

**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. )  
 ) (Jointly Administered)  
 )  
 ) **Re: D.I. 10**  
 )

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**CERTIFICATION OF COUNSEL REGARDING MOTION OF DEBTORS FOR ENTRY  
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY  
CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS AND (II)  
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND  
TRANSFERS RELATED TO SUCH PREPETITION TAXES  
AND RELATED 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 Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. On July 17, 2023, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Prepetition Taxes and Related Obligations* (the “Motion”) [D.I. 10]. Attached to the Motion as Exhibit A was a proposed form of interim order (the “Proposed Interim Order”). Attached to the Motion as Exhibit B was a proposed form of final order (the “Proposed Final Order”).

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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.



3. On July 19, 2023, the Court entered the Proposed Interim Order [D.I. 37]. The Proposed Interim Order established a deadline to file objections or responses to the final relief requested in the Motion as August 4, 2023, at 4:00 p.m. (ET), extended for the Office of the United States Trustee (the “U.S. Trustee”) and extended to August 16, 2023, at 4:00 p.m. (ET) (the “Objection Deadline”) only as to the Official Committee of Unsecured Creditors (the “Committee”) and the Office of the United States Trustee (the “U.S. Trustee”).

4. Prior to the Objection Deadline, the Debtors received informal comments from counsel to the Committee. The Debtor did not receive any other objections or informal comments to the Motion.

5. The Debtors have resolved the informal comments of the Committee through revisions to the Proposed Final Order. A copy of the revised proposed final form of order (the “Revised Proposed Final Order”) is attached hereto as **Exhibit A**. For the convenience of the Court and all parties in interest, a blackline comparing the Revised Proposed Final Order to the Proposed Final Order is attached hereto as **Exhibit B**.

6. Counsel to the Committee has reviewed the Revised Proposed Final Order and does not object to its entry.

WHEREFORE, the Debtors respectfully request that the Revised Proposed Final Order attached to the Motion be entered at the earliest convenience of the Court.

*[Remainder of page left intentionally blank]*

Dated: August 17, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Scott D. Jones

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

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*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**(Revised Proposed Final 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>	)	
Debtors.	)	Case No. 23-10937 (LSS)
	)	(Jointly Administered)
	)	
	)	<b>Re: D.I. 10, 37</b>
	)	

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**FINAL ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH PREPETITION TAXES AND RELATED OBLIGATIONS**

Upon the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Relating to Such Prepetition Taxes and Related Obligations* (the "Motion")<sup>2</sup> filed by the above-captioned debtors (the "Debtors") for entry of an interim order and final order (this "Final Order"), (a) authorizing, but not directing, the Debtors to pay, in their discretion, certain prepetition taxes and related obligations and (b) authorizing and directing applicable banks and financial institutions to honor and process checks and transfers related to such prepetition taxes and related obligations, 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 (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

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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.

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)(2)(A), (iv) venue of this 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; this Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion; and this Court having granted the interim relief requested in the Motion [D.I. 37]; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Final Order; and any objections to the requested relief having been withdrawn or overruled;

**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 pay prepetition Taxes to the Taxing Authorities in the ordinary course of their business, including, without limitation, all Taxes subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, subject to a final aggregate maximum of \$200,000.00.
3. Nothing in this Final Order shall be construed as authorizing the Debtors to pay any amounts on account of past-due taxes or to prepay any taxes, except with respect to trust fund taxes that do not constitute property of the Debtors' estates.
4. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.
5. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Taxes or audit amounts on any grounds it deems

appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it 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 Final 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.

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 Taxes 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 Final Order.

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

9. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

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



**Exhibit B**

**(Blackline)**

**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> , <sup>1</sup>	)
	) Case No. 23-10937 (LSS)
Debtors.	)
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	) <b>Re: D.I. <u>10, 37</u></b>
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**FINAL ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION TAXES AND RELATED OBLIGATIONS AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH PREPETITION TAXES AND RELATED OBLIGATIONS**

Upon the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Relating to Such Prepetition Taxes and Related Obligations* (the "Motion")<sup>2</sup> filed by the above-captioned debtors (the "Debtors") for entry of an interim order and final order (this "Final Order"), (a) authorizing, but not directing, the Debtors to pay, in their discretion, certain prepetition taxes and related obligations and (b) authorizing and directing applicable banks and financial institutions to honor and process checks and transfers related to such prepetition taxes and related obligations, 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 (i) this Court has jurisdiction over the Debtors, their estates,

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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)(2)(A), (iv) venue of this 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; this Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and the evidence adduced with respect to the Motion; and this Court having granted the interim relief requested in the Motion [D.I. 37]; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted in this Final Order; and any objections to the requested relief having been withdrawn or overruled;

**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 pay prepetition Taxes to the Taxing Authorities in the ordinary course of their business, including, without limitation, all Taxes subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date, subject to a final aggregate maximum of \$200,000.00.
3. Nothing in this Final Order shall be construed as authorizing the Debtors to pay any amounts on account of past-due taxes or to prepay any taxes, except with respect to trust fund taxes that do not constitute property of the Debtors' estates.
4. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

5. ~~4.~~ This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Taxes or audit amounts on any grounds it deems appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

6. ~~5.~~ Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it 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 Final 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.

7. ~~6.~~ 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 Taxes 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 Final Order.

