

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
 NVN Liquidation, Inc., *et al.*, )  
 f/k/a NOVAN, INC.,<sup>1</sup> ) Case No. 23-10937 (LSS)  
 )  
 Debtors. ) (Jointly Administered)  
 )  
 ) **Hearing Date:**  
 ) **December 15, 2023, at 10:00 a.m. (ET)**  
 )  
 ) **Objection Deadline:**  
 ) **December 6, 2023, at 4:00 p.m. (ET)**

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**DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE COMBINED DISCLOSURE STATEMENT AND CHAPTER 11 PLAN OF LIQUIDATION ON AN INTERIM BASIS; (II) ESTABLISHING SOLICITATION AND TABULATION PROCEDURES; (III) APPROVING THE FORM OF BALLOT AND SOLICITATION MATERIALS; (IV) ESTABLISHING THE VOTING RECORD DATE; (V) FIXING THE DATE, TIME, AND PLACE FOR THE CONFIRMATION HEARING AND THE DEADLINE FOR FILING OBJECTIONS THERETO; AND (VI) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move this Court (this “Motion”), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Solicitation Procedures Order”), (i) approving the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* (as may be amended modified or supplemented, the “Disclosure Statement and Plan”),<sup>2</sup> filed contemporaneously herewith, on an interim basis: (ii) establishing procedures for the solicitation and tabulation of votes to accept or reject the Disclosure Statement and Plan; (iii) approving the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Disclosure Statement and Plan.



form of ballot and solicitation materials; (iv) establishing a voting record date; (v) fixing the date, time, and place for the combined hearing (the “Confirmation Hearing”) to approve and confirm the Disclosure Statement and Plan, including the adequacy of the disclosures therein on a final basis, and establishing the deadline for filing objections related thereto; and (vi) granting related relief. In support of the Motion, the Debtors respectfully state as follows:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter 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. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. 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 Rules”), the Debtors consent to the entry of a final order with respect to this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these chapter 11 cases (these “Chapter 11 Cases”) and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal bases for the relief requested herein are sections 105(a), 1125, 1126, and 1128 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), rules 2002(b), 3017, 3018, and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 3017-2.

## **BACKGROUND**

### **A. General Background**

5. On July 17, 2023 (the “Petition Date”), the Debtors each commenced a voluntary case under chapter 11 of the Bankruptcy Code in this Court. On July 28, 2023, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code in these Chapter 11 Cases [D.I. 72]. No trustee or examiner has been appointed in these Chapter 11 Cases.

6. Additional factual background relating to the Debtors’ business and the commencement of these Chapter 11 Cases is set forth in the *Declaration of Paula Brown Stafford in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [D.I. 4] (the “First Day Declaration”) which is incorporated herein by reference.

### **B. Sale of Substantially All of the Debtors’ Assets**

7. As more thoroughly detailed in the First Day Declaration, the Debtors initially commenced a marketing process to explore a sale of their assets (the “Sale Process”). To further the Sale Process, the Debtors filed the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances After the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) in the Alternative, Approving the Sale of the Debtors’ Assets Free and Clear of*

*Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder* [D.I. 16].

8. On August 15, 2023, the Court entered the *Order Approving Bidding Procedures for Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof*, and (II) Granting Related Relief [D.I. 166] (the "Bidding Procedures Order"). Pursuant to the Bidding Procedures Order, bids for the Debtors' assets were due on or before August 28, 2023, at 5:00 p.m. (ET).

9. On August 31, 2023, the Debtors filed the *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 Sale").

10. On September 1, 2023, the Debtors filed the *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 Sale").

11. On September 12, 2023, the Court entered the *Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of the Debtors' Development Assets and Certain of the Commercial Assets Free and Clear of all Encumbrances to LNHC, Inc., (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [D.I. 291] (the "Ligand Sale Order"). Attached to the Ligand Sale Order as Exhibit A was the *Amended and Restated Asset Purchase Agreement*, dated September 1, 2023.

12. Also on September 12, 2023, the Court entered the *Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of the Debtors' Assets Free and Clear of All Encumbrances to Mayne Pharma LLC, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [D.I. 292] (the "Mayne Sale Order"). Attached to the Mayne Sale Order as Exhibit A was the *Asset Purchase Agreement*, dated August 31, 2023.

13. On September 25, 2023, the Mayne Sale closed.

14. On September 27, 2023, the Ligand Sale closed.

### C. The Disclosure Statement and Plan

15. The Debtors have filed the Disclosure Statement and Plan contemporaneously with this Motion. The Plan provides for the following classification and treatment of Claims and Interests:

<b><u>Class/ Designation</u></b>	<b><u>Plan Treatment</u></b>	<b><u>Status</u></b>	<b><u>Voting Rights</u></b>
<b>Class 1:</b> Other Priority Claims	Each Holder of an Allowed Class 1 Claim shall receive Cash in an amount equal to the unpaid portion of such Allowed Other Priority Claim.	Unimpaired	Not entitled to vote Deemed to accept Plan
<b>Class 2:</b> Other Secured Claims	Each Holder of an Allowed Class 2 Claim shall receive, at the option of the Debtors, as applicable: (i) Cash in an amount equal to the Allowed amount of such Claim; (ii) reinstatement of such Holder's Allowed Other Secured Claim; (iii) such other treatment sufficient to render such Holder's Allowed Other Secured Claim Unimpaired; or (iv) return of the applicable collateral in satisfaction of the Allowed amount of such Other Secured Claim.	Unimpaired	Not entitled to vote Deemed to accept Plan

<b><u>Class/ Designation</u></b>	<b><u>Plan Treatment</u></b>	<b><u>Status</u></b>	<b><u>Voting Rights</u></b>
<b>Class 3:</b> NVN Unsecured Claims	<b>If Class 3 accepts this Plan (i.e., 66 2/3% in claim amount and majority in number),</b> each Holder of an Allowed NVN Unsecured Claim shall receive, in full and final satisfaction, and release of and in exchange for its Allowed Class 3 Claim, either: (A) its Pro Rata share of the NVN Recovery; or (B) such other treatment which the Debtors (with the consent of the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Allowed NVN Unsecured Claim have agreed upon in writing. <b>If Class 3 does not vote to accept the Plan, Class 3 will receive no Distribution on account of their Class 3 Claims.</b>	Impaired	Entitled to vote
<b>Class 4:</b> EPI Unsecured Claims	Each Holder of an Allowed EPI Unsecured Claim shall receive, in full and final satisfaction, and release of and in exchange for its Allowed Class 4 Claim, either: (A) its Pro Rata share of the EPI Recovery; or (B) such other treatment which the Debtors (with the consent of the Committee) or the Liquidating Trustee, as applicable, and the Holder of such Allowed EPI Unsecured Claim have agreed upon in writing.	Impaired	Entitled to vote
<b>Class 5:</b> Subordinated Claims	Each Holder of an Allowed Class 5 Claim shall receive no Distribution on account of their Subordinated Claims.	Impaired	Not entitled to vote Deemed to reject Plan
<b>Class 6:</b> Equity Interests	On the Effective Date, all Equity Interests shall be deemed canceled, extinguished and discharged and of no further force or effect, and the Holders of Equity Interests shall not be entitled to receive or retain any property on account of such Interests.	Impaired	Not entitled to vote Deemed to reject Plan

16. As set forth above, Holders of NVN Unsecured Claims (Class 3) and Holders of EPI Unsecured Claims (Class 4) (collectively, the “Voting Classes”) are the only

Holders of Claims and Interests entitled to vote on the Disclosure Statement and Plan. All other Holders of Claims or Interests are not entitled to vote on the Disclosure Statement and Plan because these Holders either (a) hold a Claim that is not classified under the Disclosure Statement and Plan, (b) hold a Claim that is unimpaired under the Disclosure Statement and Plan and are conclusively presumed to accept the Disclosure Statement and Plan under section 1126(f) of the Bankruptcy Code, or (c) hold an Interest that is impaired under the Disclosure Statement and Plan, are not receiving a distribution, and are deemed to reject the Disclosure Statement and Plan under section 1126(g) of the Bankruptcy Code.

17. The Disclosure Statement and Plan provides a summary of these Chapter 11 Cases and an estimate of Distributions to Holders on account of Allowed Claims. In addition, the Disclosure Statement and Plan provides “adequate information” to Holders of Claims who are eligible to vote to make an informed decision as to whether to vote to accept or reject the Disclosure Statement and Plan. Accordingly, the Debtors propose the Disclosure Statement and Plan and seek a combined hearing as the most efficient means to conclude these Chapter 11 Cases.

**RELIEF REQUESTED**

18. By this Motion, the Debtors seek entry of the Proposed Solicitation Procedures Order: (i) approving the Disclosure Statement and Plan, including the adequacy of the disclosures for purposes of solicitation, on an interim basis; (ii) establishing procedures for the solicitation and tabulation of votes to accept or reject the Disclosure Statement and Plan; (iii) approving the form of Ballot (as defined below) and solicitation materials; (iv) establishing a Voting Record Date (as defined below); (v) fixing the date, time, and place for the Confirmation Hearing and establishing the deadline for filing objections related thereto; and (vi) granting related

relief. A summary of the key dates proposed to be established by the Proposed Solicitation Procedures Order, subject to the Court's availability, is set forth below:

<b>Proposed Timetable</b>	
<b><u>Event</u></b>	<b><u>Date</u></b>
Voting Record Date	<b>December 15, 2023</b> (or the date the Proposed Solicitation Procedures Order is entered)
Date by Which Solicitation Will be Mailed	<b>December 20, 2023</b> (or within three business days of entry of the Proposed Solicitation Procedures Order)
Deadline to File Rule 3018 Motions	<b>January 4, 2024, at 4:00 p.m. (ET)</b>
Deadline for Debtors to Respond to any Rule 3018 Motion	<b>January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Plan Supplement	<b>(on or before 7 days prior to the earlier of (a) voting deadline or (b) deadline to object to confirmation) January 11, 2024, at 4:00 p.m. (ET)</b>
Voting Deadline	<b>(not more than 10 days prior to confirmation hearing) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to Object to Confirmation and Final Approval of Adequacy of Disclosures	<b>(at least 28 days from service) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Confirmation Brief and any Replies in Support of Confirmation	<b>January 23, 2024, at 4:00 p.m. (ET)</b> (or two business days prior to the Confirmation Hearing)
Confirmation Hearing	<b>January 25, 2024 at 10:00 a.m. (ET)</b> (or as soon as possible thereafter)

