IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: Novan, Inc., *et al.*,[1] Debtors.	Chapter 11 Case No. 23-10937 (LSS) (Jointly Administered) District Court Case No. 1:23-cv-01039-CFC Bankruptcy BAP No. 23-53

ACLARIS THERAPEUTICS, INC.'S STATEMENT OF THE ISSUES ON APPEAL AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 8009-1, Appellant Aclaris Therapeutics, Inc. (the "Appellant") respectfully submits the following: (I) statement of issues to be included on appeal from the decision of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") set forth in the *Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of the Debtor's 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* (the "Sale Order") [Docket No. 292], which was entered on September 12, 2023, and (II) designation of items to be included in the record on appeal.

Through the Sale Order, the Bankruptcy Court approved, over the objection of Aclaris, the sale of the RHOFADE pharmaceutical assets (the "Assets") owned by the above-captioned debtors and debtors-in-possession (the "Debtors") to Mayne Pharma LLC ("Mayne") under section 363 of

[1] The Debtors in these Chapter 11 cases, along with the last four digitals of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

title 11 of the United States Code (the "Bankruptcy Code"). The Debtors had acquired the Assets being sold from Aclaris under an asset purchase agreement between Aclaris and Debtor EPI Health, LLC, pursuant to which the Debtors agreed to a royalty based on future sales of the Assets (the "Aclaris APA"). In their sale agreement with Mayne (the "Mayne APA"), the Debtors designated the Aclaris APA as a material contract, and yet the Mayne APA provided that *future* liabilities arising under the Aclaris APA, including the royalty, would be treated as excluded liabilities that would not be honored or paid by Mayne. Aclaris objected to the sale because the Debtors and Mayne improperly sought to use section 363(f) of the Bankruptcy Code to immunize Mayne from paying contractual royalties that would result solely from and on account of Mayne's post-closing sales of such products.

STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

The Appellant submits the following statement of issues on appeal:

1. Whether the Bankruptcy Court erred in ruling that section 363 of the Bankruptcy Code empowers the Debtors to sell the Assets free and clear of future royalty obligations that will only arise, if at all, upon and as a result of the post-closing conduct of Mayne related to its operation, manufacture and sale of the Assets.

2. Whether the Bankruptcy Court erred in ruling that the Debtors may sell the Assets without also selling and transferring the Debtors' rights and obligations under the Aclaris APA to Mayne under section 363 of the Bankruptcy Code, or, alternatively, assuming and assigning the Aclaris APA to Mayne under section 365 of the Bankruptcy Code.

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Appellant submits the following designation of items to be included in the record on appeal (including any exhibit, annex, or addendum thereto):

Docket Entries and Other Items			
	Description	**Date Filed**	**Docket No.**
1.	*Motion of 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 Ligan Pharmaceuticals if Not Approved as the Stalking Horse Bidder*	07/17/2021	16
2.	*Notice of Filing of Private Sale Order*	07/25/2023	59
3.	*Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	07/25/2023	60

Docket Entries and Other Items			
	Description	**Date Filed**	**Docket No.**
4.	*Reedy Creek Investments LLC's Preliminary Objection and Reservation of Rights Regarding (I) Motion of 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 Ligan Pharmaceuticals if Not Approved as the Stalking Horse Bidder and (2) Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/01/2023	98
5.	*Reservation of Rights and Limited Objection of Ascent Health Services, LLC and Express Scripts, Inc. to Debtors' Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/07/2023	124

Docket Entries and Other Items			
	Description	**Date Filed**	**Docket No.**
6.	*Limited Objection and Reservation of Rights of Fingerpaint Marketing, Inc. to Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/08/2023	129
7.	*Objection of Aspect Pharmaceuticals, LLC to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/08/2023	130
8.	*Limited Objection and Reservation of Rights of Dr. Reddy's Laboratories LTD and Certain Affiliates to Initial Notice of Possible Assumption and Assignment of Certain executory Contracts and Unexpired Leases*	08/10/2023	141
9.	*Limited Objection of USI Insurance Services LLC to Debtors' Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/11/2023	142
10.	*Limited Objection and Reservation of Rights of Optimurx, Inc. and Emisar Pharma Services, LLC to Cure Amounts of Executory Contracts that May be Assumed and Assigned in Asset Sale*	08/22/23	144
11.	*Objection of CaremarkPCS Health, L.L.C. and Zinc Health Services, L.L.C. to Debtors' Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/11/2023	146

