

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
) Case No. 23-10937 (LSS)
NOVAN, INC., <i>et al.</i> , ¹)
) (Jointly Administered)
)
Debtors.) Hearing Date: October 18, 2023 at 2:30 p.m. (ET)
) Obj. Deadline: October 11, 2023 at 4:00 p.m. (ET)

**APPLICATION OF WE2 ACQUISITION HOLDINGS, LLC PURSUANT TO
11 U.S.C. §§ 503(b)(3) AND 503(b)(4) FOR ALLOWANCE OF FEES AND EXPENSES
INCURRED IN MAKING A SUBSTANTIAL CONTRIBUTION
AS AN ADMINISTRATIVE EXPENSE CLAIM**

WE2 Acquisition Holdings, LLC (the “Applicant”), by and through its undersigned counsel, hereby submits this application (the “Application”), pursuant to sections 503(b)(3)(D) and 503(b)(4) of title 11 of the United States Code (the “Bankruptcy Code”), seeking allowance of an administrative expense claim for reimbursement of professional fees and expenses incurred in making a substantial contribution in the chapter 11 cases (the “Chapter 11 Cases”) of the above-captioned debtors and debtors in possession (the “Debtors”). In support of this Application, the Applicant respectfully represents and sets forth as follows:²

PRELIMINARY STATEMENT

1. By developing, proposing, and negotiating an alternative, fully actionable proposal for the Applicant to replace Ligand Pharmaceuticals Inc. (“Ligand”) as the stalking horse bidder to purchase all of the Debtors’ assets and debtor-in-possession (“DIP”) financing lender to 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 This Application is also supported by the *Declaration of Raymond Canole in Support of Application of WE2 Acquisition Holdings, LLC Pursuant to 11 U.S.C. §§ 503(b)(3) and 503(b)(4) for Allowance of Fees and Expenses Incurred in Making a Substantial Contribution as an Administrative Claim* (the “Canole Declaration”), filed contemporaneously herewith.



Debtors (the “Alternative Stalking Horse/DIP Proposal”), the Applicant made a substantial contribution in the Chapter 11 Cases. Although the Debtors ultimately abandoned the Alternative Stalking Horse/DIP Proposal on the eve of the August 15th hearing to consider approval of the Debtors’ bidding procedures motion and, thus, the Applicant’s proposal was never filed with or approved by this Court, it compelled material improvements to the Debtors’ DIP financing facility (the “Ligand DIP Facility”) and closely-related stalking horse asset purchase agreement with Ligand (the “Ligand Stalking Horse APA”). Those substantial, quantifiable improvements included, among other things: (i) the allocation of Ligand’s \$15 million stalking horse bid among the Debtors’ R&D Assets and Commercial Assets (each as defined below), thereby fostering a more competitive bidding process for the Debtors’ assets and resulting in a \$5 million net increase in the total amount of consideration paid for the Debtors’ assets as compared to the Ligand Stalking Horse APA; (ii) the waiver of Ligand’s \$450,000 break-up fee under the Ligand Stalking Horse APA; and (iii) the waiver of Ligand’s \$300,000 exit fee under the Ligand DIP Facility. Each of these modifications, along with other improvements, benefitted the Debtors and their estates and ultimately led to an increased amount of distributable value for unsecured creditors of approximately \$5.75 million. Indeed, the Debtors’ own investment banker, Raymond James & Associates, Inc. (“Raymond James”), acknowledges that these materially improved terms could not have been obtained without the Alternative Stalking Horse/DIP Proposal, which “resulted from creating . . . competitive tension via the [Alternative Stalking Horse/DIP Proposal].” *Declaration of Simon Wein in Support of Entry of Orders Authorizing Sale of Substantially All of the Debtors’ Assets Free and Clear of All Encumbrances* [D.I. 273] (the “Sale Declaration”), ¶ 22.

2. The Applicant and its counsel, Paul Hastings LLP (“Paul Hastings”), engaged in substantial efforts to develop, negotiate and document the Alternative Stalking Horse/DIP

Proposal within a very short time period. Through Paul Hastings and the Applicant's strategic lending partner, Colbeck Capital Management LLC ("Colbeck"), the Applicant submitted the Alternative Stalking Horse/DIP Proposal to the Debtors, then immediately engaged with the Debtors to negotiate and prepare definitive documentation for the transactions contemplated under the Alternative Stalking Horse/DIP Proposal. The Applicant's request for allowance of an administrative expense claim is appropriately limited to the reasonable fees and actual, necessary expenses incurred by Paul Hastings in connection with the Applicant's efforts in making a substantial contribution in the Chapter 11 Cases. Moreover, the services provided by Paul Hastings to the Applicant were necessary, made at the request of the Debtors, and did not duplicate those provided by any estate professionals. Accordingly, the Applicant respectfully requests that this Court grant this Application.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this Application pursuant to 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. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.³

4. The statutory predicates for the relief requested herein are sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code, Rule 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1, 2016-2 and 9006-1 of the Local Bankruptcy Rules.

³ Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules"), the Applicant hereby confirms its consent to entry of a final order by this Court in connection with this Applicant if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

BACKGROUND

A. The Debtors and the Chapter 11 Cases

5. The Debtors commenced the Chapter 11 Cases on July 17, 2023 (the “Petition Date”). Since the Petition Date, the Debtors continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. On July 28, 2023, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an Official Committee of Unsecured Creditors (the “Committee”). *See Notice of Appointment of Committee of Unsecured Creditors* [D.I. 72]. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. The Debtors’ Prepetition Marketing and Financing Efforts and the Original Ligand Proposals

7. On June 10, 2023, the Debtors engaged Raymond James, as the Debtors’ investment banker, to quickly evaluate strategic alternatives and explore paths to address the liquidity crisis then facing the Debtors. *See* Sale Decl. ¶ 11. Raymond James immediately undertook a dual-track prepetition marketing process that simultaneously sought potential purchasers of the Debtors’ assets as well as financing solutions for the Debtors. *Id.* In connection with this dual-track process, Raymond James and the Debtors contacted approximately 30 potential strategic buyers and nearly a dozen potential financing sources in the lead-up to these Chapter 11 Cases. *See id.* Although Raymond James and the Debtors engaged in extensive prepetition negotiations with multiple interested parties, neither an out-of-court sale nor restructuring transaction ultimately was actionable, and the Debtors and their advisors began preparing for an inevitable bankruptcy filing. *See id.* ¶ 12. Faced with the growing prospect of a chapter 7 filing in the days leading up to the Petition Date, the Debtors determined that the sole viable option to preserve their going concern value at that time was a proposal by Ligand to both

(i) provide up to \$15 million in DIP financing to the Debtors, consisting of new-money term loans in the aggregate principal amount of up to \$12 million, and the “roll-up” of a \$3 million secured prepetition bridge loan Ligand had previously provided to the Debtors (the “Original Ligand DIP Proposal”), and (ii) serve as stalking horse purchaser in connection with a sale of substantially all of the Debtors’ assets for a purchase price of \$15 million and assumption of certain liabilities (the “Original Ligand Stalking Horse Proposal” and, together with the Original Ligand DIP Proposal, the “Original Ligand Proposals”). *See id.* ¶¶ 9, 12; *see also Declaration of Paula Brown Stafford in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [D.I. 4], ¶¶ 14-15, 55.