19. The related exhibits annexed to the Proposed Solicitation Procedures Order and cited throughout are as follows:

<b>Exhibit</b>	<b>Number</b>
Confirmation Hearing Notice	<b>Exhibit 1</b>
Ballot (Class 3 and Class 4)	<b>Exhibit 2</b>
Notice of Non-Voting Status	<b>Exhibit 3</b>



**BASIS FOR RELIEF**

**A. Interim Approval of the Disclosure Statement and Plan for Solicitation Purposes**

20. Local Rule 3017-2 prescribes the necessary information and other requirements for interim approval of the Disclosure Statement and Plan for solicitation purposes. *See* Del. Bankr. L.R. 3017-2(b) (identifying certain requirements for interim approval of a combined disclosure statement and plan for solicitation purposes). The Debtors submit that the information and procedures set forth in this Motion satisfy the requirements of Local Rule 3017-2 because the Debtors propose a liquidating plan and the Motion and Disclosure Statement and Plan provide (as applicable), among other things (i) a period of at least fourteen (14) days to object to the relief requested in the Motion; (ii) service of the Motion upon the U.S. Trustee, the U.S. Securities and Exchange Commission, and all parties entitled to notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; (iii) publication of notices in the Chapter 11 Cases, including notice of the Confirmation Hearing, on the home page of the website of the Debtors' claims agent, Kurtzman Carson Consultants LLC ("KCC" or the "Voting Agent"); (iv) certain voting procedures, as detailed below; (v) certification that final approval of the adequacy and confirmation of the Disclosure Statement and Plan will comply with Bankruptcy Rule 2002(b); and (vi) a proposed order, which establishes, among other things, a voting record date, and a voting deadline that is not more than ten (10) days before the Confirmation Hearing, in satisfaction of Local Rule 3017-2(c). *See* Del. Bankr. L.R. 3017(c) (mandating the establishment of a voting record date and a voting deadline in a proposed solicitation procedures order).

21. Section 1125 of the Bankruptcy Code requires that a disclosure statement approved by the court contain "adequate information" prior to a debtor's solicitation of

acceptances or rejections of a chapter 11 plan. 11 U.S.C. § 1125(b). Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part:

“Adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . .

11 U.S.C. § 1125(a)(1). The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding whether to vote for the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”). It must, as a whole, provide information that is sufficiently detailed, so far as reasonably practicable, to permit an informed judgment by impaired creditors entitled to vote on the plan. *See Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp.*, 337 F.3d 314, 322 (3d Cir. 2003); *In re Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996); *see also In re Autobacs Strauss, Inc.*, 473 B.R. 525, 584 (Bankr. D. Del. 2012). Essentially, the Combined Disclosure Statement and Plan “must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution.” *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

22. “Adequate information” is a flexible standard, based on the facts and circumstances of each case. *See* 11 U.S.C. § 1125(a)(1); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each

case.”); *In re Monroe Well Serv., Inc.*, 80 B.R. 324, 330 (Bankr. E.D. Pa. 1987) (noting that the adequate information standard “is flexible on a case-by-case basis, [and] governs the disclosure that must be provided in all reorganization cases, whether involving a public or private corporation, or a partnership or an individual debtor.”).

23. Courts within the Third Circuit acknowledge that determining what constitutes “adequate information” for the purpose of satisfying section 1125 of the Bankruptcy Code resides within the broad discretion of the court. *See, e.g., Monroe Well Serv.*, at 331 (“It is clear that Congress intended for bankruptcy judges to exercise a great deal of discretion when considering the ‘adequacy of information’ provided by a disclosure statement.”); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (Bankr. E.D. Pa. 2001) (“The general language of the statute and its surrounding legislative history make clear that ‘[t]he determination of what is adequate information is subjective and made on a case-by-case basis. This determination is largely within the discretion of the bankruptcy court.”); *In re Lisanti Foods, Inc.*, 329 B.R. 491, 507 (D.N.J. 2005) (“Case law points out that [the adequate information standard] is an intentionally flexible standard as adequacy is determined on a case-by-case basis.”).

24. The Disclosure Statement and Plan provides the pertinent information necessary for eligible Holders of Claims to make an informed decision about whether to vote to accept or reject the Disclosure Statement and Plan. Specifically, the Disclosure Statement and Plan contains information that courts consider “adequate information,” including:

- a. ***The Debtors’ Corporate History, Structure, and Business Overview.*** An overview of the Debtors’ corporate history, business operations, and capital structure, which are described in Article III of the Combined Disclosure Statement and Plan;
- b. ***Events Leading to the Chapter 11 Filings.*** An overview of the events leading to the commencement of the Debtors’ Chapter 11 Cases, which are described in detail in Section 3.2 of the Combined Disclosure Statement and Plan;

- c. **Financial Information.** Certain projected financial information concerning outstanding claims and the result of the Debtors' sale of assets;
- d. **Risk Factors.** Certain risks associated with the forward-looking statements and an overall disclaimer as to the information provided by and set forth in the Combined Disclosure Statement and Plan, which are described in Article V of the Combined Disclosure Statement and Plan;
- e. **Solicitation and Voting Procedures.** A description of the procedures for soliciting votes to accept or reject the Plan and voting on the Plan, which are described in Article IV of the Combined Disclosure Statement and Plan;
- f. **Confirmation of the Plan.** Confirmation procedures and statutory requirements for Confirmation and Consummation of the Plan, which are described in Section 4.1 and 4.3 of the Combined Disclosure Statement Plan;
- g. **Certain United States Federal Income Tax Consequences of the Plan.** A description of certain U.S. Federal income tax law consequences of the Combined Disclosure Statement and Plan, as set forth in Section 5.8 of the Combined Disclosure Statement and Plan; and
- h. **Liquidation Analysis.** A comparison to a hypothetical liquidation under chapter 7 of the Bankruptcy Code and a best interests analysis, as described in Section 4.8 of the Combined Disclosure Statement and Plan.

*See Monroe Well Serv.*, 80 B.R. at 330 (“The legislative history surrounding the passage of § 1125 not only clearly sets forth its purpose but also emphasizes that the adequacy of disclosure is dependent upon various factors including: the size and complexity of the chapter 11 case, the type of plan proposed, the type of creditors and claims impaired by the proposed plan, and the access by impaired creditors to relevant information from other sources.”). Notably, disclosure regarding all conceivable topics is not necessary in every case. *Phoenix Petroleum Co.*, 278 B.R. at 393 (“[I]t is also well understood that certain categories of information which may be necessary in one case may be omitted in another; no one list of categories will apply in every case.”).

25. The Debtors respectfully submit that the Disclosure Statement and Plan complies with all aspects of section 1125 of the Bankruptcy Code. However, at the hearing on the Motion, the Debtors seek only interim approval of the Disclosure Statement and Plan for

solicitation purposes. At the Confirmation Hearing, the Debtors will demonstrate, on a final basis, that the information set forth therein contains adequate information within the meaning of section 1125 of the Bankruptcy Code.

26. The Debtors are seeking approval of the procedures and timeline requested herein because, among other reasons, the Debtors have limited remaining assets and desire to wind down their estates in an efficient way that will maximize the funds available for Distribution to stakeholders. Accordingly, the Debtors respectfully request that the Court enter the Proposed Solicitation Procedures Order approving, among other things, the Disclosure Statement and Plan on an interim basis.

27. Any objections or proposed modifications to the interim approval of the Disclosure Statement and Plan shall (a) be in writing, (b) comply with the Bankruptcy Rules and the Local Rules, and (c) be filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, with a copy served upon the following (collectively, the “Notice Parties”): (a) 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)); and (c) counsel to the Committee, Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com), Barry Bazian (bbazian@goodwinlaw.com), Stacy Dasaro (sdasaro@goodwinlaw.com), and James Lathrop (jlathrop@goodwinlaw.com)) by no later than **4:00 p.m. (ET) on December 6, 2023.**

**B. Approval of Confirmation Hearing, Confirmation Objection Deadline, and Notice Thereof**

28. Bankruptcy Rule 3017 provides that, on or before the approval of a disclosure statement, a bankruptcy court “may fix the date for the hearing on confirmation.” *See* Fed. R. Bankr. P. 3017(c). Section 105 of the Bankruptcy Code expressly authorizes a court to “issue an order . . . that . . . provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan” where the bankruptcy court deems a combined hearing to be “appropriate to ensure that the case is handled expeditiously and economically.” *See* 11 U.S.C. § 105(d)(2)(B)(vi); *see also In re Gulf Coast Oil Corp.*, 404 B.R. 407, 425 (Bankr. S.D. Tex. 2009) (“Section 1125(f) authorizes combined plans and disclosure statements in small business cases and § 105(d) authorizes the court to combined them in other cases.”); *In re Luminent Mortg. Capital Inc.*, Case No. 08-21389 (Bankr. D. Md. May 15, 2009). In addition, Local Rule 3017-2 expressly permits a debtor to file a combined plan and disclosure statement, and requires, among other things, that the debtor provide no less than fourteen (14) days’ notice of the deadline to object to the relief requested herein, and no less than thirty-five (35) days’ notice of the hearing to consider confirmation of a combined disclosure statement and plan and the adequacy of the disclosures contained therein. Del. Bankr. L.R. 3017-2(b)(i) and (iv).

29. Bankruptcy Rule 2002(b) requires that the Debtors provide notice to all creditors and parties in interest at least twenty-eight (28) days prior to the deadline for filing objections to confirmation of the Disclosure Statement and Plan, and the hearing on the final approval of the Disclosure Statement and Plan. Bankruptcy Rule 2002(d), in turn, requires that equity security holders be given notice of these matters in the manner and form directed by the Court.

30. Accordingly, the Debtors respectfully request that a combined hearing on final approval, including final approval of the adequacy of the disclosures contained therein, and confirmation of the Combined Disclosure Statement and Plan be set for **January 25, 2024, at 10:00 a.m. (ET)** or as soon as possible thereafter. The Debtors submit that a combined hearing will streamline and expedite the confirmation process, which will inure directly to benefit all stakeholders by hastening the implementation of the Disclosure Statement and Plan and limiting the amount of time the Debtors remain in chapter 11.

31. In the interest of an orderly procedure, the Debtors further request that objections to confirmation of the Disclosure Statement and Plan on a final basis, including of the adequacy of the disclosures contained therein, if any, must (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (c) state with particularity the basis and nature of such objection; and (d) be filed with the Court and served on the Notice Parties, so that they are received no later than **4:00 p.m. (prevailing Eastern Time) on January 18, 2024** (the “Confirmation Objection Deadline”). The Debtors shall, if they deem necessary in their discretion, file a reply to any such objections or brief in support of approval of the Disclosure Statement and Plan by no later than **12:00 p.m. (prevailing Eastern Time) on January 23, 2024** (or two (2) business days prior to the date of any adjourned Confirmation Hearing).

