnecessary expense and further disruption of the Cash Management System, the Debtors request authorization to continue to use their existing Business Forms substantially in the forms existing immediately before the Petition Date, without reference to their status as debtors in possession. The Debtors will communicate with the vendors and counterparties with whom the Debtors conduct business to notify them of the commencement of these cases, which the Debtors believe will provide adequate notice of the Debtors’ status as debtors in possession. Furthermore, in accordance with Local Rule 2015-2(a), to the extent the Debtors exhaust their existing supply of checks during this case and require new checks, the Debtors will order checks with a notation indicating the designation “debtor in possession” and the case number of the applicable case. In light of these steps, the Debtors submit that parties in interest will not be prejudiced if the Debtors are authorized to continue to use their Business Forms substantially in the form existing immediately before the Petition Date.

III. The Court should authorize the Debtors to continue Intercompany Transactions in the ordinary course.

30. Intercompany Transactions are made between and among the Debtors in the ordinary course as part of the Cash Management System.⁴ The Debtors track the Intercompany Transactions in their accounting system and can ascertain, trace, and account for the Intercompany Transactions. The Debtors respectfully submit that the continued performance of the Intercompany Transactions is in the best interest of the Debtors’ estates, and, therefore, the Debtors

⁴ The Debtors submit that the Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code and, thus, do not require the Court’s approval. Nonetheless, out of an abundance of caution, the Debtors seek authority to engage in such transactions on a postpetition basis.

should be permitted to continue performing such Intercompany Transactions for the limited purpose of funding the Operating Accounts and paying the business's ordinary course expenses and obligations.

IV. Cause exists for waiving the Deposit and Investment Guidelines of Section 345 of the Bankruptcy Code.

31. The Debtors request that the Court waive the requirements of section 345(b) of the Bankruptcy Code on an interim basis and permit the Debtors to maintain their deposits in the Bank Accounts in accordance with their existing deposit practices until such time as the Debtors obtain Court approval to deviate from the guidelines imposed under section 345(b) of the Bankruptcy Code on a final basis, to the extent necessary.

32. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of the money of the estate, such as cash, as will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). While section 345(a) requires that with respect to deposits and investments that are not “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” the estate must require a bond in favor of the United States secured by the undertaking of a U.S. Trustee-approved corporate surety, section 345(b) permits the court to dispense with this undertaking “for cause.” 11 U.S.C. § 345(b); *see also In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (quoting the 1994 amendments to the Bankruptcy Code which explained that the new amendments to the Code would allow the courts to approve investments other than those permitted by section 345(b) for just cause).

33. In *Service Merchandise*, the court identified the following factors for determining whether cause to waive the requirements of section 345(b) exists: (i) the

sophistication of the debtor's business; (ii) the size of the debtor's business operations; (iii) the amount of investments involved; (iv) the bank ratings of the financial institutions where the debtor's funds are held; (v) the complexity of the case; (vi) the safeguards in place within the debtor's own business for insuring the safety of the funds; (vii) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions; (viii) the benefit to the debtor of current practices; (ix) the harm, if any, to the estate; and (x) the reasonableness of the debtor's request for relief from the section 345(b) requirements in light of the overall circumstances of the case. *Serv. Merch.*, 240 B.R. at 896–97.

34. The Debtors submit that cause exists to waive the requirements of section 345(b) of the Bankruptcy Code because the Debtors are sophisticated entities with a complex Cash Management System that rely on the Bank Accounts on a daily basis. The Banks which hold the Debtors' material bank accounts are insured by the FDIC and, thus, the Debtors' funds in those accounts are safe (up to applicable FDIC limits). Furthermore, in light of the regular deposits to, and disbursements from, the various Bank Accounts, it would be especially disruptive, unnecessary, and wasteful to require the posting of a bond to the extent that the balance of the Bank Accounts exceed the applicable FDIC insurance limits at a given time.

35. Nonetheless, the Debtors propose to engage with the U.S. Trustee to determine what modifications, if any, to the Bank Accounts and Cash Management System would be appropriate under the circumstances. Accordingly, the Debtors request, pursuant to Local Rule 2015-2(b), a waiver of the requirements of section 345(b) of the Bankruptcy Code on an interim basis to permit them to confer with the U.S. Trustee regarding their compliance with section 345(b) of the Bankruptcy Code or to make other arrangements that would be acceptable to the U.S. Trustee.