8. On the Petition Date, the Debtors filed voluntary petitions commencing these Chapter 11 Cases as well as, among other “first day” motions, a motion seeking approval of the Original Ligand DIP Proposal [D.I. 15] (the “DIP Motion”) and a motion seeking approval of bidding and sale procedures premised on the Original Ligand Stalking Horse Proposal (the “Original Bidding Procedures”) [D.I. 16] (the “Bidding Procedures Motion”). Among other things, the Original Bidding Procedures required parties submitting a bid on the Debtors’ assets to assume that certain Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), between Ligand and Debtor Novan, Inc. (the “Ligand Royalty Agreement”) as a condition of such bid being deemed a “Qualified Bid” entitling the bidder to participate in the Debtors’ auction and sale process. *See* Sale Decl. ¶ 12; Bidding Procedures Motion at 10. The Original Bidding Procedures also allowed for the bifurcation of bids between (1) the Debtors’ development and commercialization rights to their research and development portfolio (the “R&D Assets”) and (2) the Debtors’ rights to commercialize their commercial portfolio (the “Commercial Assets”) and, together with the R&D Assets, the “Assets”) only if the combined total amount of the bid exceeded \$16.55 million, a threshold reflecting the sum of (i) Ligand’s

\$15 million stalking horse bid amount, (ii) a \$1 million milestone payment owed to Ligand, (iii) a \$100,000 minimum overbid amount, and (iv) a \$450,000 break-up fee. Sale Decl. ¶ 12. Additionally, pursuant to the Original Ligand Proposals, in the event (x) an order approving the Original Bidding Procedures and approving Ligand as stalking horse bidder or (y) an order approving the Original Ligand DIP Proposal on a final basis had not been entered within 25 calendar days after the Petition Date, the Debtors would then become obligated to seek entry of an order approving the sale of the Debtors' Assets to Ligand free and clear of all liens, claims, interests and encumbrances as a "private sale" no longer subject to overbids (the "Private Sale Requirement"). *See* Bidding Procedures Motion ¶ 22.

C. The Debtors' Prepetition Marketing and Financing Efforts and the Alternative Stalking Horse/DIP Proposal

9. Within one day of the Petition Date, Raymond James reinitiated outreach to all parties previously contacted prepetition, 78 new potential bidders, and nine potential providers of alternative DIP financing to the Debtors on terms more favorable than the Original Ligand Proposals. Sale Decl. ¶ 13. Significantly, these parties included Woodward Pharma Services, LLC ("Woodward"), a specialty pharmaceutical company focused on acquiring, licensing and commercializing branded and generic prescription drugs for the U.S. market and affiliate of the Applicant, which had been engaged in discussions with the Debtors regarding potential sale or financing transactions since early June 2023. *See* Canole Decl. ¶¶ 1, 3, 6. Raymond James urged Woodward to submit such an alternative stalking horse purchaser and/or DIP financing proposal to the Debtors but stressed that time was of the essence. *Id.* ¶ 6.

10. In late July 2023, Woodward worked with Colbeck to prepare the initial Alternative Stalking Horse/DIP Proposal, a proposal that effectively adopted the structure and definitive documentation of the Original Ligand Proposals, but with the Applicant—an investment vehicle

affiliated with Woodward—replacing Ligand as the stalking horse bidder for the Debtors’ Assets and DIP lender, and on modified terms that provided more value to the Debtors than the Original Ligand Proposals, including by (a) eliminating the requirement for potential bidders to agree to assume the Ligand Royalty Agreement in order to participate in the sale process, (b) eliminating the requirement that the Debtors’ assets be sold to the Applicant as a “private sale,” rather than subject to a competitive auction process, and (c) relaxing the DIP financing milestones to give the Debtors additional time to complete their postpetition sale process. Canole Decl. ¶ 7.

11. On August 1, 2023, a series of formal objections to the Original Ligand Proposals were filed by Mayne Pharma LLC (“Mayne”) [D.I. 100] (the “Mayne Objection”), Reedy Creek Investments LLC (“Reedy Creek”) [D.I. 98] (the “Reedy Creek Objection”), and the U.S. Trustee [D.I. 99] (the “U.S. Trustee Objection” and, together with the Mayne Objection and the Reedy Creek Objection, the “Objections”). Sale Decl. ¶ 15. The Objections focused on three primary issues: (i) the requirement that bidders agree to assume the Ligand Royalty Agreement as a condition to participating in the bidding process; (ii) the prohibition on separately bidding on the R&D Assets and the Commercial Assets unless aggregate consideration exceeded \$16.55 million; and (iii) the chilling effect of the Private Sale Requirement on the bidding process. *See id.*; *see also* Reedy Creek Obj. ¶¶ 9, 13-14; U.S. Trustee Obj. ¶¶ 1-2, 36-39; Mayne Obj. ¶¶ 13-15. The hearing on the Debtors’ Bidding Procedures Motion was ultimately rescheduled to August 15, 2023 at the request of counsel to the recently formed Committee.

12. Also on August 1, 2023, Woodward communicated the principal terms of the Alternative Stalking Horse/DIP Proposal to the Debtors’ advisors. Canole Decl. ¶ 8. Shortly thereafter, Raymond James informed Woodward that the Debtors wanted to pursue the Alternative Stalking Horse/DIP Proposal, and Woodward promptly engaged Paul Hastings in connection

therewith. *Id.* On August 3, 2023, Paul Hastings and Woodward immediately began engaging with the Debtors' advisors in negotiating and drafting definitive documentation for the transactions contemplated under the Alternative Stalking Horse/DIP Proposal. *Id.*

D. The Revised Ligand Stalking Horse/DIP Proposal

13. Paul Hastings worked tirelessly, at an around-the-clock pace, over the ensuing week to advance the definitive documents to near-final form ahead of the hearing on the Original Ligand Proposals scheduled for August 15, 2023, which required a monumental effort from a team comprised of corporate, finance and restructuring specialists. Canole Decl. ¶ 9. Not only did Paul Hastings provide complete operative documents for the new DIP financing and stalking horse asset purchase agreement contemplated by the Alternative Stalking Horse/DIP Proposal (and negotiate the same to substantial completion with the Debtors and their professional advisors), the parties also exchanged draft motions and proposed orders to have the Alternative Stalking Horse/DIP Proposal approved by the Bankruptcy Court. *Id.* However, late in the afternoon of August 11, 2023, an hour prior to when those motions were supposed to be filed, the Debtors' advisors informed Woodward, Paul Hastings and Colbeck that the Debtors had leveraged the favorable Alternative Stalking Horse/DIP Proposal to extract concessions on the key objectionable terms of the Original Ligand Proposals as reflected in a revised stalking horse and DIP financing proposal (the "Revised Ligand Stalking Horse/DIP Proposal"), including:

- (i) allocation of Ligand's \$15 million stalking horse bid as a \$12 million bid for the R&D Assets and a \$3 million bid for the Commercial Assets;
- (ii) waiver of Ligand's \$450,000 break-up fee;
- (iii) assumption of Reedy Creek's royalty agreement with the Debtors (so long as there were no economic changes to the agreement);
- (iv) elimination of Ligand's consent and consultation rights under the revised bidding procedures; and

(v) waiver of Ligand's \$300,000 DIP exit fee.