32. The notice of the Confirmation Hearing (the “Confirmation Hearing Notice”) sets forth, among other things, (i) the Confirmation Objection Deadline, (ii) the time, date, and place of the Confirmation Hearing, and (iii) instructions on how to obtain a copy of the Disclosure Statement and Plan free of charge. The Debtors will cause the Confirmation Hearing Notice to be served by the Service Date on the following parties: (a) all persons or entities that

have filed, or are deemed to have filed a Proof of Claim or request for allowance of Claim as of the Record Date; (b) all persons or entities listed on the Schedules as holding a Claim; (c) the Securities and Exchange Commission and any regulatory agencies with oversight authority of the Debtors; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) other known Holders of Claims and Interests; (g) all entities known to the Debtors to hold or assert a lien or other interest in the Debtors' property; and (h) any other parties that have requested notice pursuant to Bankruptcy Rule 2002. Notwithstanding the foregoing, under the Debtors proposed timeline set forth herein, the Confirmation Hearing Notice will be served at least twenty-eight (28) days prior to the Confirmation Objection Deadline and thirty-five (35) days prior to the Confirmation Hearing.

33. The Debtors submit that the foregoing procedures for providing notice of the Confirmation Hearing, the Confirmation Objection Deadline, and related matters fully comply with Bankruptcy Rules 2002 and 3017 and the time limits set forth therein, are consistent with sections 1126(f) and 1126(g) of the Bankruptcy Code and Bankruptcy Rule 3017(d) with respect to parties that are not entitled to vote on the Plan, and are both fair to Holders of Claims or Interests and other parties in interest and are designed to permit an organized and efficient Confirmation Hearing. Accordingly, the Debtors respectfully request that the Court approve such notice procedures as appropriate under the circumstances and in compliance with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

**C. Approval of Form of Solicitation Materials and Ballot and Notice of Non-Voting Status**

*i. Approval of Form and Solicitation Materials and Ballot*

34. As detailed above, only Class 3 and Class 4 (Unsecured Claims of NVN and EPI) are impaired and entitled to vote to accept or reject the Disclosure Statement and Plan.



The remaining Classes (collectively, the “Non-Voting Classes”) are not entitled to vote on the Disclosure Statement and Plan as they are conclusively presumed to have accepted the Disclosure Statement and Plan in accordance with section 1126(f) of the Bankruptcy Code, or deemed to have rejected the Disclosure Statement Plan in accordance with section 1126(g) of the Bankruptcy Code.

25. Bankruptcy Rule 3017(d) specifies the materials to be distributed to creditors and equity security holders upon approval of a disclosure statement:

Upon approval of a disclosure statement,—except to the extent that the court orders otherwise with respect to one or more unimpaired classes of creditors or equity security holders—the debtor in possession, trustee, proponent of the plan, or clerk as the court orders shall mail to all creditors and equity security holders, and in a chapter 11 reorganization case shall transmit to the United States trustee,

- (1) the plan or a court-approved summary of the plan;
- (2) the disclosure statement approved by the court;
- (3) notice of the time within which acceptances and rejections of the plan may be filed; and
- (4) any other information as the court may direct, including any court order approving the disclosure statement or a court-approved summary of the opinion.

In addition, notice of the time fixed for filing objections and the hearing on confirmation shall be mailed to all creditors and equity security holders in accordance with [Bankruptcy] Rule 2002(b), and a form of ballot conforming to the appropriate Official Form shall be mailed to creditors and equity security holders entitled to vote on the plan. . . .

Fed. R. Bankr. P. 3017(d).

35. The Debtors propose that the following materials be mailed no later than three (3) business days following the entry of the Proposed Solicitation Procedures Order (the

“Service Date”) by the Debtors claims and voting agent, KCC, to Holders of Claims in the Voting Class (collectively, a “Solicitation Package”):

- a. The Confirmation Hearing Notice and related objection procedures, substantially in the form attached to the Proposed Solicitation Procedures Order as **Exhibit 1**;
- b. The Disclosure Statement and Plan, with all exhibits thereto;
- c. The Solicitation Procedures Order, without exhibits;
- d. The form of ballot attached to the Proposed Solicitation Procedures Order as **Exhibit 2** (the “Ballot”);<sup>3</sup>
- e. A pre-paid, pre-addressed return envelope; and
- f. Any other documents and materials that the Court may direct or approve, including supplemental materials filed by the Debtors.

At the discretion of the Debtors, the Disclosure Statement and Plan, and the Solicitation Procedures Order, may be provided in pdf format on a flash drive, or in paper format. The Ballot and the Confirmation Hearing Notice will be provided in paper format.

36. The Debtors request that they not be required to transmit Solicitation Packages to Holders of Claims or Interests in Non-Voting Classes and propose sending such parties the Confirmation Hearing Notice, including only by email where the Debtors have an email address for any such Holders. The Confirmation Hearing Notice sets forth, among other things, the manner in which a copy of the Disclosure Statement and Plan and the Solicitation Procedures Order may be obtained free of charge through the website maintained by the Voting Agent or upon request to the Voting Agent.

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<sup>3</sup> The Ballot is substantially similar to Official Form No. 14 but has been modified to be consistent with the specific provisions of the Disclosure Statement and Plan and the facts of these Chapter 11 Cases.

*ii. Notice of Non-Voting Status*

37. The Voting Classes are the only classes entitled to receive a Ballot to vote to accept or reject the Combined Disclosure Statement and Plan. Holders of Claims in Classes 1 and 2 (the “Unimpaired Classes”) are conclusively presumed to have accepted the Combined Disclosure Statement and Plan in accordance with section 1126(f) of the Bankruptcy Code, and Holders of Claims in Class 5 and Interest Holders in Class 6 (together with the Unimpaired Classes, the “Non-Voting Classes”) are conclusively presumed to have rejected the Combined Disclosure Statement and Plan in accordance with section 1126(g) of the Bankruptcy Code.

38. Accordingly, the Debtors submit they should not be required to transmit Solicitation Packages to Holders of Claims or Interest Holders in the Non-Voting Classes. Therefore, the Debtors propose that they will mail or cause to be mailed to Holders of Claims or Interest Holders in the Non-Voting Classes, at the address to which notices are required to be sent pursuant to Bankruptcy Rule 2002(g), a notice substantially in the form attached to the Interim Approval and Procedures Order as **Exhibit 3** (the “Notice of Non-Voting Status”).

**D. Establishment of Voting Record Date and Voting Deadline**

39. Bankruptcy Rule 3017(c) provides that, “[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan . . . .” Fed. R. Bankr. P. 3017(c). The Debtors will complete the plan solicitation period by mailing the Ballot (and other approved solicitation materials) to the Voting Classes no later than the Service Date. Based on this schedule, the Debtors propose that any Ballot cast must be properly executed, completed, and delivered by mail, overnight courier, personal delivery, or E-Ballot (as defined below) to the Voting Agent in accordance with the instructions set forth in the Ballot, so that the Ballot is actually *received* no later than **4:00 p.m. (ET) on**

**January 18, 2024** (the “Voting Deadline”). The Voting Deadline will give Holders of Claims in the Voting Classes sufficient time to review the solicitation materials and vote.

40. In addition to accepting paper Ballots by mail, overnight courier, and personal delivery, the Debtors request authorization to accept Ballots from Holders of Claims in the Voting Classes by electronic ballot (an “E-Ballot”) transmitted solely through a customized online balloting portal on the Debtors’ case website to be maintained by KCC (the “E-Balloting Portal”). Parties entitled to vote may cast an electronic Ballot and electronically sign and submit the Ballot instantly by utilizing the E-Ballot, which allows a Holder to submit an electronic signature. The instructions for submission of E-Ballots will be set forth on the Ballot. The encrypted Ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor’s electronic signature will be deemed to be immediately legally valid and effective.

41. Bankruptcy Rule 3017(d) provides that a bankruptcy court may set the date on which the disclosure statement is approved or another date as the record date for determining which Holders of Claims and Interests are entitled to receive solicitation materials, including ballots for voting on a chapter 11 plan. *See* Fed. R. Bankr. P. 3017(d).

42. The Debtors propose that the Court establish **December 15, 2023** (or the date upon which Proposed Solicitation Procedures Order is entered) as the record date (the “Voting Record Date”) for purposes of determining which Holders of Claims are entitled to receive a Ballot to vote to accept or reject the Disclosure Statement and Plan. Establishing the Record Date will provide sufficient time for the Debtors and the Voting Agent to ensure that the Solicitation Packages can be mailed by the Service Date.

43. With respect to any transferred Claim, the Debtors propose that the transferee will be entitled to receive and cast a Ballot on account of such transferred Claim only if (a) all actions necessary to effect the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Voting Record Date (including, without limitation, the passage of any applicable objection period) or (b) the transferee files, no later than the Voting Record Date, (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer and (ii) a sworn statement of the transferor supporting the validity of the transfer.

**E. Approval of Tabulation Procedures**

44. The Debtors propose that the following procedures set forth in the subsequent paragraph be utilized in tabulating the votes to accept or reject the Disclosure Statement and Plan (the “Tabulation Procedures”).

45. The Debtors propose that each Holder of a Claim in the Voting Class shall be entitled to vote the amount of its Claim as of the Voting Record Date (as defined below). Accordingly, solely for purposes of voting on the Disclosure Statement and Plan, and not for the purpose of making Distributions on account of a Claim, and without prejudice to the rights of the Debtors or any other proper party in interest in any other context, including claims objections and adversary proceedings, with respect to all Holders of Claims in the Voting Class against the Debtors, the Debtors propose that the temporarily allowed amount of a Claim used to tabulate acceptance or rejection of the Plan should be as follows:

- a. The amount of the Claim listed in the Debtors’ Schedules; provided that such Claim is not scheduled as contingent, unliquidated, undetermined, undisputed, or in the amount of \$0.00, and such Claim has not been superseded by a timely filed Proof of Claim.
- b. The non-contingent and liquidated amount specified in a Proof of Claim against the Debtors, timely filed with the Court or the Voting Agent by the applicable Bar Date (or otherwise deemed timely filed by the Court under applicable law) to the extent such Proof of Claim has not been amended or

superseded by another Proof of Claim (or, if such Claim has been resolved pursuant to a stipulation or order entered by the Court, the amount set forth in such stipulation or order).

