

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)
)
) **Re: D.I. 8**
)

**CERTIFICATION OF COUNSEL REGARDING INTERIM ORDER (I)
AUTHORIZING DEBTORS TO (A) PAY CERTAIN PREPETITION EMPLOYMENT
OBLIGATIONS AND (B) MAINTAIN EMPLOYEE BENEFITS PROGRAMS AND
(II) GRANTING RELATED RELIEF**

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. Also on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Certain Prepetition Employment Obligations and (B) Maintain Employee Benefits Programs and (II) Granting Related Relief* (the “Motion”) (D.I. 8). Attached to the Motion as Exhibit A was a proposed form of interim order (the “Proposed Interim Order”).
3. Prior to the first day hearing in these cases, the Debtors received informal comments on the Motion from the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”).

¹ 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.



4. On July 19, 2023, at 2:00 p.m. (ET), the United States Bankruptcy Court for the District of Delaware (the “Court”) held the first day hearing (the “First Day Hearing”) to consider, among other things, the Motion. At the First Day Hearing, counsel for the Debtors informed the Court of the resolution of certain of the U.S. Trustee’s issues with the Motion.

5. At the First Day Hearing, the Court and the U.S. Trustee provided additional comments to the Proposed Interim Order.

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

7. For the convenience of the Court and all parties in interest, a blackline comparing the Revised Proposed Final Order to the Proposed Interim Order is attached hereto as **Exhibit B**.

8. The U.S. Trustee has reviewed the Revised Proposed Final Order and does not object to its entry.

[Remainder of page left intentionally blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Revised Proposed Final Order at its 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

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Debtors.)	
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**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) PAY CERTAIN
PREPETITION EMPLOYMENT OBLIGATIONS AND (B) MAINTAIN EMPLOYEE
BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) for the entry of interim and final orders, pursuant to sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Local Rule 9013-1, (i) authorizing the Debtors, but not directing, to (a) pay all Prepetition Employee Obligations and (b) honor and continue the Debtors’ prepetition programs, policies and practices as described in the Motion in the ordinary course of business; and (ii) granting certain related relief, all as more fully set forth in the Motion; and upon consideration of the Motion and all pleadings related thereto, including the First Day Declaration; and due and proper notice of the Motion having been given; and having determined that no other or further notice of the Motion is required; and having determined that this Court has jurisdiction to consider the Motion in accordance with 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 as of February 29, 2012; and

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² Capitalized terms used but not defined in this Interim Order are defined in the Motion.

having determined that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and having determined that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; 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. A final hearing on the relief sought in the Motion shall be conducted on **August 21, 2023 at 10:00 a.m. (ET)** (the “Final Hearing”). 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, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrисnichols.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 (i) pay or otherwise honor all Prepetition Employee Obligations in an amount not to exceed \$225,000.00 on an interim basis; (ii) pay postpetition Compensation Obligations and honor and continue their programs, policies and practices described in the Motion that were in effect as of the Petition Date, in the ordinary course

of business; and (iii) withhold and remit all federal, state and local taxes relating to the Prepetition Employee Obligations as required by applicable law; provided that in no event shall the Debtors pay any Prepetition Employee Obligations before such amounts are due and payable, and this Interim Order shall not be deemed to allow the Debtors to accelerate any payment of any amounts of Prepetition Employee Obligations that may be due and owing by the Debtors.

4. Notwithstanding any other provision of this Interim Order and absent further order of the Court, the Debtors shall not make any payments on account of the Prepetition Employee Obligations in excess of the limits provided for under section 507(a)(4) and (a)(5) of the Bankruptcy Code and capped at the amount afforded priority by those statutory subsections. Further, the Debtors are not authorized to “cash out” unpaid vacation days upon termination/resignation of an employee in excess of the caps provided by section 507(a)(4) or (a)(5) of the Bankruptcy Code unless applicable state law requires such payment.

5. The Debtors may only make material changes or modifications to their Compensation and Benefits Programs or introduce any new employee compensation or benefit plans or programs in prior consultation with the DIP Lender.

6. The Debtors shall maintain a matrix or schedule of amounts paid pursuant to the Non-Insider Severance Program, the Insider Severance Program, and the Insider Severance Packages, subject to the terms and conditions of this Interim Order, including the following information: (a) the title of the claimant paid; (b) the amount and date of the payment to such claimant; and (c) the total amount paid to the claimant to date. The Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee, counsel to the DIP Lender, and any statutory committee appointed in these Chapter 11 Cases every 30 days beginning upon entry of this Interim Order.

7. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their Workers' Compensation Claims (if any) in the appropriate judicial or administrative forum, and the Debtors are authorized to continue the Workers' Compensation Policies and pay the Workers' Compensation Claims. This modification of the automatic stay pertains solely to pursuing Workers' Compensation Claims.

8. The Debtors are authorized to reissue payment for the Prepetition Employee Obligations and to replace any inadvertently dishonored or rejected payments. Further, the Debtors are authorized to reimburse any expenses that Employees may incur as a result of any bank's failure to honor a prepetition check.

9. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay Prepetition Employee Obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments; provided further that payments pursuant to the Prepetition Employee Obligations are limited to the statutory provisions contained in section 507(a)(4) and (a)(5) of the Bankruptcy Code. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

10. The Banks are hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks and drafts drawn

on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by a Bank if specifically authorized by order of this Court.

11. Nothing in this Interim Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors; (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action; or (iv) shall be construed as a promise to pay a claim.

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

13. 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.

14. 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.

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

16. Notwithstanding anything to the contrary set forth herein, the Debtors shall not make any severance payments until entry of a final order thereon; provided, however, that if the Debtors propose any severance payments during the Interim Period and the U.S. Trustee and any official committee of unsecured creditors appointed in these cases express in writing no objection, then the Debtors may submit an order to the Court authorizing such payments by certification of counsel.

Exhibit B

Redline of Proposed Order

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February 29, 2012; and having determined that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and having determined that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and after due deliberation and sufficient cause appearing therefor,

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and practices described in the Motion that were in effect as of the Petition Date, in the ordinary course of business; and (iii) withhold and remit all federal, state and local taxes relating to the Prepetition Employee Obligations as required by applicable law; provided that in no event shall the Debtors pay any Prepetition Employee Obligations before such amounts are due and payable, and this Interim Order shall not be deemed to allow the Debtors to accelerate any payment of any amounts of Prepetition Employee Obligations that may be due and owing by the Debtors.

4. Notwithstanding any other provision of this Interim Order and absent further order of the Court, the Debtors shall not make any payments on account of the Prepetition Employee Obligations in excess of the limits provided for under section 507(a)(4) and (a)(5) of the Bankruptcy Code and capped at the amount afforded priority by those statutory subsections. Further, the Debtors are not authorized to “cash out” unpaid vacation days upon termination/resignation of an employee in excess of the caps provided by section 507(a)(4) or (a)(5) of the Bankruptcy Code unless applicable state law requires such payment.

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10. The Banks are hereby authorized to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks and drafts drawn on, or electronic transfer requests made on, the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; provided, however, that any check drawn or issued by the Debtors before the Petition Date may be honored by a Bank if specifically authorized by order of this Court.

11. Nothing in this Interim Order (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors; (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors or their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates; (iii) shall impair, prejudice, waive, or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action; or (iv) shall be construed as a promise to pay a claim.

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