See id.; Sale Decl. ¶ 20.

14. On August 15, 2023, the Court held a hearing on the revised bidding procedures reflecting the modified terms of the Revised Ligand Stalking Horse/DIP Proposal (the "Revised Bidding Procedures") and subsequently entered an order approving the Revised Bidding Procedures [D.I. 166] (the "Bidding Procedures Order"). On August 21, 2023, the Court entered a final order approving the Ligand DIP Facility, as revised to reflect the modified terms of the Revised Ligand Stalking Horse/DIP Proposal [D.I. 220].

E. The Auction Results and Asset Sales

15. On August 31, 2023, an auction on the Debtors' Assets (the "Auction") was held virtually via Zoom teleconference. *See* Sale Decl. ¶ 23. A bid submitted by Mayne for certain of the Debtors' Commercial Assets related to Rhofade (the "Mayne Bid") offered improved terms over the allocation set forth in the Revised Ligand Stalking Horse/DIP Proposal. *See id.* ¶¶ 25-26. Specifically, the Mayne Bid consisted of total cash consideration of \$8 million, an additional allowance of up to \$1.5 million for cure costs (the "Cure Cap"), and the assumption by Mayne of certain assumed liabilities. *Id.* ¶ 25. Compared to the initial \$3 million allocation for the Debtors' Commercial Assets reflected in the Revised Ligand Stalking Horse/DIP Proposal, the Mayne Bid resulted in an incremental recovery of \$5 million for unsecured creditors and reduced pool of unsecured claims by causing the assumption of the cure costs under the Cure Cap. *See id.* At the conclusion of the Auction, the Debtors determined that Mayne had submitted the highest or otherwise best offer for certain of the Debtors' Commercial Assets related to Rhofade, and Ligand, via the Revised Ligand Stalking Horse/DIP Proposal, had submitted the highest or otherwise best offer for the Debtors' R&D Assets as well as certain of the Debtors' Commercial Assets related to Sitavig. *See id.* ¶ 26; *see also* Notice of Debtors' Designation of Mayne Pharma LLC as Winning

Bidder and the Mayne APA as the Winning Bid for Certain of the Debtors' Assets [D.I. 242] (the "Mayne Winning Bid Notice"); *Notice of Debtors' Designation of Stalking Horse as Winning Bidder and the Stalking Horse APA as the Winning Bid for Certain of the Debtors' Assets* [D.I. 246] (the "Ligand Winning Bid Notice").

16. On September 11, 2023, the Court held a hearing on the Debtors' motion seeking approval of (i) the sale of certain of the Debtors' Commercial Assets related to Rhofade to Mayne, on the terms of the Mayne Bid and related asset purchase agreement (the "Mayne Sale"), and (ii) the sale of the Debtors' R&D Assets and certain of the Debtors' Commercial Assets related to Sitavig to Ligand, on the terms of the Revised Ligand Stalking Horse/DIP Proposal and related asset purchase agreement (the "Ligand Sale"). *See* Sale Decl. ¶ 26; *see also* Mayne Winning Bid Notice at 1-2; Ligand Winning Bid Notice at 1-2.

17. On September 12, 2023, the Court entered separate orders approving the Mayne Sale [D.I. 292] and the Ligand Sale [D.I. 291].

18. Ultimately, the concessions embodied in the Revised Ligand Stalking Horse/DIP Proposal resulted in a significant benefit to the Debtors' estates, increasing creditor recoveries by at least \$5.75 million based on Auction results. *See* Sale Decl. ¶¶ 20-22, 25. As the Debtors' investment banker, Raymond James, acknowledges, these improved terms could not have been obtained without the Alternative Stalking Horse/DIP Proposal, which generated competitive tension and was a critical component in compelling Ligand to make the key concessions reflected in the Revised Ligand Stalking Horse/DIP Proposal, thereby unlocking meaningful value for the Debtors' estates. *Id.* ¶¶ 18-19, 22.

RELIEF REQUESTED

19. By this Application, pursuant to Bankruptcy Code sections 503(b)(3)(D) and 503(b)(4), the Applicant requests entry of an order, substantially in the form attached hereto as

Exhibit A, allowing as administrative expenses of the Debtors' estates, \$353,752.00 in fees on account of reasonable and necessary professional services rendered to the Applicant by Paul Hastings and \$2,338.20 in actual and necessary costs and expenses incurred by Paul Hastings in its representation of the Applicant.⁴ The Applicant incurred such fees in developing, proposing, and negotiating the Alternative Stalking Horse/DIP Proposal and in preparing this Application, which constituted a substantial contribution in these Chapter 11 Cases that directly benefitted the Debtors' estates and unsecured creditors.

BASIS FOR RELIEF REQUESTED

20. Section 503(b)(3)(D) of the Bankruptcy Code grants administrative expense status to claims for the "actual, necessary expenses" incurred by "a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title." 11 U.S.C. § 503(b)(3)(D). In addition, section 503(b)(4) of the Bankruptcy Code allows administrative expenses for "reasonable compensation for professional services rendered by an attorney . . . of an entity whose expense is allowable" under section 503(b)(3)(D) of the Bankruptcy Code and reimbursement for "actual, necessary expenses incurred by such attorney." 11 U.S.C. § 503(b)(4).

21. Although the Bankruptcy Code does not define what constitutes a "substantial contribution," courts consider several factors when determining whether a movant substantially contributed to the case, such as: (i) whether the services were rendered solely to benefit the client or to benefit all parties in the case, (ii) whether the services provided direct, significant and

⁴ The amounts sought include \$290,849.00 in fees associated with the Alternative Stalking Horse/DIP Proposal, and \$62,903.00 in fees and \$2,338.20 in expenses associated with the preparation of this Application and appearance at the related hearing.

demonstrable benefit to the estate, and (iii) whether the services were duplicative of services rendered by attorneys for the committee, the committees themselves, or the debtor and its attorneys. *See In re Buckhead Am. Corp.*, 161 B.R. 11, 15 (Bankr. D. Del. 1993); *see also In re Worldwide Direct, Inc.*, 334 B.R. 112, 122 (Bankr. D. Del. 2005).