- c. If a Proof of Claim has been amended by a later Proof of Claim that is filed on or prior to the Voting Record Date, the later filed amending claim shall be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended claim. Except as otherwise ordered by the Court, any amendments to Proofs of Claim after the Voting Record Date shall not be considered for purposes of these tabulation rules.
- d. If applicable, the amount temporarily allowed by the Court for voting purposes pursuant to Bankruptcy Rule 3018. Any motion pursuant to Bankruptcy Rule 3018 seeking to temporarily allow a Claim for voting purposes must be filed and served in accordance with the Proposed Solicitation Procedures Order.
- e. Except as otherwise provided in subsection (d) hereof, a Ballot cast by an alleged Creditor who has timely filed a Proof of Claim in an unknown, blank, or undetermined amount, or is wholly unliquidated, or contingent (as determined on the face of the claim or after a reasonable review of the supporting documentation by the Voting Agent) and such claim has not been allowed, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00.
- f. Proofs of Claim filed for \$0.00 or arising from an Interest in NVN are not entitled to vote.
- g. Except as otherwise provided in subsection (d) hereof, with respect to a Ballot cast by an alleged Creditor who has timely filed a Proof of Claim, but the Claim is the subject of a claim objection filed by **December 15, 2023**, the Debtors request, that such Claim is temporarily disallowed for voting purposes only, and not for purposes of allowance or distribution.
- h. Notwithstanding anything to the contrary contained herein, to the extent that a Holder holds duplicate Claims in the Voting Class against the Debtors (by virtue of one or more timely-filed proofs of claim, the Schedules, or a combination of both), such Holder shall be deemed to hold a single Claim in the Voting Class, and shall be provided with one Solicitation Package and one ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such duplicative Claims.
- i. For purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single creditor in a particular Class shall be aggregated as if such creditor held one Claim against the

Debtor in such Class, and the votes related to such Claims shall be treated as a single vote to accept or reject the Plan.

- j. Except as otherwise ordered by the Court, any Ballot received after the Voting Deadline will not be counted absent the consent of the Debtors (in their sole discretion).
- k. Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant will not be counted.
- l. Any Ballot cast by a person or entity that does not hold a Claim in the Voting Class will not be counted. Further, any Ballot cast in regards to a filed proof of claim that is clearly based upon an Interest in the Debtors shall automatically be placed into Class 5 “Subordinated Claims,” and such Ballot shall not be counted as Class 5 is not entitled to a Distribution and is deemed to reject the Plan.
- m. Any unsigned Ballot will not be counted, provided that any Ballot validly submitted through the E-Balloting Portal will be deemed signed.
- n. Any Ballot transmitted to the Voting Agent by facsimile or other electronic means (other than through the E-Balloting Portal) will not be counted.
- o. Any Ballot that does not indicate an acceptance or rejection of the Disclosure Statement and Plan, or that indicates both an acceptance and rejection of the Disclosure Statement and Plan, will not be counted.
- p. Whenever a claimant casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the latest-dated valid Ballot timely received will be deemed to reflect the voter’s intent and, thus, will supersede any prior Ballots.
- q. If a claimant casts simultaneous duplicative Ballots that are voted inconsistently, such Ballots will not be counted.
- r. Any claimant who had delivered a valid Ballot voting on the Plan may withdraw or change such vote solely in accordance with Bankruptcy Rule 3018(a).
- s. Each claimant will be deemed to have voted the full amount of its Claim as set forth on the Ballot.
- t. Claimants may not split their vote within a Class; thus, each claimant will be required to vote all of its Claims within the Class either to accept or reject the Disclosure Statement and Plan.
- u. The Debtors further propose that, subject to any contrary order of the Court and except as otherwise set forth herein, they may waive any defects or

irregularities as to any particular Ballot at any time, either before or after the Voting Deadline, and any such waivers shall be documented in the vote tabulation certification prepared by the Voting Agent.

46. The Debtors respectfully submit that the Tabulation Procedures are appropriate and reasonable under the circumstances of these Chapter 11 Cases and should be approved.

**F. Procedures for Temporary Allowance of Claims**

47. The Debtors propose that any Holder of a Claim that seeks to challenge the temporary allowance of its claim for voting purposes based on the Tabulation Procedures be required to file a motion, pursuant to Bankruptcy Rule 3018(a), for an order temporarily allowing its claim in a different amount or classification for purposes of voting to accept or reject the Disclosure Statement and Plan (a "Rule 3018 Motion"), no later than **4:00 p.m. (prevailing Eastern Time) on January 4, 2024**, and serve the Rule 3018 Motion on the Debtors. The Debtors (and, with respect to filing a response, any party in interest) will then have: (i) until **4:00 p.m. (prevailing Eastern Time) on January 18, 2024** to file and serve any responses to a Rule 3018 Motion; and (ii) coordinate with the Court to adjudicate and resolve all pending Rule 3018 Motions prior to the Confirmation Hearing. In accordance with Bankruptcy Rule 3018, the Debtors further propose that any Ballot submitted by a Holder of a Claim that files a Rule 3018 Motion will be counted solely in accordance with the Tabulation Procedures and other applicable provisions contained herein unless and until the underlying claim is temporarily allowed by the Court for voting purposes in a different amount, after notice and a hearing.

**NON-SUBSTANTIVE MODIFICATIONS**

48. The Debtors request authorization to make non-substantive modifications to the Confirmation Notice, Solicitation Packages, and Ballot and related documents without further order of the Court, including modifications to correct typographical and grammatical



errors, if any, and to make conforming modifications to the Disclosure Statement and Plan, and any other materials in the Solicitation Packages prior to distribution.

**NOTICE**

49. The Debtors have provided notice of this Motion to (a) the U.S. Trustee, (b) counsel to the Committee, (c) the Securities and Exchange Commission, and (d) all parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE the Debtors respectfully request that the Court enter the Proposed Solicitation Procedures Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: November 22, 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Daniel B. Butz*

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**Exhibit A**

**Proposed Order**

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

In re:	)	
	)	Chapter 11
NVN Liquidation, Inc., <i>et al.</i> ,	)	
f/k/a NOVAN, INC., <sup>1</sup>	)	Case No. 23-10937 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Re: D.I. ____</b>

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**ORDER (I) APPROVING THE COMBINED DISCLOSURE STATEMENT  
AND CHAPTER 11 PLAN OF LIQUIDATION ON AN INTERIM BASIS;  
(II) ESTABLISHING SOLICITATION AND TABULATION PROCEDURES;  
(III) APPROVING THE FORM OF BALLOT AND SOLICITATION MATERIALS;  
(IV) ESTABLISHING THE VOTING RECORD DATE; (V) FIXING THE DATE, TIME,  
AND PLACE FOR THE CONFIRMATION HEARING AND THE DEADLINE FOR  
FILING OBJECTIONS THERETO; AND (VI) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the Debtors for entry of an order: (i) approving the Disclosure Statement and Plan on an interim basis; (ii) establishing procedures for the solicitation and tabulation of votes to accept or reject the Disclosure Statement and Plan; (iii) approving the form of ballot and solicitation materials; (iv) establishing a voting record date; (v) fixing the date, time, and place for the Confirmation Hearing and the deadline for filing objections related thereto; and (vi) granting related relief; and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS AS FOLLOWS:**

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*, dated as of February 29, 2012.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the meanings ascribed to such terms in the Motion or Disclosure Statement and Plan, as applicable.

B. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. This Court may, consistent with Article III of the United States Constitution, issue a final order in connection with the Motion.

D. Venue of the proceeding and the Motion in this District is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

E. The relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

F. The notice of the Motion and the Confirmation Hearing were served as set forth in the Motion, and such notice constitutes good and sufficient notice to all interested parties and complies with Bankruptcy Rules 2002 and 3017, and no other or further notice need be provided.

G. The form of Ballot attached hereto as **Exhibit 2** (the "Ballot"): (i) is consistent with Official Form No. 14; (ii) adequately addresses the particular needs of these Chapter 11 Cases; (iii) is appropriate for Holders of Claims in Class 3 and Class 4 of the Plan (the "Voting Classes"); and (iv) complies with Bankruptcy Rule 3017(d).

H. The Ballot need not be provided to Holders of Claims or Interests in Classes 1, 2, 5, and 6 (collectively, the "Non-Voting Classes"), as such Non-Voting Classes are either (i) unimpaired and are conclusively presumed to have accepted the Disclosure Statement and Plan in accordance with section 1126(f) of the Bankruptcy Code or (ii) impaired but will neither retain nor receive any property under the Disclosure Statement and Plan and, thus, are conclusively deemed to have rejected the Disclosure Statement and Plan under section 1126(g) of the Bankruptcy Code.

I. The period during which the Debtors may solicit votes to accept or reject the Disclosure Statement and Plan, as established by this Order, provides sufficient time for the Holders of Claims in the Voting Classes to make an informed decision to accept or reject the Disclosure Statement and Plan and submit a Ballot in a timely fashion, and the solicitation provided by this Order is consistent with section 1126 of the Bankruptcy Code.

J. The Tabulation Procedures (defined below) for the solicitation and tabulation of votes to accept or reject the Disclosure Statement and Plan, as approved herein, provide a fair and equitable voting process and are consistent with section 1126 of the Bankruptcy Code.

K. The contents of the Solicitation Packages and the procedures for providing notice of the Confirmation Hearing and the other matters set forth in the Confirmation Hearing Notice, under the circumstances, constitute sufficient notice to all interested parties in accordance with Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Disclosure Statement and Plan is approved on an interim basis as containing adequate information for solicitation purposes under sections 105 and 1125 of the Bankruptcy Code, Bankruptcy Rule 3017, and Local Rule 3017-2. Any objections to the adequacy of information contained in the Disclosure Statement on a final basis are expressly reserved for consideration at the Confirmation Hearing, unless overruled on the record at the hearing to approve the Disclosure Statement and Plan on an interim basis, if applicable.
3. The Bankruptcy Court shall conduct the Confirmation Hearing for (i) final approval of the Disclosure Statement and Plan as containing adequate information and (ii)

confirmation of the Disclosure Statement and Plan. The Confirmation Hearing is hereby scheduled for **January 25, 2024, at 10:00 a.m. (prevailing Eastern Time)**. The Confirmation Hearing may be continued from time to time without further notice other than by (a) announcing any adjourned date at the Confirmation Hearing (or any continued hearing) or (b) filing a notice on the docket of these Chapter 11 Cases.