Docket Entries and Other Items			
	Description	**Date Filed**	**Docket No.**
12.	*Order (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligan 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*	08/15/2023	166
13.	*Notice of Sale, Bidding Procedures, Auction, Sale Hearing, and Other Deadlines Related Hereto*	08/18/2023	168
14.	*Supplemental Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases*	08/18/2023	201
15.	*Reedy Creek Investments LLC's Limited Objection to Sale and Reservation of Rights*	08/28/2023	232
16.	*Limited Objection and Reservation of Rights of Dr. Reddy's Laboratories Ltd. And Certain Affiliates to the Debtors' Sale*	08/28/2023	233
17.	*Notice of Virtual Auction*	08/30/2023	240
18.	*Additional Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Corrections and Clarifications to Previous Notices*	08/31/2023	241

Docket Entries and Other Items			
	Description	**Date Filed**	**Docket No.**
19.	*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*	08/31/2023	242
20.	*Objection by the United States to the Debtors' Sale Motion*	09/01/2023	244
21.	*Second Additional Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Corrections and Clarifications to Previous Notices*	09/01/2023	245
22.	*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*	09/01/2023	246
23.	*Letter Regarding Sale*	09/01/2023	248
24.	*Limited Objection of Aclaris Therapeutics, Inc. to the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances*	09/06/2023	255
25.	*Debtors' Motion for Leave to File a Late Reply Regarding the Limited Objection of Aclaris Therapeutics, Inc. to the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances*	09/08/2023	272
26.	*Declaration of Simon Wein in Support of Entry of Orders Authorizing Sale of Substantially all of the Debtors' Assets Free and Clear of All Encumbrances*	09/08/2023	273
27.	*Motion of Aclaris Therapeutics, Inc. for Entry of an Order Granting Leave to File a Sur-Reply*	09/08/2023	275

Docket Entries and Other Items			
	Description	**Date Filed**	**Docket No.**
28.	*Limited Objection and Reservation of Rights of Allergan, Inc. and Allergan Sales, LLC to the Sale of the Debtors' Assets Free and Clear of liens, Claims, Interests, and Encumbrances*	09/09/2023	276
29.	*[SEALED] Notice of Filing Exhibits to Limited Objection and Reservation of Rights of Allergan, Inc. and Allergan Sales, LLC to the Sale of the Debtors' Assets Free and Clear of liens, Claims, Interests, and Encumbrances*	09/09/2023	277
30.	*Debtors' Objection to Motion of Aclaris Therapeutics, Inc. for Entry of an Order Granting Leave to File a Sur-Reply and Request for the Court to Consider a Response Thereto*	09/10/2023	279
31.	*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*	09/12/2023	292
32.	*Transcript regarding Hearing Held 09/11/2023 RE: Sale Hearing*	09/18/2023	300
33.	*Notice of Appeal*	09/22/2023	312

[*Remainder of Page Intentionally Left Blank]*

III. CERTIFICATE REGARDING TRANSCRIPTS

In an appeal from a bankruptcy court ruling, Rule 8009(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") requires an appellant to either: (i) order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant considers necessary for the appeal and file a copy of the order with the bankruptcy clerk; or (ii) file a certificate with the bankruptcy clerk stating that the appellant is not ordering a transcript.

Pursuant to Bankruptcy Rule 8009(b), Appellant respectfully certifies to the Clerk of Court that it is not ordering a transcript not already included in the record on appeal with respect to the appeal docketed in the United States District Court for the District of Delaware, No. 1:23-cv-01039-CFC.

Dated: October 6, 2023
Wilmington, Delaware

DLA PIPER LLP (US)

/s/ Aaron S. Applebaum

Aaron S. Applebaum (DE No. 5587)
Matthew S. Sarna (DE No. 6578)
1201 N. Market Street, Suite 2100
Wilmington, DE 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
Email: aaron.applebaum@us.dlapiper.com
matthew.sarna@us.dlapiper.com

Counsel to Appellant

CERTIFICATE OF SERVICE

I, Aaron Applebaum, hereby certify that on October 6, 2023, *Aclaris Therapeutics, Inc.'s Statement of the Issues on Appeal and Designation of Items to be Included in the Record on Appeal* was filed in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") and served via Bankruptcy Court cm/ecf on the parties in interest receiving cm/ecf notifications in this case.

/s/ Aaron S. Applebaum
Aaron S. Applebaum (DE 5587)