A. The Applicant Has Standing to Assert an Administrative Expense Claim Based on Its Substantial Contribution to the Chapter 11 Cases

22. Section 503(b)(3)(D) of the Bankruptcy Code expressly provides that “a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title” may seek allowance of an administrative expense claim for “actual, necessary expenses” incurred in making a substantial contribution claim in a chapter 11 case. 11 U.S.C. § 503(b)(3)(D). In determining whether an entity not specifically listed in section 503(b)(3)(D) has standing to assert a substantial contribution claim, some courts have adopted an expansive approach by correctly finding that the categories specifically listed in section 503(b)(3)(D) are illustrative and non-exclusive. *See, e.g., In re S&Y Enters., LLC*, 480 B.R. 452, 461-62 (Bankr. E.D.N.Y. 2012) (noting that section 503(b) “identifies an illustrative, not an exclusive, list of prospective applicants . . . [and that] it is simply not possible to craft a comprehensive list, or even a particularized legal standard, sufficient to encompass the wide range of entities and enterprises that may merit an administrative expense based on a substantial contribution in a Chapter 11 case”).

23. In holding that an unsuccessful bidder on a sale of the debtor’s assets had standing to seek a substantial contribution administrative expense claim based on the facts of the case, the court in *S&Y Enterprises* noted that it “is informed and guided by the Bankruptcy Code’s own definitions and rules of construction set forth in Section 102.” *Id.* Specifically, the court noted that the lead-in sentence of section 503(b) “contains the word ‘includes,’ which Section 102(3)

construes as ‘not limiting.’” *Id.* Based on this interplay of the applicable provisions of the Bankruptcy Code, the court rightfully recognized that parties who do not fall within the specifically enumerated categories of section 503(b)(3)(D) may still seek allowance of an administrative expense claim for making a substantial contribution in a chapter 11 case. Other courts have adopted a similarly expansive reading of section 503(b). *See, e.g., In re Connolly N. Am., LLC*, 802 F.3d 810, 816 (6th Cir. 2015) (“[B]y using the term ‘including’ in the opening lines of the subsection, Congress built a mechanism into § 503(b) for bankruptcy courts to reimburse expenses not specifically mentioned in § 503(b)’s subsections. The insertion of the term indicates that Congress did not intend to provide an exhaustive list of allowable expenses. Rather, it appears that Congress anticipated that bankruptcy courts would encounter a variety of administrative expenses and circumstances warranting reimbursement, which it could then evaluate on a case-by-case basis depending on the specific facts of the case, the benefit conferred upon the bankruptcy estate and its creditors, and whether the expenses at issue were actual, necessary, and reasonable.”); *In re Maqsoudi*, 566 B.R. 40, 44-45 (Bankr. C.D. Cal. 2017).

24. The Third Circuit has not expressly ruled on the issue whether an administrative expense claim under section 503(b)(D) may be sought by a person or entity of a type not specifically listed therein, but, in *Lebron v. Mechem Financial Inc.*, the Third Circuit panel suggested in *dicta* that “other interested parties” may be able to assert a substantial contribution claim. *Lebron v. Mechem Financial Inc.*, 27 F.3d 937, 944 (3rd Cir. 1994). Accordingly, the Court should follow the courts adopting an expansive interpretation of section 503(b)(3)(D) of the Bankruptcy Code and conclude that the Applicant has standing to seek allowance of a substantial

contribution administrative expense claim.⁵ Indeed, the Court implicitly adopted such an interpretation of the scope of section 503(b)(3)(D) by entering the Bidding Procedures Order, which provides, in relevant part, that “[e]ach Qualified Bidder submitting a bid shall be deemed to . . . have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code” (Bidding Procedures Order, Ex. 1 at 12), which would be unnecessary if third party bidders were not entitled to assert such a claim in the first place.

B. The Applicant’s Development, Proposal, and Negotiation of the Alternative Stalking Horse/DIP Proposal Directly and Significantly Benefitted the Debtors’ Estates by Substantially Improving the Terms of the Original Ligand Proposals

25. To prove a substantial contribution claim, a movant’s efforts must “result[] in an actual and demonstrable benefit to the debtor’s estate and the creditors.” *Lebron*, 27 F.3d at 944 (quoting *Haskins v. U.S.*, 846 F.2d 55, 57 (10th Cir. 1988)). The movant must also “show a ‘causal connection’ between the service and the contribution.” *In re Worldwide Direct, Inc.*, 334 B.R. at 121-22 (quoting *In re Granite Partners, L.P.*, 213 B.R. 440, 47 (Bankr. S.D.N.Y. 1997)). A movant’s efforts have substantially contributed to a case where they have “foster[ed] and enhance[d] . . . the progress of the reorganization.” *Lebron*, 27 F.3d at 944 (quoting *Pierson & Gaylen v. Creel & Atwood (In re Consol. Bancshares, Inc.)*, 785 F.2d 1249, 1253 (5th Cir. 1986)).

26. In *In re FF Holdings Corp.*, the Delaware district court allowed a substantial contribution claim where an unsecured creditor arranged alternative postpetition financing that assisted the debtors’ negotiations with other parties, even though such financing was not used by the estate. *In re FF Holdings Corp.*, 343 B.R. 84, 87 (D. Del. 2006). In *FF Holdings*, the unsecured

⁵ Although the Applicant acknowledges that Judge Dorsey recently declined to adopt an expansive reading of section 503(b)(3)(D), in a bench ruling on an application for allowance of a substantial contribution claim filed in the *Cred Inc.* chapter 11 cases, the Applicant respectfully submits that this conclusion was erroneous and carries little persuasive authority. See Hr’g Tr. 39:24-43:11, *In re Cred Inc.*, No. 20-12836 (JTD) (Bankr. D. Del. Apr. 22, 2021) (ECF No. 737).

creditor contended that “the fact that an alternative financing source was available to the Debtors increased the Debtors’ bargaining leverage with other parties in the case.” *Id.* at 85. The court agreed and concluded that this effort conferred a benefit to the estate, finding that the fact “[t]hat another lender was readily available to the Debtors undoubtedly assisted the Debtors in [their] negotiations with other parties.” *Id.* at 87.

27. *FF Holdings* is squarely on point with the facts here. Indeed, the efforts of the Applicant were greater than those of the creditor in *FF Holdings*: the Applicant here did not merely arrange for alternative DIP financing, but also proposed to serve as stalking horse purchaser for the Debtors’ Assets. By offering the Alternative Stalking Horse/DIP Proposal, the Applicant “undoubtedly assisted the Debtors in [their] negotiations” with Ligand. *See id.* As discussed above, the Debtors used the Alternative Stalking Horse/DIP Proposal as “a stalking horse” to obtain material concessions from Ligand. The existence of the Alternative Stalking Horse/DIP Proposal as an actionable alternative to the Original Ligand Proposals undoubtedly influenced Ligand’s willingness to make the concessions reflected in the Revised Ligand Stalking Horse/DIP Proposal.