4. The following dates and deadlines are hereby approved:

<b>Proposed Timetable</b>	
<b><u>Event</u></b>	<b><u>Date</u></b>
Voting Record Date	<b>December 15, 2023</b> (or the date the Proposed Solicitation Procedures Order is entered)
Date by Which Solicitation Will be Mailed	<b>December 20, 2023</b> (or within three business days of entry of the Proposed Solicitation Procedures Order)
Deadline to File Rule 3018 Motions	<b>January 4, 2024, at 4:00 p.m. (ET)</b>
Deadline for Debtors to Respond to any Rule 3018 Motion	<b>January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Plan Supplement	<b>(on or before 7 days prior to the earlier of (a) voting deadline or (b) deadline to object to confirmation) January 11, 2024, at 4:00 p.m. (ET)</b>
Voting Deadline	<b>(not more than 10 days prior to hearing) January 18, 2024 at 4:00 p.m. (ET)</b>
Deadline to Object to Confirmation and Final Approval of Adequacy of Disclosures	<b>(at least 28 days from service) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Confirmation Brief and any Replies in Support of Confirmation	<b>January 23, 2024, at 4:00 p.m. (ET)</b> (or two business days prior to the Confirmation Hearing)
Confirmation Hearing	<b>January 25, 2024, at 10:00 a.m. (ET)</b> (or as soon as possible thereafter)

5. The Confirmation Hearing Notice, in substantially the form attached hereto as **Exhibit 1**, is approved.

6. The Ballot, substantially in the form attached hereto as **Exhibit 2**, is approved.

7. The notice to be provided to Holders of Claims and Interests in the Non-Voting Classes, in substantially the form attached hereto as **Exhibit 3** (the “Notice of Non-Voting Status”), is approved.

8. Pursuant Bankruptcy Rule 3017(d), **December 15, 2023 at 4:00 p.m. (prevailing Eastern Time)** shall be the record date for purposes of determining which Holders of Claims are entitled to receive Solicitation Packages and vote on the Disclosure Statement and Plan (the “Record Date”).

9. With respect to any transferred Claim, the transferee shall only be entitled to receive and cast a Ballot on account of such transferred Claim if: (a) all actions necessary to effect the transfer of the Claim pursuant to Bankruptcy Rule 3001(e) have been completed by the Record Date (including, without limitation, the passage of any applicable objection period) or (b) the transferee files, no later than the Record Date, (i) the documentation required by Bankruptcy Rule 3001(e) to evidence the transfer, and (ii) a sworn statement of the transferor supporting the validity of the transfer.

10. On or prior to the date that is three (3) business days following entry of this Order (the “Service Date”), the Voting Agent shall serve, by first class mail, the Solicitation Packages to Holders of Claims in the Voting Class. The Solicitation Packages shall contain copies of: (a) the Confirmation Hearing Notice; (b) the Disclosure Statement and Plan, with all exhibits thereto; (c) this Order, without exhibits; (c) the Ballot; and (d) a pre-paid, pre-addressed return envelope.<sup>3</sup> Further, on or prior to the Service Date, the Voting Agent shall serve, by first class

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<sup>3</sup> The Disclosure Statement and Plan and this Order will be provided in pdf format on a flash drive or in paper format, and all other documents will be provided in paper format.

mail, the Notice of Non-Voting Status to Holders of Claims or Interests in the Non-Voting Classes. The Debtors shall not be required to distribute Solicitation Packages to (a) the Holders of Claims or Interests in the Non-Voting Classes and (b) those persons or entities listed at addresses for which previous mailings have been returned as undeliverable unless the Debtors receive written notice of accurate addresses for such persons or entities prior to the Voting Record Date. The Debtors and Voting Agent are also not required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages (including undeliverable Ballots) or Confirmation Hearing Notices.

11. On or prior to the Service Date, the Voting Agent shall serve, by first class mail, the Confirmation Hearing Notice to the following parties, to the extent such parties are not otherwise entitled to receive a Solicitation Package: (a) all persons or entities that have filed, or are deemed to have filed a Proof of Claim or request for allowance of Claim as of the Record Date; (b) all persons or entities listed on the Schedules as holding a Claim; (c) the Securities and Exchange Commission and any regulatory agencies with oversight authority of the Debtors; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) other known Holders of Claims and Interests; (g) all entities known to the Debtors to hold or assert a lien or other interest in the Debtors' property; and (h) any other parties that have requested notice pursuant to Bankruptcy Rule 2002.

12. To be counted as a vote to accept or reject the Disclosure Statement and Plan, a Ballot must be properly executed, completed, and delivered to the Voting Agent in accordance with the instructions on the Ballot so that it is actually received no later than **4:00 p.m. (prevailing Eastern Time) on January 18, 2024** (the "Voting Deadline").



13. The following procedures shall be used in tabulating the votes to accept or reject the Disclosure Statement and Plan (the “Tabulation Procedures”). Each Holder of a Claim in the Voting Classes shall be entitled to vote the amount of its Claim as of the Record Date. Solely for purposes of voting on the Disclosure Statement and Plan, and not for the purpose of making Distributions on account of a Claim, and without prejudice to the rights of the Debtors or any other proper party in interest in any other context, including claims objections and adversary proceedings, with respect to all Holders of Claims in the Voting Classes against the Debtors, the temporarily allowed amount of a Claim used to tabulate acceptance or rejection of the Plan should be as follows:

- a. The amount of the Claim listed in the Debtors’ Schedules; provided that such Claim is not scheduled as contingent, unliquidated, undetermined, undisputed, or in the amount of \$0.00, and such Claim has not been superseded by a timely filed Proof of Claim.
- b. The non-contingent and liquidated amount specified in a Proof of Claim against the Debtors, timely filed with the Court or the Voting Agent by the applicable Bar Date (or otherwise deemed timely filed by the Court under applicable law) to the extent such Proof of Claim has not been amended or superseded by another Proof of Claim (or, if such Claim has been resolved pursuant to a stipulation or order entered by the Court, the amount set forth in such stipulation or order).
- c. If a Proof of Claim has been amended by a later Proof of Claim that is filed on or prior to the Voting Record Date, the later filed amending claim shall be entitled to vote in a manner consistent with these tabulation rules, and the earlier filed claim shall be disallowed for voting purposes, regardless of whether the Debtors have objected to such amended claim. Except as otherwise ordered by the Court, any amendments to Proofs of Claim after the Voting Record Date shall not be considered for purposes of these tabulation rules.
- d. If applicable, the amount temporarily allowed by the Court for voting purposes pursuant to Bankruptcy Rule 3018. Any motion pursuant to Bankruptcy Rule 3018 seeking to temporarily allow a Claim for voting purposes must be filed and served in accordance with the Proposed Solicitation Procedures Order.

- e. Except as otherwise provided in subsection (d) hereof, a Ballot cast by an alleged Creditor who has timely filed a Proof of Claim in an unknown, blank, or undetermined amount, or is wholly unliquidated, or contingent (as determined on the face of the claim or after a reasonable review of the supporting documentation by the Voting Agent) and such claim has not been allowed, such Claim shall be temporarily allowed for voting purposes only, and not for purposes of allowance or distribution, at \$1.00.
- f. Proofs of Claim filed for \$0.00 or arising from an Interest in NVN are not entitled to vote.
- g. Except as otherwise provided in subsection (d) hereof, with respect to a Ballot cast by an alleged Creditor who has timely filed a Proof of Claim, but the Claim is the subject of a claim objection filed by **December 15, 2023**, the Debtors request, that such Claim is temporarily disallowed for voting purposes only, and not for purposes of allowance or distribution.
- h. Notwithstanding anything to the contrary contained herein, to the extent that a Holder holds duplicate Claims in the Voting Class against the Debtors (by virtue of one or more timely-filed proofs of claim, the Schedules, or a combination of both), such Holder shall be deemed to hold a single Claim in the Voting Class, and shall be provided with one Solicitation Package and one ballot for voting a single Claim in such Class, regardless of whether the Debtors have objected to such duplicative Claims.
- i. For purposes of the numerosity requirement of section 1126(c) of the Bankruptcy Code, separate Claims held by a single creditor in a particular Class shall be aggregated as if such creditor held one Claim against the Debtor in such Class, and the votes related to such Claims shall be treated as a single vote to accept or reject the Plan.
- j. Except as otherwise ordered by the Court, any Ballot received after the Voting Deadline will not be counted absent the consent of the Debtors (in their sole discretion).
- k. Any Ballot that is illegible or contains insufficient information to permit the identification of the claimant will not be counted.
- l. Any Ballot cast by a person or entity that does not hold a Claim in the Voting Class will not be counted. Further, any Ballot cast in regards to a filed proof of claim that is clearly based upon an Interest in the Debtors shall automatically be placed into Class 5 “Subordinated Claims,” and such Ballot shall not be counted as Class 5 is not entitled to a Distribution and is deemed to reject the Plan.
- m. Any unsigned Ballot will not be counted, provided that any Ballot validly submitted through the E-Balloting Portal will be deemed signed.

- n. Any Ballot transmitted to the Voting Agent by facsimile or other electronic means (other than through the E-Balloting Portal) will not be counted.
- o. Any Ballot that does not indicate an acceptance or rejection of the Disclosure Statement and Plan, or that indicates both an acceptance and rejection of the Disclosure Statement and Plan, will not be counted.
- p. Whenever a claimant casts more than one Ballot voting the same Claim prior to the Voting Deadline, only the latest-dated valid Ballot timely received will be deemed to reflect the voter's intent and, thus, will supersede any prior Ballots.
- q. If a claimant casts simultaneous duplicative Ballots that are voted inconsistently, such Ballots will not be counted.
- r. Any claimant who had delivered a valid Ballot voting on the Plan may withdraw or change such vote solely in accordance with Bankruptcy Rule 3018(a).
- s. Each claimant will be deemed to have voted the full amount of its Claim as set forth on the Ballot.
- t. Claimants may not split their vote within a Class; thus, each claimant will be required to vote all of its Claims within the Class either to accept or reject the Disclosure Statement and Plan.
- u. The Debtors further propose that, subject to any contrary order of the Court and except as otherwise set forth herein, they may waive any defects or irregularities as to any particular Ballot at any time, either before or after the Voting Deadline, and any such waivers shall be documented in the vote tabulation certification prepared by the Voting Agent.

14. Upon completion of the balloting, the Voting Agent shall certify the amount and number of allowed claims of the Voting Classes accepting or rejecting the Disclosure Statement and Plan, including all votes not counted and the reason for not counting such votes. The Debtors shall cause such certification to be filed with the Court prior to the Confirmation Hearing, but no later than **January 23, 2024, at 12:00 p.m. (prevailing Eastern Time)**.

