

**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)
)
) **Objection Deadline: Sept. 6, 2023 at 4:00 p.m. (ET)**
) **Re: D.I. 60, 166, 201**

**ADDITIONAL NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND
CORRECTIONS AND CLARIFICATIONS TO PREVIOUS NOTICES**

PLEASE TAKE NOTICE that, on July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases (the “Chapter 11 Cases”).

PLEASE TAKE FURTHER NOTICE that, on July 17, 2023, the Debtors filed a motion [D.I. 16] (the “Bidding Procedures Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures to be used in connection with one or more sales (each a “Sale”) of the Debtors’ development and commercialization rights to their research and development portfolio (the “R&D Assets”) and to the rights to commercialize the Debtors’ commercial portfolio (the “Commercial Assets” and together with the R&D Assets, the “Assets,” as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder² for all of the Assets in connection with considering the entry of the Bidding Procedures Order; (iii) scheduling one or more auctions (each, an “Auction”), if necessary, and schedule one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “Auction Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”), of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assumed Contract (the “Cure Amounts”); and (B) certain other information regarding the

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.

² Capitalized terms used but not otherwise defined herein shall have the means ascribed to them in the Bidding Procedures Motion.



potential assumption and assignment of Assumed Contracts in connection with a Sale, substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the “Assumption and Assignment Notice”); and (vii) granting related relief; and (b) one or more orders of the Court (collectively, the “Sale Orders”): (i) authorizing the sale of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale(s); and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that, on July 25, 2023, the Debtors filed and served the *Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I. 60]. A schedule listing certain contracts and leases that may potentially be assumed and assigned as part of the sales was attached thereto (the “First Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International). The deadline to object to the proposed assumption and assignment of a contract or lease listed on the First Contracts Schedule was August 8, 2023, unless extended by the Debtors. This additional notice does not alter any deadlines for those contracts and leases that were part of the First Contracts Schedule.

PLEASE TAKE FURTHER NOTICE that, on August 15, 2023, the Court entered the Bidding Procedures Order [D.I. 166], approving, among other things, the Bidding Procedures, which establish key dates and times relating to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

PLEASE TAKE FURTHER NOTICE that, on August 18, 2023, the Debtors filed and served the *Supplemental Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I. 201]. A supplemental schedule listing additional contracts and leases that may potentially be assumed and assigned as part of the sales was attached thereto (the “Second Contracts Schedule, and with the First Contracts Schedule, the “Initial Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International). The deadline to object to the proposed assumption and assignment of a contract or lease listed on the Second Contracts Schedule is September 1, 2023, unless extended by the Debtors. This additional notice does not alter any deadlines for those contracts and leases that were part of the Second Contracts Schedule.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order and the Bidding Procedures, the Debtors are authorized to file and serve this Additional Assumption and Assignment Notice (as such term is defined in the Bidding Procedures Order) on any Counterparty to the Debtors’ universe of executory contracts and unexpired leases that may be designated as an Assumed Contract that a Winning Bidder desires to assume as part of its Winning Bid that was not already listed on the Initial Contracts Schedule.

PLEASE TAKE FURTHER NOTICE *that in accordance with the Bidding Procedures Order, the Debtors have selected and designated Ligand as the Winning Bidder for the R&D Assets and certain of the Commercial Assets related to Sitavig and the Qualified Bid of Mayne Pharma LLC for certain of the Commercial Assets related to Rhofade as the Winning Bidder for such Assets.*

PLEASE TAKE FURTHER NOTICE that the Debtors will seek one or more Sale Orders selling the Assets to Winning Bidder(s) on or before September 11, 2023; in each such instance, the Assumed Contracts may be included in such sales. A schedule adding to the Initial Contracts Schedule with extra contracts and leases that may potentially be assumed and assigned as part of the sales is attached hereto as Exhibit 1 (the “Additional Contracts Schedule”) and A schedule correcting certain entries on the Initial Contracts Schedule that may potentially be assumed and assigned as part of the sales is attached hereto as Exhibit 2 (the “Corrected Previous Entries Schedule”). These may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

PLEASE TAKE FURTHER NOTICE that Cure Amounts, if any, for the assumption and assignment of such contracts and leases are also set forth on the Additional Contracts Schedule. Each Cure Amount listed on the Additional Contracts Schedule represents all liabilities of any nature of the Debtors arising under a contract or lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF A SALE. *The presence of a contract or lease listed on Exhibit 1 or 2 attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of a Sale. The Debtors reserve all their rights, claims and causes of action with respect to the contracts and leases listed on Exhibit 1 or 2 attached hereto.*

Filing Objections

Objections to the proposed assumption and assignment of a contract or lease listed on the Additional Contracts Schedule attached hereto as Exhibit 1 on any basis, including, without limitation, on the basis (i) of adequate assurance of the Winning Bidder’s future ability to perform; (ii) of the transfer of any related rights or benefits thereunder; (iii) that consent is allegedly required from any Counterparty for the assumption, assignment, and transfer of the Assumed Contract; (iv) relating to Cure Amounts, must (1)(a) be in writing; (b) state the basis for such objection; and (c) if such objection is to the Cure Amount, state with specificity what Cure Amount the counterparty believes is required (in all cases, with appropriate documentation

in support thereof) and (2) be filed with the Court and served no later than **September 6, 2023 at 4:00 p.m. (ET)** on the following parties (collectively, the “Objection Notice Parties”): (a) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16th Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. (dabbott@morrisnichols.com)); (b) 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)); (c) counsel to Ligand, Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com), Jason A. Alderson (Jason.alderson@morganlewis.com), and David K. Shim (David.shim@morganlewis.com)); and (d) counsel to the Creditors’ Committee. This additional notice does not alter any deadlines for those contracts and leases that were part of the Initial Contracts Schedule.