C. The Alternative Stalking Horse/DIP Proposal Benefitted All Unsecured Creditors and Was Proposed by the Applicant at the Request of the Debtors

28. In the Third Circuit, courts consider the motives of the movant when determining whether a substantial contribution has been made under section 503(b)(3)(D) of the Bankruptcy Code. *See Lebron*, 27 F.3d at 944.⁶ The movant must show that the benefit to the estate was “more than an incidental one arising from activities the applicant has pursued in protecting his or her own interests.” *Id.* However, the *Lebron* court acknowledged that “[m]ost activities of an interested

⁶ In other circuits, motive is irrelevant when reviewing claims under section 503(b)(3)(D). *See, e.g., Hall Fin. Grp., Inc. v. DP Partners, Ltd. P’ship. (In re DP Partners Ltd. P’ship.)*, 106 F.3d 667, 673 (5th Cir. 1997) (“[A] creditor’s motive in taking actions that benefit the estate has little relevance in the determination whether the creditor has incurred actual and necessary expenses in making a substantial contribution to a case.”).

party that contribute to the estate will also, of course, benefit that party to some degree, and the existence of a self-interest cannot in and of itself preclude reimbursement.” *Id.* Therefore, compensation is authorized even where the services rendered by the attorney were primarily for its clients, if such services transcend self-protection and extend to the entire bankruptcy estate. *Id.*

29. Additionally, in examining motive, the Delaware bankruptcy courts have found this element to be satisfied where the party seeking reimbursement took the actions providing a benefit to the estate at the request of an estate representative. *See In re Worldwide Direct, Inc.*, 334 B.R. at 123-24 (finding a party’s efforts in a litigation and in drafting plan provisions constituted a substantial contribution and noting that the creditors’ committee had requested such efforts); *In re Columbia Gas Sys., Inc.*, 224 B.R. 540, 554-55 (Bankr. D. Del. 1998) (finding substantial contribution by three public pension funds for efforts in assisting an equity committee in negotiations with other parties, facilitating positive outcomes in the case, where the pension funds were “invited to participate in the meetings of the equity security committee”). Both *Worldwide Direct* and *Columbia Gas* demonstrate the importance of this factor, as both cases considered multiple and varied substantial contribution requests and allowed only those for efforts taken at the request of estate representatives.

30. The Debtors strongly encouraged the Applicant to expend the efforts to develop, propose, and negotiate the Alternative Stalking Horse/DIP Proposal, in hope that such efforts would advance the general interests of all unsecured creditors in maximizing the value of the Debtors’ estates and increase the amount available for distribution. The Objections to the Original Ligand Proposals would have carried much less weight had the Alternative Stalking Horse/DIP Proposal not been available. Moreover, the Alternative Stalking Horse/DIP Proposal gave the Debtors leverage to use in negotiations with Ligand, ultimately resulting in the value-accretive

concessions made by Ligand under the Revised Ligand Stalking Horse/DIP Proposal that would not have been possible but for the Alternative Stalking Horse/DIP Proposal being made and advanced to near final definitive documentation.

D. The Amounts Requested Represent the Applicant’s Actual and Necessary Expenses and Reasonable Compensation for Professional Fees

31. Section 503(b)(4) of the Bankruptcy Code grants administrative expense status to claims for “reasonable compensation for professional services rendered by an attorney” to a party entitled to reimbursement under section 503(b)(3)(D) of the Bankruptcy Code, “based on the time, the nature, the extent, and the value of such services, the cost of such services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney” 11 U.S.C. § 503(b)(4).

32. The fees and expenses of Paul Hastings represent reasonable compensation for the professional services rendered to the Applicant in developing, proposing, and negotiating the Alternative Stalking Horse/DIP Proposal, as well as the actual, necessary expenses incurred in providing such services. Among other things, Paul Hastings (i) reviewed the filings in the Chapter 11 Cases, including the DIP Motion and Bidding Procedures Motion; (ii) examined the Debtors’ businesses to understand the capital and corporate structure; and (iii) worked with the Applicant and the Debtors on a very compressed timeframe to draft the DIP credit agreement and stalking horse asset purchase agreement contemplated by the Alternative Stalking Horse/DIP Proposal as well as draft motions and related forms of order for approval thereof.

33. In representing the Applicant, Paul Hastings maintained detailed records of the time expended by professionals and paraprofessionals in rendering services to the Applicant. Such time records were generated contemporaneously by the person who rendered the services when such services were performed and are generated in the ordinary course of Paul Hastings’ practices. A

copy of Paul Hastings' time records and itemization of expenses incurred in connection with the Alternative Stalking Horse/DIP Proposal and the preparation of this Application is included as **Exhibit B** attached hereto. Paul Hastings believes that the time records and itemization of expenses provide sufficient information for the Court to determine whether the hourly rates and the number of hours worked were reasonable.

NOTICE

34. Notice of this Application has been provided to: (i) the U.S. Trustee; (ii) counsel to the Debtors; (iii) counsel to the Committee; and (iv) all other parties required to receive service under Rule 2002-1(b) of the Local Bankruptcy Rules. In light of the nature of the relief requested, the Applicant submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, the Applicant respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, (i) allowing as an administrative expense claim in the amount of \$356,090.20, on account of professional fees and expenses incurred in connection with the Applicant's substantial contribution in these Chapter 11 Cases, (ii) authorizing the Debtors to pay Paul Hastings the amount of \$356,090.20 in fees and expenses, and (iii) granting the Applicant such other and further relief as the Court deems just and appropriate.

[Remainder of page intentionally left blank]

Dated: October 4, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

Matthew B. Lunn (No. 4119)
Robert F. Poppiti, Jr. (No. 5052)
1000 North King Street
Wilmington, DE 19809
Telephone: (302) 571-6600
Facsimile: (302) 576-3312
Email: mlunn@ycst.com
rpoppiti@ycst.com

–and–

PAUL HASTINGS LLP

Frank A. Merola (*pro hac vice* admission pending)
Jason Pierce (*pro hac vice* admission pending)
200 Park Avenue
New York, NY 10166
Telephone: (212) 318-6000
Facsimile: (212) 319-4090
Email: frankmerola@paulhastings.com
jasonpierce@paulhastings.com

Counsel to WE2 Acquisition Holdings, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
) Case No. 23-10937 (LSS)
NOVAN, INC., *et al.*,¹)
) (Jointly Administered)
)
Debtors.) **Hearing Date: October 18, 2023 at 2:30 p.m. (ET)**
) **Obj. Deadline: October 11, 2023 at 4:00 p.m. (ET)**

**NOTICE OF APPLICATION OF WE2 ACQUISITION HOLDINGS, LLC PURSUANT
TO 11 U.S.C. §§ 503(b)(3) AND 503(b)(4) FOR ALLOWANCE OF FEES AND
EXPENSES INCURRED IN MAKING A SUBSTANTIAL CONTRIBUTION
AS AN ADMINISTRATIVE EXPENSE CLAIM**

PLEASE TAKE NOTICE that WE2 Acquisition Holdings, LLC (the “Applicant”), by and through its undersigned counsel, filed the attached *Application of WE2 Acquisition Holdings, LLC Pursuant to 11 U.S.C. §§ 503(b)(3) and 503(b)(4) for Allowance of Fees and Expenses Incurred in Making a Substantial Contribution as an Administrative Expense Claim* (the “Application”).

