

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. 11**  
 )

**CERTIFICATION OF COUNSEL REGARDING INTERIM ORDER AUTHORIZING DEBTORS TO (I) CONTINUE THEIR INSURANCE PROGRAM, (II) PAY ALL PREPETITION AND POSTPETITION OBLIGATIONS WITH RESPECT THERETO, (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH INSURANCE OBLIGATIONS**

The undersigned counsel to the above-captioned debtors and debtors in possession (the “Debtors”) hereby certifies as follows:

1. On July 17, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
2. On the Petition Date, the Debtors also filed the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations With Respect Thereto; (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations* (the “Motion”) (D.I. 11). Attached to the Motion as Exhibit A was a proposed form of interim order (the “Proposed Interim Order”).
3. On July 19, 2023, the United States Bankruptcy Court for the District of

<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.



Delaware (the “Court”) held a First Day Hearing to consider, among other things, the Motion. At the First Day Hearing, the Court provided comments to the Proposed Interim Order. That same day, the Proposed Interim Order was inadvertently uploaded and entered by the Court.

4. The Debtors have revised the Proposed Interim Order (the “Revised Proposed Interim Order”) to resolve the comments received from the Court. A copy of the Revised Proposed Interim Order is attached as **Exhibit A**.

5. Attached as **Exhibit B** is a blackline of the Revised Proposed Interim Order marking the changes to the Proposed Interim Order.

*[Remainder of page left intentionally blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Proposed Interim Order attached as **Exhibit A** at the Court's earliest convenience.

Dated: July 20, 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. 23-10397 (LSS)
Debtors.	)	
	)	(Joint Administration Requested)
	)	
	)	<b>Re: D.I 11</b>
	)	

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**INTERIM ORDER AUTHORIZING DEBTORS TO (I) CONTINUE THEIR  
INSURANCE PROGRAM, (II) PAY ALL PREPETITION AND POSTPETITION  
OBLIGATIONS WITH RESPECT THERETO, (III) AUTHORIZING BANKS TO  
HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH  
INSURANCE OBLIGATIONS**

Upon the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations With Respect Thereto; (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations* (the “Motion”),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing, but not directing, the Debtors to (i) continue their insurance program and honor prepetition and postpetition obligations with respect thereto; and (ii) renew, supplement, modify, extend, terminate, or purchase insurance coverage (including “tail” insurance

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein 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.

policies) in the ordinary course of business, as necessary; (b) authorizing and directing applicable banks and financial institutions to honor and process checks and transfers related to such insurance obligations; and (c) granting related relief, all as further described in the Motion, and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b), (iv) venue of the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Interim Order, and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth therein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on **August 21, 2023, at 10:00 a.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 August 3, 2023**, and served on the following parties: (i) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell

LLP, 1201 Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.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 required, to pay all prepetition Insurance Obligations in connection with the Insurance Program and those Insurance Obligations that were due and payable as of the Petition Date, or will become due and payable in the ordinary course of business, subject to an aggregate maximum of \$80,000.00 on an interim basis, provided that that any payment made by the Debtors pursuant to the authority granted herein shall be in accordance with the terms and conditions of the DIP Facility, including the Initial DIP Budget and Approved Budget.

4. The Debtors are authorized, but not directed, after consulting with the DIP Lender to maintain the Insurance Program without interruption on the same basis and to the extent consistent with their practices and procedures that were in effect prior to the Petition Date and to modify, renew, and enter into new arrangements consistent therewith, including through obtaining “tail” coverage, in the ordinary course of business.

5. Except as set forth in this Interim Order, without further order of this Court, the Debtors are authorized, but not directed, after consulting with the DIP Lender, to honor their Insurance Obligations under the Insurance Program and to renew the existing Commercial Insurance Policies or enter into new arrangements in the ordinary course of business, as may be required as the annual terms of existing arrangements expire.

6. Except as set forth in this Interim Order, without further order of this Court, the Debtors are authorized, but not directed, after consulting with the DIP Lender, to amend, supplement, change, or enter into new broker retention agreements in connection with the Insurance Programs and to pay any Broker Fees, whether incurred or due and payable before or after the Petition Date, in the ordinary course of business.

