

**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. 20, 164**
)

**CERTIFICATION OF COUNSEL REGARDING DEBTORS’ MOTION FOR ENTRY
OF AN ORDER (I) APPROVING DEBTORS’ KEY EMPLOYEE INCENTIVE
PROGRAM 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 each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. On the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving Debtors’ Key Employee Incentive Program and (II) Granting Certain Related Relief* (the “Motion”) [D.I. 20]. Attached to the Motion as Exhibit A was a proposed form of order.
3. The deadline to file objections or responses to the relief requested in the Motion was August 9, 2023, at 4:00 p.m. (ET). The objection deadline was later extended to August 15, 2023 (the “U.S. Trustee Objection Deadline”), only in regards to the Office of the United States Trustee (the “U.S. Trustee”) and August 16, 2023, (the “Committee Objection Deadline”) only in regards to the Official Committee of Unsecured Creditors (the “Committee”).

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.



4. Prior to the U.S. Trustee Objection Deadline, the U.S. Trustee filed *The United States Trustee's Objection to Debtors' Motion for Entry of an Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Certain Related Relief* (the "Objection") [D.I. 164]. In addition, prior to the Committee Objection Deadline, the Committee provided informal comments to the Debtors regarding the Motion.

5. On August 18, 2023, the Debtors filed the *Notice of Filing of Revised Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Certain Related Relief* (the "Notice") [D.I. 200]. Attached to the Notice as Exhibit A was a proposed form of order (the "Proposed Order") that resolved the informal comments from the Committee.

6. The Debtors and the U.S. Trustee have been in active good faith discussions regarding the Motion. As a result of these discussions, the Debtors have made certain revisions to the Proposed Order as reflected in the revised proposed form of order (the "Revised Proposed Order") attached hereto as **Exhibit A** that resolves the Objection. For the convenience of the Court and all parties in interest, a blackline comparing the Revised Proposed Order to the Proposed Order is attached hereto as **Exhibit B**.

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

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

Dated: August 21, 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> , ¹)	
)	Case No. 23-10937 (LSS)
Debtors.)	
)	(Joint Administration Requested)
)	
)	Re D.I. 20
)	
)	

**ORDER (I) APPROVING DEBTORS’ KEY EMPLOYEE
INCENTIVE PROGRAM AND (II) GRANTING CERTAIN RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”), pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code, authorizing and approving the Debtors’ KEIP, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at a hearing

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² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The KEIP is approved on the terms described in this Order.
3. The KEIP Participants will earn 1/3 of their KEIP Payment if the sale proceeds for the R&D Assets and the Commercial Assets equals or exceeds \$20 million in the aggregate. Further, the KEIP Participants will earn an additional 1/3 of their KEIP Payment for each \$1 million collected over \$20 million in connection with the sale of the R&D Assets and Commercial Assets up to 100% of their KEIP Payment if the aggregate proceeds of the sale of the R&D Assets and Commercial Assets equals or exceeds \$22 million.
4. The Debtors are authorized to take all actions necessary to implement the KEIP on the terms and conditions set forth in this Order in the ordinary course, including, but not limited to, making payments pursuant to the terms of the KEIP.
5. All amounts earned and payable under the KEIP shall have administrative expense priority under sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code for all purposes in these Chapter 11 Cases and in any other case under the Bankruptcy Code to which these Chapter 11 Cases may be converted.
6. The Debtors are authorized, but not directed, to continue payments under their usual severance policies and practices to the KEIP Participants, subject to the limitations of section 503(c) of the Bankruptcy Code.

7. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

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

Exhibit B

(Blackline)

**IN THE UNITED STATES BANKRUPTCY COURT
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NOVAN, INC., *et al.*,¹)
) Case No. 23-10937 (LSS)
 Debtors.)
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Upon the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”), pursuant to Sections 105(a), 363(b) and 503(c) of the Bankruptcy Code, authorizing and approving the Debtors’ KEIP, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein 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 February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing were appropriate under the circumstances and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing; and this Court having determined that the legal and factual bases set forth in the Motion and at a hearing establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and upon all of the proceedings had before this Court, and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The KEIP is approved on the terms described in this Order.
3. The KEIP Participants will earn ~~20%~~1/3 of their KEIP Payment if the sale proceeds for the R&D Assets and the Commercial Assets equals or exceeds \$20 million in the aggregate. Further, the KEIP Participants will earn an additional 1/3 of their KEIP Payment for

² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

each \$1 million ~~in aggregate sale proceeds~~ collected ~~above the Stalking Horse Bid of~~ over \$1520 million in connection with the sale of ~~all or a portion of the Debtors' assets, including~~ the R&D Assets and ~~the~~ Commercial Assets, up to 100% of their KEIP Payment if ~~such~~ the aggregate ~~sale~~ proceeds ~~equal~~ of the sale of the R&D Assets and Commercial Assets equals or exceeds \$2022 million.

4. The Debtors are authorized to take all actions necessary to implement the KEIP on the terms and conditions set forth in this Order in the ordinary course, including, but not limited to, making payments pursuant to the terms of the KEIP.

5. All amounts earned and payable under the KEIP shall have administrative expense priority under sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code for all purposes in these Chapter 11 Cases and in any other case under the Bankruptcy Code to which these Chapter 11 Cases may be converted.

6. The Debtors are authorized, but not directed, to continue payments under their usual severance policies and practices to the KEIP Participants, subject to the limitations of section 503(c) of the Bankruptcy Code.

7. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

8. The terms and conditions of this Order shall be immediately effective and enforceable upon entry.

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