15. If any Holder of a Claim seeks to challenge the allowance of its Claim for voting purposes in accordance with the Tabulation Procedures, such Holder must file a motion, pursuant to Bankruptcy Rule 3018(a), for an order temporarily allowing its claim in a different

amount or classification for purposes of voting to accept or reject the Combined Disclosure Statement and Plan (a “Rule 3018 Motion”) no later than **January 4, 2024, at 4:00 (prevailing Eastern Time)** and serve the Rule 3018 Motion on the Debtors. The Debtors (and, with respect to filing a response, any other party in interest) shall then (i) have until **January 18, 2024 at 4:00 (prevailing Eastern Time)** to file and serve any responses to such Rule 3018 Motions, and (ii) coordinate with the Court to adjudicate and resolve all pending Rule 3018 Motions prior to or at the Confirmation Hearing. Any Ballot submitted by a Holder of a Claim that files a Rule 3018 Motion shall be counted solely in accordance with the Tabulation Procedures and the other applicable provisions of this Order unless and until the underlying claim or equity interest is temporarily allowed by the Court for voting purposes in a different amount, after notice and a hearing.

16. Objections to approval and confirmation of the Disclosure Statement and Plan on any grounds, including adequacy of the disclosures therein, if any, shall (a) be in writing, (b) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (c) comply with the Bankruptcy Rules and the Local Rules, and (d) be filed with the Clerk of the Court, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801, with a copy served upon the following (collectively, the “Notice Parties”): (a) counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> 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)); and (c) counsel to the Official Committee of Unsecured Creditors (the “Committee”) Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com), Barry

Bazian (bbazian@goodwinlaw.com), Stacy Dasaro (sdasar@goodwinlaw.com), and James Lathrop (jlathrop@goodwinlaw.com)) by no later than **4:00 p.m. (ET) on January 18, 2024** (the “Confirmation Objection Deadline”).

17. The Debtors shall, if they deem necessary in their discretion, file a reply to any objections or brief in support of approval of the Disclosure Statement and Plan by no later than **4:00 p.m. (prevailing Eastern Time) on January 23, 2023** (or two (2) business days prior to the date of any adjourned Confirmation Hearing).

18. The Debtors are authorized to make non-substantive and ministerial changes to the Disclosure Statement and Plan, Confirmation Notice, Ballot, and related documents without further approval of the Court prior to its dissemination, including, without limitation, changes to correct typographical and grammatical errors and to make conforming changes to the Disclosure Statement and Plan and any other materials included in the Solicitation Package prior to their distribution; provided that the Debtors shall provide notice to the Office of the United States Trustee of any such non-substantive, ministerial, or immaterial changes.

19. The Debtors are authorized to take or refrain from taking any action necessary or appropriate to implement the terms of, and the relief granted in, this Order.

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

21. The Court shall retain jurisdiction to hear and determined all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

**Exhibit 1**

**Confirmation Notice**

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

In re:	)	
	)	Chapter 11
NVN Liquidation, Inc., <i>et al.</i> ,	)	
f/k/a NOVAN, INC., <sup>1</sup>	)	Case No. 23-10937 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Re: D.I. ____

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**NOTICE OF (I) INTERIM APPROVAL OF COMBINED DISCLOSURE STATEMENT AND PLAN; AND (II) THE HEARING TO CONSIDER (A) FINAL APPROVAL OF THE COMBINED DISCLOSURE STATEMENT AND PLAN AS CONTAINING ADEQUATE INFORMATION AND (B) CONFIRMATION OF THE COMBINED DISCLOSURE STATEMENT AND PLAN**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

**I. APPROVAL OF DISCLOSURE STATEMENT AND PLAN ON AN INTERIM BASIS**

1. On [●], 2023, the Court entered an order (the “Solicitation Procedures Order”), which, among other things, approved, on an interim basis, the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* (as may be amended, modified, or supplemented from time to time, the “Disclosure Statement and Plan”)<sup>2</sup> filed by the Debtors in these chapter 11 cases (the “Chapter 11 Cases”).
2. **Copies of the Disclosure Statement and Plan, the Solicitation Procedures Order, and all other documents filed in these Chapter 11 Cases may be obtained without charge at, or upon request to the Debtors’ claim and voting agent, Kurtzman Carson Consultants LLC, at (888) 251-2954 or (310) 751-2614 (for parties outside the U.S. and Canada) or at [NovanInfo@kccllc.com](mailto:NovanInfo@kccllc.com).**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the meanings ascribed to such terms in the Disclosure Statement and Plan.

3. **Confirmation Hearing.** A hearing (the “Confirmation Hearing”) to consider (a) final approval of the Disclosure Statement and Plan as containing adequate information within the meaning of section 1125 of the Bankruptcy Code and (b) confirmation of the Disclosure Statement and Plan will be held before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 6th Floor, Courtroom #2, 824 North Market Street, Wilmington, Delaware 19801, on **January 25, 2024, at 10:00 a.m. (prevailing Eastern Time)**. The Confirmation Hearing may be continued from time to time without further notice other than the announcement by the Debtors in open court of the adjourned date at the Confirmation Hearing or any continued hearing or as indicated in any notice filed with the Court on the docket in the Chapter 11 Cases.
4. **Voting Deadline.** Only Holders of Claims in Class 3 (NVN Unsecured Claims) and Class 4 (EPI Unsecured Claims) are entitled to vote to accept or reject the Disclosure Statement and Plan. The deadline for the submission of such votes is **January 18, 2024, at 4:00 p.m. (prevailing Eastern Time)**.
5. **Parties Not Entitled to Vote.** Holders of Unimpaired Claims in Class 1 (Other Priority Claims) and Class 2 (Other Secured Claims) are deemed to accept the Disclosure Statement and Plan. Holders of Impaired Claims or Interests in Class 5 (Subordinated Claims) or Class 6 (Equity) will receive no distribution under the Disclosure Statement and Plan on account of such Claims and Interests and are deemed to reject the Disclosure Statement and Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims, Professional Fee Claims, and Priority Tax Claims, as described in the Disclosure Statement and Plan, have not been classified and, therefore, Holders of such Claims are not entitled to vote to accept or reject the Disclosure Statement and Plan. The respective treatment of such unclassified Claims is set forth in Article VI of the Disclosure Statement and Plan.
6. **Objections to Confirmation.** Objections to confirmation of the Disclosure Statement and Plan, including any objection to the adequacy of the disclosures in the Disclosure Statement and Plan, if any, must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Interest of such party; (c) state with particularity the basis and nature of such objection; and (d) be filed with the Court and served on the Notice Parties<sup>1</sup> so as to be received no later than **4:00 p.m. (prevailing Eastern Time) on January 18, 2024**. Unless an objection is timely served and filed as prescribed herein, it may not be considered by the Court.

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<sup>1</sup> The Notice Parties are: (a) counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> 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)); and (c) counsel to the Official Committee of Unsecured Creditors (the “Committee”) Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com), Barry Bazian (bbazian@goodwinlaw.com), Stacy Dasaro (sdasar@goodwinlaw.com), and James Lathrop (jlathrop@goodwinlaw.com)).



7. **Summary of Key Dates.** A table summarizing the key dates described in this notice is included below for ease of reference:

<b>Proposed Timetable</b>	
<b><u>Event</u></b>	<b><u>Date</u></b>
Voting Record Date	<b>December 15, 2023</b> (or the date the Proposed Solicitation Procedures Order is entered)
Date by Which Solicitation Will be Mailed	<b>December 20, 2023</b> (or within three business days of entry of the Proposed Solicitation Procedures Order)
Deadline to File Rule 3018 Motions	<b>January 4, 2024, at 4:00 p.m. (ET)</b>
Deadline for Debtors to Respond to any Rule 3018 Motion	<b>January 18, 2024 at 4:00 p.m. (ET)</b>
Deadline to File Plan Supplement	<b>(on or before 7 days prior to the earlier of (a) voting deadline or (b) deadline to object to confirmation) January 11, 2024, at 4:00 p.m. (ET)</b>
Voting Deadline	<b>(not more than 10 days prior to hearing) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to Object to Confirmation and Final Approval of Adequacy of Disclosures	<b>(at least 28 days from service) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Confirmation Brief and any Replies in Support of Confirmation	<b>January 23, 2023, at 4:00 p.m. (ET)</b> (or two business days prior to the Confirmation Hearing)
Confirmation Hearing	<b>January 25, 2024, at 10:00 a.m. (ET)</b> (or as soon as possible thereafter)

**ARTICLE X OF THE COMBINED DISCLOSURE STATEMENT AND PLAN CONTAINS RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS. YOU ARE ADVISED TO REVIEW AND CONSIDER THE COMBINED DISCLOSURE STATEMENT AND PLAN CAREFULLY, PARTICULARLY ARTICLE X THEREOF, BECAUSE YOUR RIGHTS MIGHT BE AFFECTED THEREUNDER. INCLUDING:**

**Section 10.4(a):** From and after the Effective Date, all Persons and Entities who have held, hold, or may hold Claims or Equity Interests that have been released, dismissed, cancelled, settled or waived, or are subject to exculpation, under this Plan or the Confirmation Order, are permanently enjoined from taking any of the following actions against the Estate, the Released Parties, the Liquidating Trust, the Liquidating Trustee, or any of their respective property or assets, on account of any such Claims or Equity Interests: (i) commencing or continuing, in any manner or in any place, any action or proceeding seeking to collect or to recover in any manner against, or assert control or dominion over,

the assets; (ii) enforcing, attaching, collecting, or recovering in any manner against the assets, any judgment, award, decree or order; (iii) creating, perfecting, or enforcing any Lien or encumbrance against the assets; (iv) asserting setoff unless such setoff was formally asserted in a timely Filed proof of Claim or in a pleading Filed with the Bankruptcy Court prior to entry of the Confirmation Order (notwithstanding any indication in any proof of Claim or otherwise that such Holder asserts, has, or intends to preserve any right of setoff) or right of subrogation of any kind against any debt, liability, or obligation due to the Debtors; and (v) commencing or continuing in any manner any action or other proceeding of any kind on account of, in connection with or with respect to any such Claims or Interests; *provided, however,* that such Persons and Entities shall not be precluded from exercising their rights under and consistent with the terms of this Plan or the Confirmation Order.

**Section 10.4(b):** Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests, and other parties in interest, along with their Related Parties, shall be enjoined from taking any actions to interfere with the implementation or substantial consummation of this Plan by the Debtors, the Liquidating Trustee and/or their respective Related Parties, as applicable.

**Section 10.4(c):** By accepting distributions pursuant to this Plan, each holder of an Allowed Claim will be deemed to have specifically consented to the Injunctions set forth in this Section.