PLEASE TAKE FURTHER NOTICE that objections or responses, if any, to the Application must (a) be in writing, (b) be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before October 11, 2023 at 4:00 p.m. (ET) (the “Objection Deadline”), and served upon the undersigned counsel and the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Lockbox 35, Wilmington, Delaware 19801, Attn: Linda J. Casey, Esq. (linda.casey@usdoj.gov).

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE APPLICATION WILL BE HELD ON OCTOBER 18, 2023 AT 2:30 P.M. (ET) BEFORE THE HONORABLE CHIEF JUDGE LAURIE S. SILVERSTEIN, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6th FLOOR, COURTROOM NO. 2, WILMINGTON, DELAWARE 19801.

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.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR A HEARING.

Dated: October 4, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Robert F. Poppiti, Jr.

Matthew B. Lunn (No. 4119)
Robert F. Poppiti, Jr. (No. 5052)
1000 North King Street
Wilmington, DE 19809
Telephone: (302) 571-6600
Facsimile: (302) 576-3312
Email: mlunn@ycst.com
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-and-

PAUL HASTINGS LLP

Frank A. Merola (*pro hac vice* admission pending)
Jason Pierce (*pro hac vice* admission pending)
200 Park Avenue
New York, NY 10166
Telephone: (212) 318-6000
Facsimile: (212) 319-4090
Email: frankmerola@paulhastings.com
jasonpierce@paulhastings.com

Counsel to WE2 Acquisition Holdings, LLC

Exhibit A

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.)
) (Jointly Administered)
)
) Ref. Docket No. _____
_____)

**ORDER GRANTING APPLICATION OF WE2 ACQUISITION HOLDINGS, LLC
PURSUANT TO 11 U.S.C. §§ 503(b)(3) AND 503(b)(4) FOR ALLOWANCE OF FEES
AND EXPENSES INCURRED IN MAKING A SUBSTANTIAL CONTRIBUTION
AS AN ADMINISTRATIVE EXPENSE CLAIM**

Upon consideration of the *Application of WE2 Acquisition Holdings, LLC Pursuant to 11 U.S.C. §§ 503(b)(3) and 503(b)(3) for Allowance of Fees and Expenses Incurred in Making a Substantial Contribution as an Administrative Expense Claim* (the “Application”)² seeking allowance of an administrative expense claim for payment of professional fees and expenses incurred by WE2 Acquisition Holdings, LLC (the “Applicant”) in making a substantial contribution in the Chapter 11 Cases; and it appearing that this Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and adequate notice of the Application having been given such that no other or further notice need be given; and it appearing that the relief requested in the Application is in the best interests of the Debtors, their estates and creditors;

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 meanings given to them in the Application.

and it appearing that the Alternative Stalking Horse/DIP Proposal and the efforts of the Applicant and the services rendered by Paul Hastings on behalf of the Applicant constituted a substantial contribution to the Chapter 11 Cases; and it appearing that the Applicant's and Paul Hastings' efforts were not duplicated by other parties in the Chapter 11 Cases; and it appearing that the services rendered by Paul Hastings were reasonable and that the expenses incurred by Paul Hastings were actual and necessary, it is hereby ORDERED that:

1. The Application is GRANTED as set forth herein.
2. The Applicant shall have an allowed administrative expense claim under sections 503(b)(3)(D) and 503(b)(4) of the Bankruptcy Code for reimbursement of professional fees and expenses incurred by the Applicant in connection with making a substantial contribution to the Chapter 11 Cases, in the amount of \$353,752.00 in fees and \$2,338.20 in expenses.
3. The Debtors are authorized to pay to Paul Hastings the amount of \$353,752.00 in fees and \$2,338.20 in expenses.
4. This Court shall retain exclusive jurisdiction to hear and decide all matters arising from or related to this Order.

Exhibit B

Itemized Fees and Expenses of Paul Hastings



PAUL HASTINGS LLP
200 Park Avenue, New York, NY 10166-3205
t: +1.212.318.6000 | f: +1.212.319.4090 | www.paulhastings.com

Woodward Pharma Services LLC
Suite A
47220 Cartier Drive
Wixom, MI 48393

Revised: October 4, 2023
August 25, 2023

Please refer to
Invoice Number: 2369077

Attn: David Risk

PH LLP Tax ID No. 95-2209675

SUMMARY SHEET

Woodward Pharma

PH LLP Client/Matter # 52134-00002

Alex Cota

Legal fees for professional services for the period ending October 3, 2023	\$353,752.00
Costs incurred and advanced	2,338.20
Current Fees and Costs Due	\$356,090.20
Total Balance Due - Due Upon Receipt	\$356,090.20

We encourage our clients to pay via ACH, however, in the event that you pay by check, please send payment to the remittance address below:

TO PROTECT AGAINST FRAUD, the Firm will not change its wiring instructions via email. We strongly encourage clients to confirm any change in wiring instructions by contacting Teri Goffredo @ 213-683-5045 or via email @ terigoffredo@paulhastings.com and requesting written and verbal confirmation.

Wiring and ACH Instructions:

Citibank
ABA # 322271724
SWIFT Address: CITIUS33
787 W. 5th Street
Los Angeles, CA 90071
Account Number: 206628380
Account Name: Paul Hastings LLP

Remittance Address:

Paul Hastings LLP
Lockbox 4803
PO Box 894803
Los Angeles, CA 90189-4803

*For wires, please reference the invoice, client and matter number(s) being paid
For ACH payments, please use the CTX format and/or send any remittances to cashepn@paulhastings.com. This is a no-reply mailbox
Please refer all questions to billing@paulhastings.com*



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t: +1.212.318.6000 | f: +1.212.319.4090 | www.paulhastings.com

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Suite A
47220 Cartier Drive
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Revised: October 4, 2023
August 25, 2023

Please refer to
Invoice Number: 2369077

Attn: David Risk

PH LLP Tax ID No. 95-2209675

REMITTANCE COPY

Woodward Pharma
PH LLP Client/Matter # 52134-00002
Alex Cota

Legal fees for professional services for the period ending October 3, 2023	\$353,752.00
Costs incurred and advanced	2,338.20
Current Fees and Costs Due	\$356,090.20
Total Balance Due - Due Upon Receipt	\$356,090.20

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Citibank
ABA # 322271724
SWIFT Address: CITIUS33
787 W. 5th Street
Los Angeles, CA 90071
Account Number: 206628380
Account Name: Paul Hastings LLP

