

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Joint Administration Requested)  
 )  
 ) **Re: D.I 7 & 43**  
 )

---

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO (A) CONTINUE THEIR  
EXISTING CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN  
PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN THEIR  
BANK ACCOUNTS AND EXISTING BUSINESS FORMS, (D) IMPLEMENT  
CHANGES TO THE EXISTING CASH MANAGEMENT SYSTEM AS  
NECESSARY, AND (E) CONTINUE ORDINARY COURSE INTERCOMPANY  
TRANSACTIONS, (II) WAIVING THE REQUIREMENTS OF 11 U.S.C. § 345(b)  
AND THE U.S. TRUSTEE’S OPERATING GUIDELINES,  
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (the “Debtors”) for entry of an interim order (this “Order”) pursuant to sections 105(a), 345(b) and 363(c)(1) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Rule 9013-l(m): (i) authorizing, but not directing, the Debtors to (a) continue to operate their existing cash management system, (b) honor certain prepetition obligations related thereto, (c) maintain their existing bank accounts and business forms, (d) implement any changes to the existing cash

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion or in the Interim or Final *Order (I) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing the Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Adequate Protection to the Prepetition Secured Lender Pursuant to Sections 361, 362, 363, and 364 of the Bankruptcy Code, (IV) Granting Liens and Superpriority Claims, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (“the “DIP Order”), whichever is then in effect.



management system as set forth in the Motion, including, without limitation, opening new bank accounts or closing existing bank accounts, and (e) continue ordinary course Intercompany Transactions; (ii) waiving the requirements of section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines on an interim basis; and (iii) granting any related relief, all as more fully described in the Motion; and upon consideration of the First Day Declaration; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice need be provided under the circumstances; and it appearing that the relief requested by this Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing (the “Final Hearing”) on the Motion shall be held on **August 21, 2023, at 10:00 a.m. (EST)**. Any objections or responses to entry of a final order on the Motion (each, an “Objection”) shall be filed on or before **4:00 p.m. (EST) on August 3, 2023**, and served on the following parties: (i) proposed 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)); (ii) 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)); (iii) counsel to Ligand Pharmaceuticals, Incorporated (the “DIP Lender”), Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com) Jason R. Alderson (Jason.alderson@morganlewis.com, and David K. Shim (David.shim@morganlewis.com)); and (iv) counsel to any statutory committee appointed in these Chapter 11 Cases. In the event no

Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed to, continue to use the Cash Management System, including the Bank Accounts, in the ordinary course and to implement any changes to the Cash Management System subject to the limitations set forth in this Interim Order.

4. The Debtors are authorized, but not directed to: (i) continue to use, with the same account numbers, the Bank Accounts in existence on the Petition Date and need not comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Operating Guidelines, including, without limitation, the requirement to establish separate accounts for cash collateral and/or tax payments; (ii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (iii) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including, without limitation, by check, wire transfer and other methods; (iv) pay the Service Charges, including, without limitation, any undisputed Service Charges regardless of whether such Service Charge arose before, on or after the Petition Date; and (v) otherwise perform their obligations under the documents governing the Bank Accounts.

5. The Debtors are authorized to continue to pay the Service Charges and other ordinary course fees, costs, charges, and expenses to which such Bank, credit card processor, and credit service provider may be entitled, *provided that* such payments are made in the ordinary course and consistent with prepetition practices.

6. The Debtors are authorized to use, in their present form, all Business Forms and other documents related to the Bank Accounts, without reference to their status as debtors in possession, provided, however, that if the Debtors exhaust their existing check stock during the

pendency of these chapter 11 cases, the Debtors will order checks with a notation indicating the designation “debtor in possession” and the case number of the applicable case.

7. The Debtors are authorized to open new bank accounts or close any Bank Accounts without further order of this Court; provided that in the event that the Debtors open any bank accounts or close any existing Bank Accounts, the Debtors shall provide no less than one (1) business day prior notice to counsel to the DIP Lender (as defined in the DIP Order) which shall be provided through electronic mail and set forth details of such opening or closing of any bank accounts, and, such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and notice of such opening or closing shall be provided to the U.S. Trustee and counsel to any statutory committees appointed in these Chapter 11 Cases within 15 days; provided further that, to the extent the Debtors open a new bank account, the Debtors shall open such new bank account(s) at a bank that has executed a Uniform Depository Agreement with the U.S. Trustee, or at a bank that is willing to immediately execute such an agreement; provided further that any such new bank accounts opened by the Debtors shall be subject to the terms of this Interim Order.

8. Except as otherwise expressly provided in this Order, the Banks are authorized to: (i) continue to maintain, service and administer the Bank Accounts as accounts of the Debtors as debtors in possession and provide related treasury, account and cash management services, all without interruption and in the ordinary course of business; (ii) receive, process, honor and pay, to the extent of available funds, any and all checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn on the Bank Accounts; provided, however, that any check, draft or other notification that the Debtors advise a Bank to have been drawn, issued or otherwise presented before the Petition Date may be honored by the Bank only to the extent authorized by order of the Court; (iii) accept and honor all representations

from the Debtors as to which checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items presented, issued or drawn should be honored or dishonored consistent with any order of the Court and governing law, whether such checks, drafts, EFT (including wires or ACH transfers), credit card payments and other items are dated before or after the Petition Date; and (iv) debit or charge the Bank Accounts for all undisputed Service Charges, whether arising before, on or after the Petition Date.

