

**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.,¹) Case No. 23-10937 (LSS)
)
Debtors.) (Jointly Administered)
)
) **Re: D.I. 533**
)

**CERTIFICATION OF COUNSEL REGARDING MOTION OF DEBTORS FOR ENTRY
OF AN ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 554 AND FEDERAL RULE
OF BANKRUPTCY PROCEDURE 6007 AUTHORIZING THE ABANDONMENT OF
CERTAIN UNSELLABLE PRODUCTS SUBJECT TO
CERTAIN REGULATORY OBLIGATIONS**

The undersigned counsel to the above-captioned debtors and debtors in possession (the “Debtors”) hereby certifies as follows:

1. On February 14, 2024, the Debtors filed the *Motion of Debtors for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 554 and Federal Rule of Bankruptcy Procedure 6007 Authorizing the Abandonment of Certain Unsellable Products Subject to Certain Regulatory Obligations* [D.I. 533] (the “Motion”). Attached to the Motion as Exhibit A was a form of order approving the Motion (the “Proposed Order”).

2. The deadline to file objections to the relief requested in the Motion was February 2, 2024, at 4:00 p.m. (ET), extended to February 13, 2024, for the United States Food and Drug Administration (the “FDA”) and extended to February 22, 2024, for Integrated Commercialization Solutions, Inc. (“ICS”).

¹ 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.



3. On February 12, 2024, the FDA filed the *Objection by the United States to the Debtors' Motion to Abandon* [D.I. 587] ("FDA Objection").

4. On February 22, 2024, ICS filed the *Response and Reservation of Rights of Integrated Commercialization Solutions, Inc. to Motion of Debtors for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 554 and Federal Rule of Bankruptcy Procedure 6007 Authorizing the Abandonment of Certain Unsellable Products Subject to Certain Regulatory Obligations* [D.I. 613] ("ICS Reservation"). ICS had also previously provided informal comments to the Debtors concerning the Proposed Order (the "ICS Comments").

5. The Debtors and the FDA have had numerous discussions concerning resolving the FDA Objection. As part of the resolution, the Debtors have agreed to institute a recall process governing some of the assets being abandoned pursuant to the Proposed Order, as well as having agreed to the insertion of language requested by the FDA into the Proposed Order.

6. Similarly, the Debtors and ICS resolved the ICS Reservation and ICS Comments by the insertion of language into the Proposed Order.

7. A copy of the revised proposed form of order reflecting these revisions (the "Revised Proposed Order") is attached hereto as **Exhibit A**. For the convenience of the Court and all parties in interest, a blackline comparing the Revised Proposed Order to the Proposed Order is attached hereto as **Exhibit B**.

8. The language requested by the FDA can be found in paragraph 5 of the Revised Proposed Order. The language requested by ICS can be found in paragraphs 3 and 4 of the Revised Proposed Order.

9. The FDA and ICS have reviewed the Revised Proposed Order and do not object to its entry. The Official Committee of Unsecured Creditors in these cases has also revised the Revised Proposed Order and does not object to its entry.

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

Dated: April 9, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Scott D. Jones

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Counsel to the Debtors and Debtors in Possession

Exhibit A

(Revised Proposed Order)

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

In re:

NVN Liquidation, Inc., *et al.*,
f/k/a NOVAN, INC.,¹

Debtors.

Chapter 11

Case No. 23-10937 (LSS)

Re: D.I. 533

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 554 AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 6007
AUTHORIZING THE ABANDONMENT OF CERTAIN UNSELLABLE
PRODUCTS SUBJECT TO CERTAIN REGULATORY OBLIGATIONS**

Upon consideration of the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”) authorizing the abandonment of certain of the debtors’ property; and this Court having jurisdiction to consider the Motion 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; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections to the Motion having been resolved as set forth herein;