Remittance Address:

Paul Hastings LLP
Lockbox 4803
PO Box 894803
Los Angeles, CA 90189-4803

For wires, please reference the invoice, client and matter number(s) being paid
For ACH payments, please use the CTX format and/or send any remittances to cashepn@paulhastings.com. This is a no-reply mailbox
Please refer all questions to billing@paulhastings.com



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Woodward Pharma Services LLC
 Suite A
 47220 Cartier Drive
 Wixom, MI 48393

Revised: October 4, 2023
 August 25, 2023

Please refer to
 Invoice Number: 2369077

Attn: David Risk

PH LLP Tax ID No. 95-2209675

FOR PROFESSIONAL SERVICES RENDERED
 for the period ending October 3, 2023

Woodward Pharma **\$353,752.00**

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
08/03/2023	AC43	Telephone conference with clients and all-hands telephone conference with Novan, Raymond James, MN and others; review state of play with Stalking Horse.	2.00
08/03/2023	BL11	Initial telephone conference; review documents; on-board PH team	0.50
08/03/2023	MP29	Discuss deal; initial review of Ligand DIP	3.20
08/04/2023	AC43	Telephone conferences regarding new DIP / Stalking Horse APA; coordinate team; analysis regarding various issues; telephone conferences with corp team, fin team and BK team; begin drafts of same.	4.80
08/04/2023	BL10	Calls to discuss matter; review stalking horse materials; mark-up documents	3.00
08/04/2023	BL11	Review documents; telephone conferences with client; attention to bid strategy	2.80
08/04/2023	BS18	Call on deal and read DIP order and other bk documents and precedent credit agreement	1.00
08/04/2023	FM7	Telephone conference and correspondence with D. Abbott regarding pleadings ; exchange client correspondence regarding DIP economics	0.40

Woodward Pharma Services LLC
 52134-00002
 Our invoice No. 2369077

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
08/04/2023	FM7	Kick off telephone conference ; telephone conference with Debtors regarding timetable ; kick off telephone conference with client ; correspondence with Raymond James regarding "green light" ; correspondence regarding Bid Procedures	2.00
08/04/2023	JP32	Telephone calls with Paul Hastings team regarding Novan transaction; review bid procedures motion, first day declaration	2.60
08/04/2023	MP29	Review of markup of DIP from debtors; call with debtors' counsel; revise DIP credit agreement in preparation for filing; all hands call to discuss process	5.50
08/04/2023	MP29	Plan and coordinate DIP preparation; review of documents; discussions	4.30
08/05/2023	AC43	Review and comment on DIP CA; coordinate revisions on same; analysis of APA changes; various communications regarding same.	3.90
08/05/2023	BL10	Review APA and Schedules; prepare issues list	6.30
08/05/2023	BL11	Attention to tax issues; schedule telephone conference	0.70
08/05/2023	BS18	Draft credit agreement	3.00
08/05/2023	FM7	Review DIP Budget ; check in telephone conference with Debtors ; correspondence regarding DIP carve out ; correspondence regarding DIP AP package ; client correspondence regarding DIP fees	1.20
08/05/2023	FM7	Client correspondence regarding issues with APA ; Raymond James correspondence regarding timing ; Levine correspondence regarding APA ; review Bankruptcy Actions regarding APA	0.70
08/06/2023	AC43	Review and comment on DIP CA; review stalking horse APA for Ligand for certain milestones; analysis of multiple issues; coordinate BK review and bidding procedures	4.90
08/06/2023	BL10	Continue review of APA, Schedules and data room; update Issues list and circulate to client for review	5.30
08/06/2023	BL11	Telephone conference with Tax regarding deal points; attention to structure and APA review	2.50
08/06/2023	BS18	Finish draft of the credit agreement	3.00
08/06/2023	FM7	Correspondence with client regarding DIP	0.20
08/06/2023	MP29	Review/markup of DIP credit agreement; discussions	6.50
08/07/2023	AC43	Telephone conferences regarding DIP and related matters; analyze certain issues in APA; coordinate BK motions review/comment; various client issues to resolve; various communications regarding same.	4.90
08/07/2023	BL10	Issues list call with client; follow-up with specialists on reps; call with MN on APA; revise APA and circulate draft to client for review	6.50

Woodward Pharma Services LLC
 52134-00002
 Our invoice No. 2369077

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
08/07/2023	BL11	Review/revise APA; attention to bid procedures; telephone conferences with clients	3.50
08/07/2023	BS18	Revise credit agreement with internal and bk colleagues feedback	1.50
08/07/2023	FM7	Exchange client correspondence regarding APA issue list; review executory contract schedules; review initial draft of APA; review Pierce comments regarding Bankruptcy Actions; review FDA counsel mark up; review draft APA redline; B. Lawrence correspondence regarding APA open issues; review Client comments regarding APA issues; Patrizia correspondence regarding Healthcare issues; exchange client correspondence regarding Commercial Assets;	2.80
08/07/2023	FM7	Exchange correspondence regarding DIP AP and Carve Out ; review draft DIP Agreement redline	0.70
08/07/2023	JP32	Review bankruptcy provisions in draft APA and DIP Credit Agreement; review proposed bid procedures order; emails with Paul Hastings team regarding same; call with Woodward regarding APA issues list; emails with MNAT regarding draft DIP and bid procedures orders; review and analyze issues regarding potential contracts/leases to be assumed, WARN Act exposure; telephone call with MNAT regarding APA and DIP issues	8.20
08/07/2023	MP29	Discuss feedback to DIP credit agreement; revise drafting; review of APA	4.20
08/08/2023	AC43	Telephone conferences with clients regarding APA; review / comment revised versions of APA; various communications regarding foregoing.	3.90
08/08/2023	BL10	Follow-up on Cure Amounts; call with client to review open items; respond to questions on APA; review reimbursement provisions in APA in Bidding Procedures and revise accordingly	5.30
08/08/2023	BL11	Revise APA comments; telephone conferences with client	4.50
08/08/2023	BS18	Revise credit agreement	1.30
08/08/2023	FM7	Correspondence with Hokayem regarding DIP economics ; review redline DIP CA and related correspondence ; review correspondence regarding DIP CA review ; correspondence with Hokayem regarding DIP review/comments	1.10