9. Those agreements existing between the Debtors and the Banks shall continue to govern the post-petition cash management relationship between the Debtors and the Banks and all of the provisions of such agreements, including the termination, fee provisions, rights, benefits, collateral, and offset rights, and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with a Bank (including, for the avoidance of doubt, any rights of a Bank to use funds from the Bank Accounts to remedy any overdraft of another Bank Account or other cash management obligations, whether prepetition or postpetition, to the extent permitted under the applicable agreement), unless the Debtors and the applicable Bank agree otherwise, and any other legal rights and remedies afforded to Cash Management Bank under applicable law shall be preserved.

10. In the course of providing cash management services to the Debtors, the Banks are authorized, without further order of the Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising prepetition or post-petition, from the appropriate accounts of the Debtors, and further, to charge back to, and take and apply reserves from, the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned

items that result from ACH transactions, wire transfers, merchant services transactions or other electronic transfers of any kind, regardless of whether such items were deposited or transferred prepetition or post-petition and regardless of whether the returned items relate to prepetition or post-petition items or transfers.

11. Subject to the terms of this Order, the Banks may rely upon the representations of the Debtors with respect to whether any disbursement should be honored pursuant to any order of this Court, whether or not such disbursements are dated before, on or after the Petition Date, and no Bank that honors a prepetition disbursement that is the subject of this Order (i) at the direction of the Debtors or (ii) in the good-faith belief that this Court has authorized such disbursement to be honored shall or shall be deemed to have any liability to the Debtors or their estates on account of such disbursement being honored postpetition, or otherwise be deemed to be in violation of this Order.

12. The Debtors are authorized but not directed to continue performing Intercompany Transactions in the ordinary course of business during the Interim Period, consistent with historical practices; provided that (i) any Intercompany Transactions or other transfer from any Debtor to a non-Debtor affiliate shall be in accordance with the terms and conditions of the DIP Facility (as defined in the DIP Order), including the Initial DIP Budget and Approved Budget (as defined in the DIP Order), and the requirements of the DIP Order, (ii) all Intercompany Claims held by one Debtor against another Debtor arising from postpetition Intercompany Transactions shall be entitled to administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code, and (iii) any claim arising on account of the Intercompany Transactions shall be subject to the terms and conditions of the DIP Order; provided further that the Debtors shall not be authorized by this Interim Order to make any Intercompany Transactions including proceeds

received by Debtor EPI Health, LLC from Bay View pursuant to the Factoring Agreement to during the Interim Period.

13. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain records with respect to all transfers of cash in the ordinary course so that all transactions (including Intercompany Transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions and shall make such records available to the U.S. Trustee or the DIP Lender upon request.

14. For Banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors will immediately, upon entry of this Order, (i) contact each Bank, (ii) provide the Bank with the Debtors' employer identification number, and (iii) identify each Bank Account held at such Banks as being held by a debtor in possession in a bankruptcy case. The Debtors' time to comply with section 345(b) of the Bankruptcy Code is hereby extended for a period of forty-five days from the date of this Interim Order (the "Extension Period"), provided that such extension is without prejudice to the Debtors' right to request a further extension of the Extension Period or a final waiver of the requirements under section 345(b) of the Bankruptcy Code, including at the final hearing.

15. As soon as practicable after entry of this Order, the Debtors shall serve a copy of this Order on the Banks.

16. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

17. The requirements of Bankruptcy Rule 6003(b) have been satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

18. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be effective and enforceable immediately upon its entry.

19. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, this Order shall be immediately effective and enforceable upon its entry.

20. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Interim Order.

Dated: July 21st, 2023  
Wilmington, Delaware

  
LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

## Debtors' Bank Accounts

Account Holder	Bank Name	Last Four Digits of Account #	Account Type/Purpose
Novan, Inc.	Silicon Valley Bank	7949	Operating Account
Novan, Inc.	Silicon Valley Bank	9620	Investment Account
Novan, Inc.	Silicon Valley Bank	9086	Operating Account
Novan, Inc.	Silicon Valley Bank	1484	Sweep Account
Novan, Inc.	Silicon Valley Bank	9616	Payroll Account
Novan, Inc.	PNC Bank	0299	Operating Account
Novan, Inc.	PNC Bank	3407	Inactive Account
Novan, Inc.	PNC Bank	3423	Inactive Account
Novan, Inc.	PNC Bank	3374	Leased Facility Account
Novan, Inc.	StoneCastle Cash Management LLC	1607	FICA Account
Novan, Inc.	Bank of America	1379	Lockbox Account