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² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized to abandon, and are hereby deemed to have abandoned, the Unsellable Products as described in the Motion.
3. Integrated Commercialization Solutions, Inc. ("ICS") is authorized to dispose of all any and all inventory of the Debtors in their possession, including, but not limited to, the Unsellable Products, without liability to the Debtors, their estates, the Liquidating Trust or the Liquidating Trustee.
4. Nothing contained in this Order shall affect ICS's rights to assert claims against the Debtors relating to their contractual relationship, inventory in ICS's possession or the destruction thereof, or services provided to the Debtors, and nothing contained in this Order shall affect the Debtors', the Liquidating Trust's, the Liquidating Trustee's, or other parties' rights to object to such claims.
5. Notwithstanding any provision in the Motion or this Order (collectively, "Documents"), the Debtors and any other party in possession of, or otherwise responsible for, the Unsellable Products, the Prescription Products, or any non-expired drugs, may dispose of such property, free and clear of all liens, claims, encumbrances, and interests, provided that they have

complied with (and continue to comply if relevant) all federal regulatory obligations and non-bankruptcy law. For the avoidance of doubt and without limiting the foregoing, notwithstanding any provision in the Documents, nothing in the Documents shall impair, affect, alter, or modify any statutes (including but not limited to the Federal Food, Drug, and Cosmetic Act), regulations, rules, guidelines, standards, policies and procedures of the United States, including but not limited to the Department of Health and Human Services and the Food and Drug Administration.

6. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

7. This Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Exhibit B

(Blackline)

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

In re:

NVN Liquidation, Inc., *et al.*,
f/k/a NOVAN, INC.,¹

Debtors.

Chapter 11

Case No. 23-10937 (LSS)

Re: D.I. ~~533~~ [533](#)

**ORDER PURSUANT TO 11 U.S.C. §§ 105(a) AND 554 AND
FEDERAL RULE OF BANKRUPTCY PROCEDURE 6007
AUTHORIZING THE ABANDONMENT OF CERTAIN UNSELLABLE
PRODUCTS SUBJECT TO CERTAIN REGULATORY OBLIGATIONS**

Upon consideration of the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”) authorizing the abandonment of certain of the debtors’ property; and this Court having jurisdiction to consider the Motion 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; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 11 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections ~~(if any)~~ to the Motion having been

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² Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

~~withdrawn,~~ resolved ~~or overruled on the merits~~ as set forth herein; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. The Debtors are authorized to abandon, and are hereby deemed to have abandoned, the Unsellable Products as described in the Motion.
3. Integrated Commercialization Solutions, Inc. (“ICS”) is authorized to dispose of all any and all inventory of the Debtors in their possession, including, but not limited to, the Unsellable Products, without liability to the Debtors, their estates, the Liquidating Trust or the Liquidating Trustee.
4. Nothing contained in this Order shall affect ICS’s rights to assert claims against the Debtors relating to their contractual relationship, inventory in ICS’s possession or the destruction thereof, or services provided to the Debtors, and nothing contained in this Order shall affect the Debtors’, the Liquidating Trust’s, the Liquidating Trustee’s, or other parties’ rights to object to such claims.
5. Notwithstanding any provision in the Motion or this Order (collectively, “Documents”), the Debtors and any other party in possession of, or otherwise responsible for, the Unsellable Products, the Prescription Products, or any non-expired drugs, may dispose of such

property, free and clear of all liens, claims, encumbrances, and interests, provided that they have complied with (and continue to comply if relevant) all federal regulatory obligations and non-bankruptcy law. For the avoidance of doubt and without limiting the foregoing, notwithstanding any provision in the Documents, nothing in the Documents shall impair, affect, alter, or modify any statutes (including but not limited to the Federal Food, Drug, and Cosmetic Act), regulations, rules, guidelines, standards, policies and procedures of the United States, including but not limited to the Department of Health and Human Services and the Food and Drug Administration.

6. ~~3.~~The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

7. ~~4.~~This Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

EXHIBIT B

Declaration

EXHIBIT C

Inventory Listing