Consequences of Failing to Timely Assert an Objection

UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER, IF ANY, OR OTHERWISE WINNING BIDDER(S) THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT OR TRANSFER (INCLUDING THE TRANSFER OF ANY RELATED RIGHTS AND BENEFITS THEREUNDER) TO THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE, OF THE YOUR CONTRACT OR LEASE AND THE ADEQUACY OF ASSURANCE OF FUTURE PERFORMANCE THEREUNDER, AND BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS OR THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE, THAT ANY ADDITIONAL DEFAULTS EXIST OR THAT CONDITIONS TO ASSUMPTION, ASSIGNMENT, AND TRANSFER MUST BE SATISFIED UNDER YOUR CONTRACT OR LEASE (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE), OR THAT ANY RELATED RIGHT OR BENEFIT UNDER SUCH CONTRACT OR LEASE CANNOT AND WILL NOT BE AVAILABLE TO THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE.

Obtaining Additional Information

Copies of the Bidding Procedures Motion, the Bidding Procedures, the proposed Bidding Procedures Order, the Stalking Horse APA, if any, and all other documents filed with the Court, are available free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing

agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

Adequate assurance of future performance information for the Winning Bidders is available by contacting counsel to Ligand or Mayne, as appropriate.

Dated: August 31, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel B. Butz

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*Counsel to the Debtors and
Debtors in Possession*

Exhibit 1

(Additional Contracts Schedule)

ID #	Debtor Name	Contract Counterparty	Date of Contract or Lease	Estimated Cure Amount	
1	EPI Health, LLC	Allergan Sales, LLC and DPT Laboratories, Ltd.	Purchase Order No. 4301432451 placed with DPT Laboratories, Ltd., dated as of September 5, 2018, relating to 35,000 tubes of RHOFAGE 1.0% 30g	9/5/2018	-
2	EPI Health, LLC	Allergan, Inc., Allergan Sales, LLC, and Aclaris Therapeutics, Inc.	Patent Sublicense Agreement	11/30/2018	-
3	EPI Health, LLC	Allergan, Inc. and Aclaris Therapeutics, Inc.	Patent Assignment Agreement	11/30/2018	-
4	EPI Health, LLC	Allergan, Inc. and Aclaris Therapeutics, Inc.	Trademark and Domain Name Assignment Agreement	11/30/2018	-
5	EPI Health, LLC	Allergan, Inc., and Aclaris Therapeutics, Inc.,	Exclusive Patent License Agreement	11/30/2018	-
6	EPI Health, LLC	Allergan Sales, LLC and Aclaris Therapeutics, Inc.	Pharmacovigilance Agreement Between Allergan Sales, LLC and Aclaris Therapeutics, Inc.	1/18/2019	-
7	EPI Health, LLC	Allergan Sales, LLC and Aclaris Therapeutics	First Amendment to Transition Services Purchase Agreement	5/23/2019	-
8	EPI Health, LLC	Diteba Laboratories Inc.	Master Services Agreement, 1/2/2019, between Aclaris (assigned to EPI) and NDI ADRL Inc., dba Dietba	1/2/2019	64,680
9	EPI Health, LLC	Padagis Israel Pharmaceuticals Ltd	Settlement and License Agreement, 9/3/2021, among Allergan, Inc., EPI, and Padagis Israel Pharmaceuticals Ltd.	9/3/2021	-
10	Novan, Inc.	The University of Alabama at Birmingham	UAB_Subaward_NIH Grant	3/19/2023	-

Exhibit 2

(Corrected Previous Entries Schedule)

ID #	Debtor Name	Contract Counterparty	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
1	EPI Health, LLC	Aclaris Therapeutics, Inc. & Allergan Sales, LLC	Seller Disclosure Letter to the Asset Purchase Agreement by and between Aclaris Therapeutics, Inc., and Allergan Sales, LLC	10/15/2018	–
2	EPI Health, LLC	Aclaris Therapeutics, Inc. & Allergan Sales, LLC	First Amendment to Transition Services Agreement by and between Aclaris Therapeutics, Inc. and Allergan Sales LLC	5/23/2019	–
3	EPI Health, LLC	Allergan, Inc. & Erythema Acquisition, Inc. & Virect Therapeutics, Inc. & Neal Walker	Agreement and Plan of Merger by and among Allergan, Inc., Erythema Acquisition, Inc., Virect Therapeutics, Inc., and Neal Walker as Shareholders' Representative	7/18/2011	–
4	EPI Health, LLC	DPT Laboratories, Ltd.	Master Manufacturing and Supply Agreement by and between Allergan Sales, LLC and DPT Laboratories, Ltd., and related Product Schedule for Oxymetazoline Cream	8/16/2018	262,934
5	EPI Health, LLC	DPT Laboratories, Ltd.	Purchase Order No. 4301432450 placed with DPT Laboratories, Ltd., dated as of September 5, 2018, relating to 35,000 tubes of RHOFADÉ 1.0% 30g	9/5/2018	–
6	EPI Health, LLC	Virect Therapeutics, Inc. & Aspect Pharmaceuticals, LLC	Assignment and License Agreement, dated as of August 3, 2009, between Virect Therapeutics, Inc. and Aspect Pharmaceuticals, LLC	8/3/2009	–