36. This Court and other courts have granted requests to approve the use of deposit practices that do not strictly comply with section 345(b) of the Bankruptcy Code. *See, e.g., In-Shape Holdings, LLC*, Case No. 20-13130 (LSS) (Bankr. D. Del. Dec., 18, 2020 and Jan. 15, 2021 (granting interim and final relief); *Libbey Glass Inc.*, Case No. 20-11439 (LSS) Bankr. D. Del. June 2, 2020 and July 1, 2020) (same); *In re New MACH Gen, LLC*, Case No. 18-11368 (MFW) (Bankr. D. Del. June 12, 2018 and July 2, 2018) (same); *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018 and Apr. 17, 2018) (same); *In re Rentech WP U.S. Inc.*, Case No. 17- 12958 (CSS) (Bankr. D. Del. Dec. 20, 2017 and Jan. 17, 2018) (same); *In re Aerogroup Int'l, Inc.*, Case No. 17-11962 (KJC) (Bankr. D. Del. Sept. 18, 2017 and Oct. 16, 2017) (same); *In re TK Holdings Inc.*, Case No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2016, July 26, 2017, Aug. 9, 2017, Aug. 30, 2017, and Sept. 12, 2017) (granting various interim orders and final relief).

37. In light of the above, the Debtors respectfully request that this Court exercise its discretion to waive the requirements of section 345(b) of the Bankruptcy Code, on an interim basis, to the extent that such requirements are inconsistent with the Debtors' Cash Management System. The Debtors submit that the circumstances of these chapter 11 cases warrant such relief.

V. The Court should authorize the Banks to continue to maintain, service and administer the Debtors' Bank Accounts in the ordinary course.

38. The Debtors submit that parties in interest will not be prejudiced or injured by the Debtors' maintenance of their Bank Accounts in the ordinary course of business. As discussed above, the Debtors strongly believe that replacing the Bank Accounts with new accounts pursuant to the U.S. Trustee Guidelines would fruitlessly disrupt their operations and derail the Debtors' efforts to preserve and maximize the value of their estates.

39. To further implement continued use of their Cash Management System and Bank Accounts, the Debtors respectfully request that the Court authorize and direct the Banks to:

(i) continue to maintain, service and administer the Bank Accounts as accounts of the Debtors as debtors in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank Accounts; provided, however, that any check, draft or other notification that the Debtors advise the Banks to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Banks only to the extent authorized by order of the Court; (iii) accept and honor all representations from the Debtors as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Accounts for all undisputed Service Charges, whether arising before, on or after the Petition Date.

40. In addition, to protect the Banks, the Debtors also request that, to the extent the Banks honor a prepetition check or other item drawn on any account that is the subject of the Motion: (a) at the direction of the Debtors; or (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, the Banks will not be deemed to be liable to the Debtors or to their estate on account of such prepetition check or other item honored postpetition. The Debtors respectfully submit that such relief is reasonable and appropriate because the Banks

are not in a position to independently verify or audit whether a particular item may be paid in accordance with a Court order or otherwise.

41. The Debtors represent that if the relief requested herein is granted, they will implement appropriate mechanisms to ensure that no payments will be made on account of debts incurred before the Petition Date (other than those authorized by the Court). To prevent the inadvertent, unauthorized payment of prepetition claims, the Debtors will work closely with the Banks to ensure that appropriate procedures are in place to prevent checks that were issued prepetition from being honored without Court approval.

VI. The Court should authorize the payment of all undisputed Service Charges.

42. Payment of the prepetition Service Charges is in the best interests of the Debtors and all parties in interest in these Chapter 11 Cases, as it will prevent unnecessary disruptions to the Cash Management System and ensure that the Debtors' receipt of funds is not delayed. Payment of prepetition Service Charges will not prejudice any parties in interest. Indeed, because the Banks likely have setoff rights for the Service Charges, payment of prepetition Service Charges should not alter the rights of unsecured creditors in these Chapter 11 Cases. Even if such Service Charges were unsecured in whole or part, the Service Charges are *de minimis* and the cost of any disruption or delay in being able to accept, process and receive credit card payments, or being able to utilize the Cash Management System far outweighs the cost of paying the Service Charges. Thus, payment of the Service Charges is justified under the "doctrine of necessity."