**Section 10.5: Exculpation.** Notwithstanding anything contained in this Plan to the contrary, the Exculpated Parties, and any property of any of the foregoing Persons, shall not have or incur any liability to any Entity for any act taken or omitted to be taken from the Petition Date through the Effective Date in connection with, related to or arising from the formulation, negotiation, preparation, dissemination, implementation, or administration of this Plan, the Solicitation Materials, the Disclosure Statement, or any contract, instrument, or other agreement or document created or entered into in connection with this Plan, or any other act taken or omitted to be taken from the Petition Date through the Effective Date in connection with or in contemplation of the restructuring of the Debtors, these chapter 11 cases, or the confirmation or consummation of this Plan, including but not limited to (i) formulating, preparing, disseminating, implementing, confirming, consummating or administrating this Plan (including soliciting acceptances or rejections thereof if necessary); (ii) the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into or any action taken or not taken in connection with this Plan; (iii) the Settlement Term Sheet; or (iv) any Distributions made pursuant to this Plan, except for acts constituting willful misconduct, bad faith, or gross negligence, and in all respects such parties shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under this Plan. Notwithstanding the foregoing, for the avoidance of doubt, this Section of the Plan shall not (i) exculpate or release the Exculpated Parties from anything other than as expressly identified in the first sentence of this Section, (ii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to a Claim of an Exculpated Party on any basis other than matters exculpated or released in this Section, (iii) prevent or limit the ability of the Debtors or the Liquidating Trustee to object to, or defend against, on any basis, any Administrative Claim of an Exculpated Party for substantial contribution, or (iv) exculpate or release the Liquidating Trustee or the Liquidating Trust Professionals with

respect to any act taken or omitted to be taken after the Effective Date that would result in liability under the terms of the Liquidating Trust Agreement.

**Section 10.6: Releases by the Debtors.** Except as otherwise expressly provided in the Plan or the Confirmation Order, on the Effective Date, for good and valuable consideration, to the fullest extent permissible under applicable law, each of the Debtors and their Estates shall, and shall be deemed to, completely and forever release, waive, void, extinguish and discharge unconditionally, each and all of the Released Parties of and from any and all Claims, Causes of Action, obligations, suits, judgments, damages, debts, rights, remedies and liabilities of any nature whatsoever, whether liquidated or unliquidated, fixed or Contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise, that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Effective Date (including prior to the Petition Date) in connection with or related to any of the Debtors, including, without limitation, (i) the chapter 11 cases, (ii) the Combined Plan and Disclosure Statement, (iii) the subject matter of, or the transaction or events giving rise to, any claim or equity interest that is treated in this Plan, (iv) the business or contractual arrangements between any Debtor and any Released Party, (v) the negotiation, formulation or preparation of this Combined Plan and Disclosure Statement, the Plan Supplement, or related agreements, instruments or other documents, (vi) the Sale or its related transaction documents, and the negotiation, formulation or preparation of the Sale and the related transaction documents, (vii) the Settlement Term Sheet, and (viii) the confirmation or consummation of this Plan or the solicitation of votes on this Plan that may be asserted by or on behalf of any of the Debtors or their respective Estates, against any of the Released Parties. The foregoing releases shall not extend to acts constituting willful misconduct, bad faith, or gross negligence.

**Binding Nature of the Combined Disclosure Statement and Plan:**

If confirmed, the Combined Disclosure Statement and Plan will bind all Holders of Claims and Interests to the maximum extent permitted by applicable law, whether or not such Holder will receive or retain any property or interest in property under the Combined Disclosure Statement and Plan, has filed a Proof of Claim in these cases, or failed to vote to accept or reject the Combined Disclosure Statement and Plan or voted to reject the Combined Disclosure Statement and Plan.

Dated: December [•], 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Draft*

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

Derek C. Abbott (No. 3376)

Daniel B. Butz (No. 4227)

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[sjones@morrisnichols.com](mailto:sjones@morrisnichols.com)

**Exhibit 2**

**Ballots**

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

In re:	)
	) Chapter 11
NVN Liquidation, Inc., <i>et al.</i> ,	)
f/k/a NOVAN, INC., <sup>1</sup>	) Case No. 23-10937 (LSS)
	)
Debtors.	) (Jointly Administered)
	)
	)

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**CLASS 3 (NVN UNSECURED CLAIMS) AND CLASS 4 (EPI UNSECURED CLAIMS)  
BALLOT FOR VOTING TO ACCEPT OF REJECT THE COMBINED DISCLOSURE  
STATEMENT AND CHAPTER 11 PLAN OF NOVAN, INC.  
AND ITS AFFILIATED DEBTOR**

**CLASS 3: NVN UNSECURED CLAIMS**  
**CLASS 4: EPI UNSECURED CLAIMS**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS FOR  
COMPLETING BALLOTS CAREFULLY BEFORE COMPLETING THIS BALLOT.**

**FOR YOUR VOTE TO BE COUNTED, THIS BALLOT MUST BE COMPLETED,  
EXECUTED, AND RETURNED SO AS TO BE ACTUALLY RECEIVED BY THE  
VOTING AGENT BY JANUARY 18, 2024, AT 4:00 P.M., PREVAILING EASTERN  
TIME (THE “VOTING DEADLINE”) IN ACCORDANCE WITH THE FOLLOWING:**

This ballot (the “Ballot”) is being submitted to you by the above-captioned debtors and debtors in possession (the “Debtors”) to solicit your vote to accept or reject the plan of liquidation (the “Plan”) as set forth in the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [D.I. ●] (including all exhibits thereto and as amended, modified, or supplemented from time to time, the “Combined Disclosure Statement and Plan”) filed by the Debtors. The Combined Disclosure Statement and Plan contains disclosures explaining the Debtors’ plan of liquidation and has been approved on an interim basis by order of the United States Bankruptcy Court for the District of Delaware (the “Court”) [D.I. ●] (the “Interim Approval”).

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

and Procedures Order”).<sup>2</sup> The Combined Disclosure Statement and Plan provides information to assist you in deciding how to vote your Ballot.

The Disclosure Statement and Plan can be confirmed by the Bankruptcy Court and, thereby, made binding on you if it is accepted by the Holders of at least two-thirds in amount and more than one-half in number of the Claims in each Impaired Class who vote on the Disclosure Statement and Plan and if the Disclosure Statement and Plan otherwise satisfies the applicable requirements of section 1129(a) of the Bankruptcy Code. If the requisite acceptances are not obtained, the Bankruptcy Court nonetheless may confirm the Disclosure Statement and Plan if it finds that the Disclosure Statement and Plan (i) provides fair and equitable treatment to, and does not unfairly discriminate against, the Class or Classes rejecting the Disclosure Statement and Plan and (ii) otherwise satisfies the requirements of section 1129(b) Bankruptcy Code.

If you are, as of **December 15, 2023** (the “Voting Record Date”), a holder of a Class 3 NVN Unsecured Claim, or a Class 4 EPI Unsecured Claim, please use this “Ballot” to cast your vote to accept or reject the Plan.

Additional copies of the Interim Approval and Procedures Order, and the Combined Disclosure Statement and Plan, are available free of charge from the website maintained by KCC (the “Voting Agent”) at <https://www.kccllc.net/novan/> or by email at [NovanInfo@kccllc.com](mailto:NovanInfo@kccllc.com), or by phone at (888) 251-2954 or (310) 751-2614 (for parties outside the U.S. and Canada).

If you have any questions on how to properly complete this Ballot, please contact the Voting Agent. Please be advised the Voting Agent cannot provide legal advice.

**IMPORTANT**

**You should carefully review the Combined Disclosure Statement and Plan before you submit this Ballot. You may wish to seek independent legal advice concerning the Combined Disclosure Statement and Plan and the classification and treatment of your Class 3 NVN Unsecured Claim or Class 4 EPI Unsecured Claim under the Combined Disclosure Statement and Plan.**

**All Unsecured Claims against NVN have been placed in Class 3 under the Combined Disclosure Statement and Plan. All Unsecured Claims against EPI have been placed in Class 4 under the Combined Disclosure Statement and Plan. If you hold Claims in more than one Class under the Combined Disclosure Statement and Plan, you may receive a Ballot for each such Class and must complete a separate Ballot for each such Class.**

**For your vote to be counted, you must either return a hard copy of your Ballot or submit your vote through the online E-Ballot portal maintained by the Voting Agent.**

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<sup>2</sup> Capitalized terms not defined herein are defined in the Combined Disclosure Statement and Plan or the Interim Approval and Procedures Order, as applicable.

If you prefer to return a hard copy of your Ballot, you may return it in the enclosed preaddressed, postage prepaid envelope or submit it by first class mail, overnight mail or courier to:

**NVN Liquidation, Inc., *et al.*, f/k/a Novan, Inc.**

**[INSERT ADDRESS HERE]**

If you prefer to vote online, Ballots will be accepted if properly completed through the E-Ballot portal maintained by the Voting Agent. **To submit your Ballot via the Voting Agent's E-Ballot portal, visit [INSERT LINK HERE].**

**IMPORTANT NOTE: You will need the following information to retrieve and submit your customized electronic Ballot:**

**Unique E-Ballot ID#:** \_\_\_\_\_

**Unique Pin ID#:** \_\_\_\_\_

**The Voting Agent's E-Ballot portal is the sole manner in which Ballots will be accepted via electronic or online transmission. Creditors who cast a Ballot using the E-Ballot portal should NOT also submit a hard copy Ballot. Ballots submitted by facsimile, email or other means of electronic transmission will not be counted.**

**If your Ballot is not received by the Voting Agent on or before the Voting Deadline, and such Voting Deadline is not extended by the Plan Proponents, your vote will not be counted.**

**If you vote to accept the Plan, you shall be deemed to have consented to the releases contained in Article X of the Combined Disclosure Statement and Plan.**

**Your receipt of this Ballot does not signify that your Claims(s) has been or will be allowed or that you will receive a distribution under the Plan. The Plan Proponents reserve all rights to dispute such Claim(s).**



**HOW TO VOTE (AS MORE FULLY SET FORTH IN THE VOTING INSTRUCTIONS):**

1. Complete Item 1.
2. Review the information, certifications and acknowledgements contained in Items 2 and 3.
3. **SIGN THE BALLOT.**
4. Return the original signed Ballot in the enclosed pre-addressed, postage-paid envelope, by first-class mail, hand delivery, courier, or through the online E-Ballot portal maintained by the Voting Agent so that it is **actually received** by the Voting Agent before the Voting Deadline.
5. You must vote the full amount of the Claim covered by this Ballot either to accept or to reject the Combined Disclosure Statement and Plan. You may not split your vote. Any executed Ballot that partially accepts and partially rejects the Combined Disclosure Statement and Plan will not be counted.
6. Any executed Ballot received that (a) does not indicate either an acceptance or rejection of the Combined Disclosure Statement and Plan or (b) indicates both an acceptance and a rejection of the Combined Disclosure Statement and Plan will not be counted.
7. Any Ballot received that is unsigned, illegible, or otherwise incomplete will not be counted.