7. The Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks and fund transfers on account of the Insurance Obligations that had not been honored and paid as of the Petition Date, *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are authorized to rely on the representations of the Debtors as to which checks and fund transfers are authorized to be honored and paid pursuant to this Interim Order.

8. This Interim Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Insurance Obligations on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

9. To the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Interim Order nor any payments made in accordance with this Interim Order shall constitute



the postpetition assumption of any such Insurance Program or any related contract or agreement pursuant to section 365 of the Bankruptcy Code.

10. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor it is intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

11. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

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

13. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Interim 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. 23-10397 (LSS)
Debtors.	)
	) (Joint Administration Requested)
	)
	) <b>Re: D.I <u>11</u></b>
	)

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**INTERIM ORDER AUTHORIZING DEBTORS TO (I) CONTINUE THEIR INSURANCE PROGRAM, (II) PAY ALL PREPETITION AND POSTPETITION OBLIGATIONS WITH RESPECT THERETO, (III) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH INSURANCE OBLIGATIONS**

Upon the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations With Respect Thereto; (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations* (the “Motion”),<sup>2</sup> filed by the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing, but not directing, the Debtors to (i) continue their insurance program and honor prepetition and postpetition obligations with respect thereto; and (ii) renew,

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein 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.

supplement, modify, extend, terminate, or purchase insurance coverage (including “tail” insurance policies) in the ordinary course of business, as necessary; (b) authorizing and directing applicable banks and financial institutions to honor and process checks and transfers related to such insurance obligations; and (c) granting related relief, all as further described in the Motion, and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b), (iv) venue of the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Interim Order, and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and after due deliberation, sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis, as set forth therein.
2. The final hearing (the “Final Hearing”) on the Motion shall be held on August 21, 2023, at ~~—:00~~ 10:00 a.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 ~~\_\_\_\_\_~~ August 3, 2023, and served on the following parties: (i) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> 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 required, to pay all prepetition Insurance Obligations in connection with the Insurance Program and those Insurance Obligations that were due and payable as of the Petition Date, or will become due and payable in the ordinary course of business, subject to an aggregate maximum of \$80,000.00 on an interim basis, provided that that any payment made by the Debtors pursuant to the authority granted herein shall be in accordance with the terms and conditions of the DIP Facility, including the Initial DIP Budget and Approved Budget, ~~and the requirements of the DIP Order and any other or subsequent orders approving debtor in possession financing or use of cash collateral by this Court in these Chapter 11 Cases.~~

4. The Debtors are authorized, but not directed, after consulting with the DIP Lender to maintain the Insurance Program without interruption on the same basis and to the extent consistent with their practices and procedures that were in effect prior to the Petition Date and to

modify, renew, and enter into new arrangements consistent therewith, including through obtaining “tail” coverage, in the ordinary course of business.

5. Except as set forth in this Interim Order, without further order of this Court, the Debtors are authorized, but not directed, after consulting with the DIP Lender, to honor their Insurance Obligations under the Insurance Program and to renew the existing Commercial Insurance Policies or enter into new arrangements in the ordinary course of business, as may be required as the annual terms of existing arrangements expire.

6. Except as set forth in this Interim Order, without further order of this Court, the Debtors are authorized, but not directed, after consulting with the DIP Lender, to amend, supplement, change, or enter into new broker retention agreements in connection with the Insurance Programs and to pay any Broker Fees, whether incurred or due and payable before or after the Petition Date, in the ordinary course of business.

7. The Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks and fund transfers on account of the Insurance Obligations that had not been honored and paid as of the Petition Date, *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are authorized to rely on the representations of the Debtors as to which checks and fund transfers are authorized to be honored and paid pursuant to this Interim Order.

8. This Interim Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Insurance Obligations on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

9. To the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Interim Order nor any payments made in accordance with this Interim Order shall constitute the postpetition assumption of any such Insurance Program or any related contract or agreement pursuant to section 365 of the Bankruptcy Code.

10. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor it is intended to constitute: (a) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission to the validity, priority, enforceability, or perfection of any lien on, security interest in, or encumbrance on property of the Debtors' estates; or (g) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

11. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

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



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