43. Accordingly, the Debtors request authority, but not direction, to honor and pay all undisputed Service Charges, including prepetition Service Charges in an amount not to exceed \$3,000.00, and to allow the Banks to debit, charge or deduct, as applicable, such undisputed amounts in the ordinary course without interruption or delay.

SATISFACTION OF BANKRUPTCY RULE 6003

44. Bankruptcy Rule 6003 empowers the Court to issue an order, within 21 days after the Petition Date, granting a motion to “use . . . property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” if such requested relief “is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003(b). For the reasons discussed above, entry of an interim order granting this Motion is integral to the Debtors’ ability to successfully transition into chapter 11. As described above, any disruption to the Cash Management System could subject the Debtors to significant disruption in or a potential cessation of the Debtors’ business, and loss of the value of the Debtors’ assets, thereby causing immediate and irreparable harm to the Debtors’ estates and, consequently, other interested parties. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

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

45. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to continue their business operations without interruption and to preserve value for the estate. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

46. To implement the foregoing immediately, the Debtors respectfully request a waiver of the notice requirements of Bankruptcy Rule 6004(a) to the extent they are deemed to apply.

RESERVATION OF RIGHTS

47. Nothing contained herein or in the Proposed Orders is intended or shall be construed as: (i) an admission as to the validity, amount or priority of any claim against the Debtors; (ii) a waiver of the Debtors' rights to dispute any claim; (iii) a promise or requirement to pay any claim; (iv) a waiver of any claim or cause of action of the Debtors that exists against any entity; (v) a ratification or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (vi) a waiver of limitation of the Debtors' rights under the Bankruptcy Code, any other applicable law, or any agreement; or (vii) an admission or concession by the Debtors that any lien acknowledged or satisfied under this Motion is valid, and the Debtors expressly reserve and preserve their rights to contest the extent, validity, or perfection, or seek avoidance of, any such lien.

NOTICE

48. Notice of this Motion will be provided to: (a) the Office of the United States Trustee (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.com)); (b) counsel to the Debtors' proposed debtor in possession financing lender; (c) the Internal Revenue Service; (d) Silicon Valley Bank; (e) PNC Bank; (f) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (g) the United States Attorney's Office for the District of Delaware; (h) the state attorneys general in states where the Debtors are authorized to do business; (i) the Securities and Exchange Commission; and (j) 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.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court: (i) enter the Interim Order, substantially in the form attached hereto as **Exhibit A** granting the relief requested in this Motion, including scheduling a final hearing on this Motion; (ii) thereafter enter the Final Order substantially in the form attached hereto as **Exhibit B**; and (iii) grant such other and further relief as the Court may deem proper.

Dated: July 17, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Derek C. Abbott

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Interim Order

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

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

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR
EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN
PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN THEIR
BANK ACCOUNTS AND EXISTING BUSINESS FORMS, (D) IMPLEMENT
CHANGES TO THE EXISTING CASH MANAGEMENT SYSTEM AS
NECESSARY, AND (E) CONTINUE ORDINARY COURSE INTERCOMPANY
TRANSACTIONS, (II) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)
AND THE U.S. TRUSTEE’S OPERATING GUIDELINES,
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an interim order (this “Order”) pursuant to sections 105(a), 345(b) and 363(c)(1) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Rule 9013-l(m): (i) authorizing, but not directing, the Debtors to (a) continue to operate their existing cash management system, (b) honor certain prepetition obligations related thereto, (c) maintain their existing bank accounts and business forms, (d) implement any changes to the existing cash

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.

² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion or in the Interim or Final *Order (I) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Lender Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (“the “DIP Order”), whichever is then in effect.

management system as set forth in the Motion, including, without limitation, opening new bank accounts or closing existing bank accounts, and (e) continue ordinary course Intercompany Transactions; (ii) waiving the requirements of section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines on an interim basis; and (iii) granting any related relief, all as more fully described in the Motion; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2023, at __:00 .m. (EST). Any objections or responses to entry of a final order on the Motion (each, an "Objection") shall be filed on or before **4:00 p.m. (EST) on _____, 2023**, and served on the following parties: (i) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisonichols.com)); (ii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, DE 19801 (Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov)); (iii) counsel to Ligand Pharmaceuticals, Incorporated (the "DIP Lender"), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com) Jason R. Alderson (Jason.alderson@morganlewis.com, and David K. Shim (David.shim@morganlewis.com)); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases. In the event no

Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed to, continue to use the Cash Management System, including the Bank Accounts, in the ordinary course and to implement any changes to the Cash Management System subject to the limitations set forth in this Interim Order.

4. The Debtors are authorized, but not directed to: (i) continue to use, with the same account numbers, the Bank Accounts in existence on the Petition Date and need not comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Operating Guidelines, including, without limitation, the requirement to establish separate accounts for cash collateral and/or tax payments; (ii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (iii) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including, without limitation, by check, wire transfer and other methods; (iv) pay the Service Charges, including, without limitation, any undisputed Service Charges regardless of whether such Service Charge arose before, on or after the Petition Date; and (v) otherwise perform their obligations under the documents governing the Bank Accounts.

5. The Debtors are authorized, but not directed, to honor and pay all undisputed prepetition Service Charges in an amount not to exceed \$1,400.00 and the Banks are hereby authorized to debit, charge or deduct, as applicable, such undisputed amounts in the ordinary course of business.

6. The Debtors are authorized to use, in their present form, all Business Forms and other documents related to the Bank Accounts, without reference to their status as debtors in possession, provided, however, that if the Debtors exhaust their existing check stock during the

pendency of these chapter 11 cases, the Debtors will order checks with a notation indicating the designation “debtor in possession” and the case number of the applicable case.

7. The Debtors are authorized to open new bank accounts or close any Bank Accounts without further order of this Court; provided that in the event that the Debtors open any bank accounts or close any existing Bank Accounts, the Debtors shall provide no less than one (1) business day prior notice to counsel to the DIP Lender (as defined in the DIP Order) which shall be provided through electronic mail and set forth details of such opening or closing of any bank accounts, and, such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committees appointed in these Chapter 11 Cases within 15 days; provided further that, to the extent the Debtors open a new bank account, the Debtors shall open such new bank account(s) at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at a bank that is willing to immediately execute such an agreement; provided further that any such new bank accounts opened by the Debtors shall be subject to the terms of this Interim Order.

8. Except as otherwise expressly provided in this Order, the Banks are authorized to: (i) continue to maintain, service and administer the Bank Accounts as accounts of the Debtors as debtors in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor and pay, to the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank Accounts; provided, however, that any check, draft or other notification that the Debtors advise a Bank to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Bank only to the extent authorized by order of the Court; (iii) accept and honor all representations

from the Debtors as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Accounts for all undisputed Service Charges, whether arising before, on or after the Petition Date.

9. Subject to the terms of this Order, the Banks may rely upon the representations of the Debtors with respect to whether any disbursement should be honored pursuant to any order of this Court, whether or not such disbursements are dated before, on or after the Petition Date, and no Bank that honors a prepetition disbursement that is the subject of this Order (i) at the direction of the Debtors or (ii) in the good-faith belief that this Court has authorized such disbursement to be honored shall or shall be deemed to have any liability to the Debtors or their estates on account of such disbursement being honored postpetition, or otherwise be deemed to be in violation of this Order.

10. The Debtors are authorized but not directed to continue performing Intercompany Transactions in the ordinary course of business during the Interim Period, consistent with historical practices; provided that (i) any Intercompany Transactions or other transfer from any Debtor to a non-Debtor affiliate shall be in accordance with the terms and conditions of the DIP Facility (as defined in the DIP Order), including the Initial DIP Budget and Approved Budget (as defined in the DIP Order), and the requirements of the DIP Order, and (ii) any claim arising on account of the Intercompany Transactions shall be subject to the terms and conditions of the DIP Order; provided further that the Debtors shall not be authorized by this Interim Order to undertake

any Intercompany Transactions that are not on terms materially consistent with the Debtors' operation of their business in the ordinary course during the prepetition period.

11. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain records with respect to all transfers of cash in the ordinary course so that all transactions (including Intercompany Transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions and shall make such records available to the U.S. Trustee or the DIP Lender upon request.

12. For Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within 3 business days of the date of entry of this Order, the Debtors shall (i) contact each Bank, (ii) provide the Bank with the Debtors' employer identification number, and (iii) identify each Bank Account held at such Banks as being held by a debtor in possession in a bankruptcy case. The Debtors' time to comply with section 345(b) of the Bankruptcy Code is hereby extended for a period of forty-five days from the date of this Interim Order (the "Extension Period"), provided that such extension is without prejudice to the Debtors' right to request a further extension of the Extension Period or a final waiver of the requirements under section 345(b) of the Bankruptcy Code, including at the final hearing.

13. As soon as practicable after entry of this Order, the Debtors shall serve a copy of this Order on the Banks.

14. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

15. The requirements of Bankruptcy Rule 6003(b) have been satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

16. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

17. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

18. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Exhibit 1

Debtors' Bank Accounts

Account Holder	Bank Name	Last Four Digits of Account #	Account Type/Purpose
Novan, Inc.	Silicon Valley Bank	7949	Operating Account
Novan, Inc.	Silicon Valley Bank	9620	Investment Account
Novan, Inc.	Silicon Valley Bank	9086	Operating Account
Novan, Inc.	Silicon Valley Bank	1484	Sweep Account
Novan, Inc.	Silicon Valley Bank	9616	Payroll Account
Novan, Inc.	PNC Bank	0299	Operating Account
Novan, Inc.	PNC Bank	3407	Inactive Account
Novan, Inc.	PNC Bank	3423	Inactive Account
Novan, Inc.	PNC Bank	3374	Leased Facility Account
Novan, Inc.	StoneCastle Cash Management LLC	1607	FICA Account
Novan, Inc.	Bank of America	1379	Lockbox Account

Exhibit B

Proposed Final Order

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

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

**FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR
EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN
PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN THEIR
BANK ACCOUNTS AND EXISTING BUSINESS FORMS, (D) IMPLEMENT
CHANGES TO THE EXISTING CASH MANAGEMENT SYSTEM AS
NECESSARY, AND (E) CONTINUE ORDINARY COURSE INTERCOMPANY
TRANSACTIONS, (II) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)
AND THE U.S. TRUSTEE’S OPERATING GUIDELINES,
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an interim order (the “Interim Order”) and a final order (this “Final Order”) pursuant to sections 105(a), 345(b) and 363(c)(1) of the Bankruptcy Code, Bankruptcy Rules 2015, 6003 and 6004(h) and Local Rules 2015-2 and 9013-1(m): (i) authorizing, but not directing, the Debtors to (a) continue to operate their existing cash management system, (b) honor certain prepetition obligations related thereto, (c) maintain their existing bank accounts and business forms, (d) implement any changes to the existing cash management system as set forth in the Motion, including, without limitation, opening new bank accounts or closing existing

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.

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

bank accounts, and (e) continue ordinary course Intercompany Transactions; (ii) waiving the requirements of section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines on an interim basis; and (iii) granting related relief, all as more fully described in the Motion; and the Court having previously entered the Interim Order; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed to, continue to use the Cash Management System, including the Bank Accounts, in the ordinary course and to implement any changes to the Cash Management System subject to the limitations set forth in this Final Order.
3. The Debtors are further authorized but not directed to: (i) continue to use, with the same account numbers, the Bank Accounts in existence on the Petition Date, and need not comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Operating Guidelines, including, without limitation, the requirement to establish separate accounts for cash collateral and/or tax payments; (ii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (iii) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including, without limitation, by check, wire transfer and other methods; (iv) pay the Service Charges, including, without limitation, any undisputed Service Charges regardless of whether such Service Charge arose before, on or after the Petition Date; and (v) otherwise perform their obligations under the documents governing the Bank Accounts.

