

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)  
 )  
 ) **Re: D.I. 5**  
 )

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

PLEASE TAKE NOTICE that on July 17, 2023, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *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* (D.I. 5) (the “Application”).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit A** is a revised proposed order granting the relief requested in the Application (the “Revised Proposed Order”). The Revised Proposed Order incorporates comments from the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

PLEASE TAKE FURTHER NOTICE that attached hereto as **Exhibit B** is a redline comparing the Revised Proposed Order against the form of order attached to the Application.

PLEASE TAKE FURTHER NOTICE that the Debtors will present the Revised Proposed Order at the First Day Hearing scheduled on **July 19, 2023, at 2:00 p.m. (ET)**.

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



Dated: July 19, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Scott D. Jones

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*Proposed Counsel to the Debtors and Debtors in  
Possession*

**Exhibit A**  
Revised 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 5</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 has been provided in

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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.

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, including paragraph IX.B., 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 B**

Redline of 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)
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	)	<b>Re: D.I <u>5</u></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

<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, [including paragraph IX.B.](#), 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.

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- (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.

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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.

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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.