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
08/08/2023	FM7	Correspondence with J. Pierce regarding APA; comments to Levine regarding APA; review Schedule regarding Assumed Contracts; correspondence with J. Pierce regarding Contracts; Levine correspondence regarding cure schedule; Levine correspondence regarding Rep regarding License/ Royalty Agreements; exchange client correspondence regarding FDA reps; exchange correspondence regarding APA Trigger Dates; exchange Jolley correspondence regarding Agreements; review redline, revised APA; client correspondence regarding revised APA; B. Lawrence correspondence with Debtors regarding APA	2.90
08/08/2023	JP32	Review and comment on APA, bid procedures order; calls regarding same	2.20
08/08/2023	MP29	Update DIP for client feedback; discussions/correspondence relating to case	2.30
08/09/2023	AC43	Review and comment on bidding procedures motion; various telephone conferences with client regarding same; attend to revised DIP; process and deal management; correspondence on same.	3.80
08/09/2023	BL10	Revise documents; weekly status call	1.50
08/09/2023	BL11	Review and comment on Bid Pro Order; attention to deal protections	3.00
08/09/2023	FM7	Review and revise DIP Order; telephone conference regarding DIP Order	1.90
08/09/2023	FM7	Revise Bid Procedures Order, Exhibits and Notices; review redline Bid Procedures Order; Pierce correspondence regarding Bid Procedures Order	2.20
08/09/2023	JP32	Review and comment on draft DIP order; internal discussions regarding same	8.50
08/10/2023	AC43	Review and comment on APA, DIP Order; DIP Motion and other operative documents; various telephone conferences with MNAT and Raymond James regarding process and material issues; negotiation with Smith Law on multiple items; various communications regarding same.	4.90
08/10/2023	BL10	Review revised APA and send summary of comments; internal call to discuss open items; MN/RJ status call; revise APA and circulate draft; finalize documents / open items	6.10
08/10/2023	BL11	Revise ask regarding deal protections; revise APA per MN comments; revise Bid Pro Order	3.50
08/10/2023	FM7	Revise Redline DIP Mtn; exchange DIP Order correspondence; review Abbott correspondence regarding DIP; review redline DIP Mtn; review MNAT comments to DIP Order; review lien search	2.10

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 52134-00002
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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
08/10/2023	FM7	Exchange Levine correspondence regarding regulatory reps ; review summary of APA changes ; correspondence with MNAT regarding Mths ; client correspondence regarding APA ; review redline APA	1.40
08/10/2023	JP32	Revise draft DIP order; review and comment on draft DIP motion; discussions with team regarding same	4.60
08/11/2023	AC43	Review DIP credit agreement comments and negotiation of same with J.Jolley of Smith Law; analysis regarding certain issues related to DIP Order draft; manage process and various telephone conferences regarding sales milestones and related items; MNAT and Raymond James telephone conference related to deal updates / negotiation; various communications related to foregoing	4.90
08/11/2023	BL10	Finalize documents for signing/filing	3.70
08/11/2023	BL11	Revise and finalize all documents; telephone conferences with clients; all hands telephone conference regarding Debtor staying with existing SH bidder	4.00
08/11/2023	FM7	Review redlined APA ; B. Lawrence correspondence regarding expense reimbursement ; client correspondence regarding milestones ; A. Cota correspondence regarding Milestones	0.90
08/11/2023	FM7	Review lien search ; correspondence with Abbott regarding Challenge Period ; M. Pecar correspondence regarding Permitted Liens ; review redlined DIP Order ; review redlined DIP CA ; client correspondence regarding update ; B. Lawrence correspondence regarding Next Steps : Abbot correspondence regarding Challenge Period ; telephone conference with A. Cota and Team regarding document checklist ; client correspondence regarding open issues ; review redline DIP CA ; review redline DIP Order ; telephone conference with Debtors regarding status	3.00
08/11/2023	JP32	Further comment on DIP motion and DIP order; calls with Paul Hastings and MNAT teams regarding transaction documents	2.20
08/31/2023	Frank Merola	Correspondence with Goodwin; telephone conference with Goodwin	0.40
09/12/2023	Frank Merola	Telephone conference regarding Sub Contribution; correspondence regarding hearing date	0.50
09/12/2023	Jason Pierce	Telephone call with B. Lawrence and F. Merola regarding application for allowance of substantial contribution claim; review precedent declarations in support of applications for allowance of substantial contribution claims; review Novan chapter 11 docket regarding background for application for allowance of substantial contribution claim.	1.60

Woodward Pharma Services LLC
 52134-00002
 Our invoice No. 2369077

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
09/13/2023	Jason Pierce	Review Novan chapter 11 filings in preparation for drafting application for allowance of substantial contribution claim; emails with B. Lawrence regarding Raymond James declarant.	1.10
09/26/2023	Jason Pierce	Review background facts, timeline of events; review precedent substantial contribution claim applications; draft substantial contribution claim application and declarations in support thereof.	5.30
09/27/2023	Frank Merola	Revise RJ Declaration regarding Sub Contribution	0.30
09/27/2023	Jason Pierce	Draft substantial contribution claim application and supporting declarations; emails with F. Merola, B. Lawrence and A. Cota regarding same.	3.20
09/28/2023	Jason Pierce	Draft substantial contribution claim application and supporting declarations.	4.10
09/29/2023	Brett Lawrence	Revise declarations; coordinate comments	1.00
09/29/2023	Frank Merola	Review and revise pleadings	0.30
09/29/2023	Jason Pierce	Draft substantial contribution claim application; review and revise declarations in support of substantial contribution claim application per comments provided by B. Lawrence and F. Merola; discussions with F. Merola, B. Lawrence and A. Cota regarding substantial contribution claim application and declarations in support of same.	5.10
10/01/2023	Jason Pierce	Draft substantial contribution claim application; discussions with F. Merola, B. Lawrence and A. Cota regarding substantial contribution claim application and declarations in support of same.	5.10
10/02/2023	Frank Merola	Revise App for Substantial Contribution; review PHV App	0.40
10/02/2023	Michael Magzame n	Correspond w/ J. Pierce; draft pro hac vice applications	0.40
10/02/2023	Jason Pierce	Draft substantial contribution claim application; discussions with F. Merola, B. Lawrence and A. Cota regarding substantial contribution claim application and declarations in support of same; revise substantial contribution claim application per comments from B. Lawrence; emails with Young Conaway regarding substantial contribution claim application; review and revise pro hac vice applications for J. Pierce and F. Merola;	3.60

Woodward Pharma Services LLC
 52134-00002
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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
10/03/2023	Jason Pierce	Further revise substantial contribution claim application and supporting declarations; discussions with B. Lawrence, F. Merola and A. Cota regarding same; discussions with Raymond James, Woodward and Colbeck regarding declarations in support of substantial contribution claim application.	5.50

Total Hours **212.00**

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Frank Merola	25.40	1,930.00	49,022.00
Brett Lawrence	26.00	1,930.00	50,180.00
Alex Cota	38.00	1,775.00	67,450.00
Marija Pecar	26.00	1,675.00	43,550.00
Jason Pierce	48.70	1,650.00	80,355.00
Bob Levine	37.70	1,330.00	50,141.00
Brittany Simington	9.80	1,310.00	12,838.00
Michael Magzamen	0.40	540.00	216.00

Costs incurred and advanced

Westlaw	2,338.20
Total Costs incurred and advanced	\$2,338.20

Current Fees and Costs **\$356,090.20**

Total Balance Due - Due Upon Receipt **\$356,090.20**