4. The Debtors are authorized, but not directed, to honor and pay all undisputed prepetition Service Charges in an amount not to exceed \$1,400.00, and the Banks are hereby authorized to debit, charge or deduct, as applicable, such undisputed amounts in the ordinary course of business.

5. The Debtors are authorized to use, in their present form, all Business Forms and other documents related to the Bank Accounts, without reference to their status as debtors in possession, provided, however, that if the Debtors exhaust their existing check stock during the pendency of these Chapter 11 Cases, the Debtors will order checks with a notation indicating the designation “debtor in possession” and the case number of this case.

6. The Debtors are authorized to open new bank accounts or close any Bank Accounts without further order of this Court; provided in the event that the Debtors open any bank accounts or close any existing Bank Accounts, the Debtors shall provide no less than one (1) business day prior notice to counsel to the DIP Lender (as defined in the DIP Order) which shall be provided through electronic mail and set forth details of such opening or closing of any bank accounts, and such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committees appointed in these Chapter 11 Cases within 15 days; provided further that, to the extent the Debtors open a new bank account, the Debtors shall open such new bank account(s) at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at a bank that is willing to immediately execute such an agreement; provided further that any such new bank accounts opened by the Debtors shall be subject to the terms of this Final Order

7. Except as otherwise expressly provided in this Final Order, the Banks are authorized to: (i) continue to maintain, service and administer the Bank Accounts as accounts of

the Debtors as debtors in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor and pay, to the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank Accounts; provided, however, that any check, draft or other notification that the Debtors advise a Bank to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Bank only to the extent authorized by order of the Court; (iii) accept and honor all representations from the Debtors as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Accounts for all undisputed Service Charges, whether arising before, on or after the Petition Date.

8. Subject to the terms of this Order, the Banks may rely upon the representations of the Debtors with respect to whether any disbursement should be honored pursuant to any order of this Court, whether or not such disbursements are dated before, on or after the Petition Date, and no Bank that honors a prepetition disbursement that is the subject of this Order (i) at the direction of the Debtors or (ii) in the good-faith belief that this Court has authorized such disbursement to be honored shall or shall be deemed to have any liability to the Debtors or their estates on account of such disbursement being honored postpetition, or otherwise be deemed to be in violation of this Order.

9. The Debtors are authorized, but not directed, to continue performing Intercompany Transactions in the ordinary course of business, consistent with historical practices;

provided that (i) any Intercompany Transactions or other transfer from any Debtor to a non-Debtor affiliate shall be in accordance with the terms and conditions of the DIP Facility (as defined in the DIP Order), including the Initial DIP Budget and Approved Budget (as defined in the DIP Order), and the requirements of the DIP Order, and (ii) any claim arising on account of the Intercompany Transactions shall be subject to the terms and conditions of the DIP Order; provided further that the Debtors shall not be authorized by this Final Order to undertake any Intercompany Transactions that are not on terms materially consistent with the Debtors' operation of their business in the ordinary course during the prepetition period.

10. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain records with respect to all transfers of cash in the ordinary course so that all transactions (including Intercompany Transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions and shall make such records available to the U.S. Trustee upon request.

11. As soon as practicable after entry of this Final Order, the Debtors shall serve a copy of this Final Order on the Banks.

12. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

13. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be effective and enforceable immediately upon its entry.

14. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.

Exhibit 1
Debtors' Bank Accounts

Account Holder	Bank Name	Last Four Digits of Account #	Account Type/Purpose
Novan, Inc.	Silicon Valley Bank	7949	Operating Account
Novan, Inc.	Silicon Valley Bank	9620	Investment Account
Novan, Inc.	Silicon Valley Bank	9086	Operating Account
Novan, Inc.	Silicon Valley Bank	1484	Sweep Account
Novan, Inc.	Silicon Valley Bank	9616	Payroll Account
Novan, Inc.	PNC Bank	0299	Operating Account
Novan, Inc.	PNC Bank	3407	Inactive Account
Novan, Inc.	PNC Bank	3423	Inactive Account
Novan, Inc.	PNC Bank	3374	Leased Facility Account
Novan, Inc.	StoneCastle Cash Management LLC	1607	FICA Account
Novan, Inc.	Bank of America	1379	Lockbox Account