**VOTING INSTRUCTIONS FOR COMPLETING THE BALLOT**

1. This Ballot is submitted to you to solicit your vote to accept or reject the Plan. **PLEASE READ THE COMBINED DISCLOSURE STATEMENT AND PLAN CAREFULLY BEFORE COMPLETING THIS BALLOT.**
2. The Plan can be confirmed by the Court and thereby made binding upon you if it is accepted by the holders of at least two-thirds in amount and more than one-half in number of Claims or Interests in at least one class of creditors that votes on the Plan and if the Plan otherwise satisfies the requirements for confirmation provided by section 1129(a) of the Bankruptcy Code. Please review the Combined Disclosure Statement and Plan for more information.
3. Complete, sign, and return this Ballot to the Voting Agent so that it is actually received by the Voting Agent before **January 18, 2024, at 4:00 p.m. (prevailing Eastern Time)**, the Voting Deadline, unless such time is extended in writing by the Debtors.
4. To properly complete this Ballot, you must follow the procedures described below:
  - a. if you hold an NVN Unsecured Claim in Class 3, or an EPI Unsecured Claim in Class 4, cast one vote to accept or reject the Combined Disclosure Statement and Plan by checking the appropriate box in Item 1;

- b. if you are completing this Ballot on behalf of another person or entity, indicate your relationship with such person or entity and the capacity in which you are signing and submit satisfactory evidence of your authority to so act (*e.g.* a power of attorney or a certified copy of board resolutions authorizing you to so act);
- c. if you also hold other Claims, you may receive more than one Ballot, labeled for a different Class of Claims and you should separately complete and submit a Ballot for each Class of Claims in which you hold Claims. Your vote will be counted in determining acceptance or rejection of the Plan by each particular Class of Claims only if you complete, sign, and return the Ballot labeled for that Class of Claims in accordance with the instructions on such Ballot;
- d. if you believe that you have received the wrong Ballot, please contact the Voting Agent immediately;
- e. provide your name and mailing address on your Ballot;
- f. sign and date your Ballot, and provide the remaining information requested; and
- g. return your Ballot using the methods described above.

**IF YOU RECEIVED A DAMAGED BALLOT, LOST YOUR BALLOT OR HAVE ANY QUESTIONS CONCERNING THE COMBINED DISCLOSURE STATEMENT AND PLAN OR PROCEDURES FOR VOTING ON THE PLAN, PLEASE CONTACT THE VOTING AGENT BY EMAIL AT [NOVANINFO@KCCLLC.COM](mailto:NOVANINFO@KCCLLC.COM), OR BY PHONE AT (888) 251-2954 OR (310) 751-2614 (FOR PARTIES OUTSIDE THE U.S. AND CANADA).**

**PLEASE READ THE VOTING INFORMATION AND INSTRUCTIONS, ABOVE, BEFORE COMPLETING THIS BALLOT.**

**Item 1. Class Vote.** The undersigned, the holder of a Class 3 NVN Unsecured Claim or Class 4 EPI Unsecured Claim against the Debtors hereby votes, in the amount set forth below, as follows (**check one box**):

Accept the Plan

OR

Reject the Plan.

Voting Amount of Claim:<sup>3</sup> \$ \_\_\_\_\_

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<sup>3</sup> For voting purposes only, subject to tabulation rules.

Debtor Claim is Against:<sup>4</sup> \_\_\_\_\_

**Item 2. Certification as to Prepetition Unsecured Claims held in Additional Accounts.** The undersigned hereby certifies that either (i) it has not submitted any other Ballots for other Class 3 or Class 4 Prepetition Unsecured Claims held in other accounts or other record names, or (ii) if it has submitted Ballots for other such Claims held in other accounts or other record names, then such Ballots indicate the same vote to accept or reject the Plan.

**Item 3. Acknowledgements and Certification.** By signing this Ballot, the undersigned acknowledges that: (a) it has been provided with a copy of the Combined Disclosure Statement and Plan, including all exhibits thereto; (b) the Debtors' solicitation of votes is subject to all terms and conditions set forth in the Combined Disclosure Statement and Plan, the Interim Approval and Procedures Order, and the procedures for the solicitation and tabulation of votes to accept or reject the Plan attached to the Interim Approval and Procedures Order as **Exhibit 1** thereto; (c) it is the holder of the NVN Unsecured Claim or EPI Unsecured Claim identified in Item 1 above as of **December 15, 2023**; and/or (d) it has full power and authority to vote to accept or reject the Plan and exercise elections with respect thereto. The undersigned understands that, if this Ballot is validly executed but does not indicate either acceptance or rejection of the Plan, this Ballot will not be counted.

\_\_\_\_\_  
Name of Creditor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
If by Authorized Agent, Name and Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Date Completed

<sup>4</sup> \_\_\_\_\_  
Must be one of: NVN Liquidation, Inc., (f/k/a Novan, Inc.) or EPI Health, LLC.

**PLEASE PROMPTLY RETURN YOUR COMPLETED BALLOT.**

**BALLOTS MAY BE SUBMITTED VIA THE E-BALLOT PORTAL, OR IN THE RETURN ENVELOPE PROVIDED, OR AS DIRECTED BY THIS BALLOT.**

**TO COUNT, A BALLOT WITH YOUR VOTE MUST BE RECEIVED BY THE VOTING DEADLINE: JANUARY 18, 2024, AT 4:00 P.M. (PREVAILING EASTERN TIME).**

This Ballot shall not constitute or be deemed a proof of Claim or Interest, an assertion of a Claim or Interest, or the allowance of a Claim or Interest.

NO PERSON HAS BEEN AUTHORIZED TO GIVE ANY INFORMATION OR ADVICE, OR TO MAKE ANY REPRESENTATION, OTHER THAN WHAT IS CONTAINED IN THE MATERIALS MAILED WITH THIS BALLOT OR OTHER MATERIALS AUTHORIZED BY THE COURT.

**Exhibit 3**

**Notice of Non-Voting Status**

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

In re:	)	
	)	Chapter 11
NVN Liquidation, Inc., <i>et al.</i> ,	)	
f/k/a NOVAN, INC., <sup>1</sup>	)	Case No. 23-10937 (LSS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	

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**NOTICE OF NON-VOTING STATUS**

On [●], 2023, the above-captioned debtors and debtors in possession (the “Debtors”) filed the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [D.I. ●] (as may be amended, modified, or supplemented, the “Combined Disclosure Statement and Plan”).<sup>2</sup> The Combined Disclosure Statement and Plan explains the Debtors’ plan of liquidation and has been approved on an interim basis by order of the United States Bankruptcy Court for the District of Delaware (the “Court”) [D.I. ●] (the “Interim Approval and Procedures Order”) for use by the Debtors in soliciting acceptances or rejections to the Combined Disclosure Statement and Plan from Holders of Impaired Claims entitled to receive Distributions under the Combined Disclosure Statement and Plan.

UNDER THE TERMS OF THE COMBINED DISCLOSURE STATEMENT AND PLAN, YOUR CLAIM(S) AGAINST AND/OR INTEREST(S) IN THE DEBTORS IS (ARE) NOT ENTITLED TO VOTE ON THE PLAN. **CLAIMS IN CLASS 1 (OTHER PRIORITY CLAIMS) AND CLAIMS IN CLASS 2 (OTHER SECURED CLAIMS) ARE UNIMPAIRED AND DEEMED TO ACCEPT THE PLAN. CLAIMS IN CLASS 5 (SUBORDINATED CLAIMS) AND CLASS 6 (EQUITY INTERESTS) ARE IMPAIRED AND DEEMED TO REJECT THE PLAN.** IF YOU HAVE ANY QUESTIONS ABOUT THE STATUS OF YOUR CLAIM OR INTEREST YOU SHOULD CONTACT KCC (THE “VOTING AGENT”) BY EMAIL AT [NOVANINFO@KCCLLC.com](mailto:NOVANINFO@KCCLLC.com) OR BY TELEPHONE AT (888) 251-2954 (DOMESTIC) OR (310) 751-2614 (FOR PARTIES OUTSIDE THE U.S. AND CANADA).

YOU WILL NOT BE SERVED WITH A COPY OF THE INTERIM APPROVAL AND PROCEDURES ORDER OR THE COMBINED DISCLOSURE STATEMENT AND PLAN. If you wish to review copies of the Interim Approval and Procedures Order or the Combined Disclosure Statement and Plan, you may obtain copies free of charge at the website

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: NVN Liquidation, Inc., (f/k/a Novan, Inc.) (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is P.O. Box 64, Pittsboro, NC 27312.

<sup>2</sup> Capitalized terms used but not otherwise defined shall have the meanings ascribed to them in the Combined Disclosure Statement and Plan.

maintained by the Voting Agent at <https://www.kccllc.net/novan>; or by contacting the Voting Agent at the aforementioned email address and telephone numbers.

If you wish to challenge the Debtors' classification of your claim, you must file a motion for an order temporarily allowing your Claim in a different classification or amount for purposes of voting to accept or reject the Plan and serve such motion on the Debtors so that it is received by **January 4, 2024 at 4:00 p.m. (Eastern Time)**.

**A table summarizing the key dates described in this notice is included below for ease of reference:**

<b>Proposed Timetable</b>	
<b><u>Event</u></b>	<b><u>Date</u></b>
Voting Record Date	<b>December 15, 2023</b> (or the date the Proposed Solicitation Procedures Order is entered)
Date by Which Solicitation Will be Mailed	<b>December 20, 2023</b> (or within three business days of entry of the Proposed Solicitation Procedures Order)
Deadline to File Rule 3018 Motions	<b>January 4, 2024, at 4:00 p.m. (ET)</b>
Deadline for Debtors to Respond to any Rule 3018 Motion	<b>January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Plan Supplement	<b>(on or before 7 days prior to the earlier of (a) voting deadline or (b) deadline to object to confirmation) January 11, 2024, at 4:00 p.m. (ET)</b>
Voting Deadline	<b>(not more than 10 days prior to hearing) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to Object to Confirmation and Final Approval of Adequacy of Disclosures	<b>(at least 28 days from service) January 18, 2024, at 4:00 p.m. (ET)</b>
Deadline to File Confirmation Brief and any Replies in Support of Confirmation	<b>January 23, 2024, at 4:00 p.m. (ET)</b> (or two business days prior to the Confirmation Hearing)
Confirmation Hearing	<b>January 25, 2024, at 10:00 a.m. (ET)</b> (or as soon as possible thereafter)

Dated: December [•], 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Draft*

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

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