

**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.)
) (Jointly Administered)
)
) **Re: D.I. 7**
)

CERTIFICATION OF COUNSEL REGARDING 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 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 *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*

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.



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 (II) Granting Related Relief (the “Motion”) [D.I. 7]. Attached to the Motion as Exhibit A was a proposed form of interim order. Attached to the Motion as Exhibit B was a proposed form of final order (the “Proposed Final Order”).

3. On July 20, 2023, the Debtors filed the *Certification of Counsel Regarding 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 (II) Granting Related Relief* (the “Certification of Counsel”) [D.I. 43]. Attached to the Certification of Counsel as Exhibit A was a proposed form of interim order (the “Proposed Interim Order”).

4. On July 21, 2023, the Court entered the Proposed Interim Order [D.I. 51]. 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 17, 2023, at 4:00 p.m. (ET) (the “Objection Deadline”) only as to the Official Committee of Unsecured Creditors (the “Committee”).

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

6. The Debtors have resolved the informal comments from the Committee by 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**.

7. 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.

Dated: August 18, 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 Final Order)

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:)
) Chapter 11
NOVAN, INC., <i>et al.</i> , ¹)
) Case No. 23-10937 (LSS)
Debtors.)
) (Jointly Administered)
)
) Re: D.I. 7, 51
)

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

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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) and counsel to the Official Committee of Unsecured Creditors (the “Committee”) 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 the Committee and the DIP Lender 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 another Debtor or 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 Intercompany Claims held by one Debtor against another Debtor arising from postpetition Intercompany Transactions shall be entitled to administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code, and (iii) 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 make 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; provided further that any transfer to non-Debtor affiliates shall require the consent of the Committee which shall not be unreasonably withheld, and two (2) business days prior notice to counsel to the DIP Lender.

10. Notwithstanding the authority granted by paragraph 9 herein, any proceeds of Bay View receivables or other EPI Health, LLC receivables received by the Debtors' estates during the chapter 11 cases shall be segregated in a separate bank account of EPI Health, LLC, which such account shall be selected in consultation with the Committee and the DIP Lender. The Debtors shall be prohibited from using the funds in such segregated bank account absent further order of the Court or prior written consent of the Committee, which consent shall not be unreasonably withheld, and two (2) business days prior notice to counsel to the DIP Lender.

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, the DIP Lender and the Committee upon request.

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

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

14. 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.

15. 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

Exhibit B

(Blackline)

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
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)	Chapter 11
NOVAN, INC., <i>et al.</i> , ¹)	
Debtors.)	Case No. 23-10937 (LSS)
)	(Jointly Administered)
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)	Re: D.I.—.7,51
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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 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.
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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.

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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 another Debtor or 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 Intercompany Claims held by one Debtor against another Debtor arising from postpetition Intercompany Transactions shall be entitled to administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code, and (iii) 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~~make 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; provided further that any transfer to non-Debtor affiliates shall require the consent of the Committee which shall not be unreasonably withheld, and two (2) business days prior notice to counsel to the DIP Lender.

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The Debtors shall be prohibited from using the funds in such segregated bank account absent further order of the Court or prior written consent of the Committee, which consent shall not be unreasonably withheld, and two (2) business days prior notice to counsel to the DIP Lender.

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

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

14. ~~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.

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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
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