

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

In re:)
) Chapter 11
NOVAN, INC., *et al.*,¹)
) Case No. 23-10937 (LSS)
 Debtors.)
) Jointly Administered
)
)

**THIRD AMENDED² NOTICE OF AGENDA OF MATTERS
SCHEDULED FOR HEARING ON AUGUST 21, 2023, AT 10:00 A.M. (ET)**

AT THE DIRECTION OF THE COURT, THIS HEARING IS CANCELLED.

MATTERS UNDER CERTIFICATION

1. Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Certain Prepetition Employment Obligations and (B) Maintain Employee Benefits Programs and (II) Granting Related Relief ([D.I. 8](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) Interim Order (I) Authorizing Debtors to (A) Pay Certain Prepetition Employment Obligations and (B) Maintain Employee Benefits Programs and (II) Granting Related Relief ([D.I. 50](#), entered 7/21/23);

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

² Amended items appear in bold.



- b) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23);
- c) Certification of Counsel Regarding Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Pay Certain Prepetition Employment Obligations and (B) Maintain Employee Benefits Programs and (II) Granting Related Relief ([D.I. 181](#), filed 8/17/23); and
- d) Final Order (I) Authorizing Debtors To (A) Pay Certain Prepetition Employment Obligations And (B) Maintain Employee Benefits Programs And (II) Granting Related Relief ([D.I. 197](#), entered 8/18/23).

Status: An order has been entered. No hearing is necessary.

- 2. Motion of Debtors for Entry of Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance from Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief ([D.I. 9](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) Notice of Filing of Revised Interim Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance from Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief ([D.I. 31](#), filed 7/21/23);
- b) Interim Order (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance from Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief ([D.I. 52](#), entered 7/21/23);
- c) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23); and
- d) Certification of Counsel Regarding Motion of Debtors for Entry of Interim and Final Orders, Pursuant to Sections 105(a) and 366 of the Bankruptcy Code, (I)

Approving Debtors' Proposed Form of Adequate Assurance of Payment, (II) Establishing Procedures for Resolving Objections and Requests for Additional Assurance from Utility Companies, (III) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Service, and (IV) Granting Related Relief ([D.I. 177](#), filed 8/17/23); and

- e) Final Order (I) Approving Debtors Proposed Form Of Adequate Assurance Of Payment, (II) Establishing Procedures For Resolving Objections And Requests For Additional Assurance From Utility Companies, (III) Prohibiting Utility Companies From Altering, Refusing, Or Discontinuing Service, And (IV) Granting Related Relief ([D.I. 195](#), entered 8/18/23).

Status: An order had been entered. No hearing is necessary.

- 3. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Prepetition Taxes and Related Obligations ([D.I. 10](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) Interim Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Prepetition Taxes and Related Obligations ([D.I. 37](#), entered 7/19/23);
- b) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23); and
- c) Certification of Counsel Regarding Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Related Obligations and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Prepetition Taxes and Related Obligations ([D.I. 178](#), filed 8/17/23); and
- d) Final Order (I) Authorizing Debtors To Pay Certain Prepetition Taxes And Related Obligations And (II) Authorizing Banks To Honor And Process Checks And Transfers Related To Such Prepetition Taxes And Related Obligations ([D.I. 196](#), entered 8/18/23).

Status: An order has been entered. No hearing is necessary.

4. Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations with Respect Thereto, and (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations ([D.I. 11](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) Interim Order Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations with Respect Thereto, and (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations ([D.I. 49](#), entered 7/21/23);
- b) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23); and
- c) Certification of Counsel Regarding Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations with Respect Thereto, and (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations ([D.I. 176](#), filed 8/17/23); and
- d) Final Order Authorizing Debtors to (I) Continue Their Insurance Program, (II) Pay All Prepetition and Postpetition Obligations with Respect Thereto, and (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Insurance Obligations ([D.I. 194](#), entered 8/18/23).

Status: An order has been entered. No hearing is necessary.

5. Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding ([D.I. 81](#), filed 7/31/23).

Response Deadline: August 14, 2023 at 4:00 p.m. (ET); extended to August 17, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) Certification of Counsel Regarding Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Corp. d/b/a/ Bay View Funding ([D.I. 183](#), filed 8/17/23); and
- b) Order Pursuant To 11 U.S.C. §§ 105(a) and 363(a) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding ([D.I. 199](#), entered 8/18/23).

Status: An order has been entered. No hearing is necessary.

- 6. Motion of Debtors for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals ([D.I. 83](#), filed 7/31/23).

Response Deadline: August 14, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received: None.

Related Documents:

- a) Omnibus Notice of Second Day Motions and Applications ([D.I. 93](#), filed 8/1/23); and
- b) **[WITHDRAWN]** Certificate of No Objection Regarding Motion of Debtors for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals ([D.I. 169](#), filed 8/16/23);
- c) Notice of Withdrawal of Docket Entry no. 169 ([D.I. 186](#), filed 8/18/23); and
- d) Certification of Counsel Regarding Motion of the Debtors for Entry of an Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals ([D.I. 189](#), filed 8/18/23).

Status: On August 18, 2023, the Debtors submitted a revised order under certification of counsel resolving informal comments from the Committee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

- 7. Debtors' Application for Entry of Order Under 11 U.S.C. §§ 327(a), 328(a), and 1107(b), Fed. R. Bank. P. 2104 and 2016, De. Bankr. L.R. 2014-1 and 2016-1, Authorizing Retention and Employment of Morris, Nichols, Arsht & Tunnell LLP as Bankruptcy Counsel for the Debtors *Nunc Pro Tunc* to the Petition Date ([D.I. 84](#), filed 7/31/23).

Response Deadline: August 14, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received: None.

Related Documents:

- a) Omnibus Notice of Second Day Motions and Applications ([D.I. 93](#), filed 8/1/23); and
- b) Certificate of No Objection Regarding Debtors' Application for Entry of Order Under 11 U.S.C. §§ 327(a), 328(a), and 1107(b), Fed. R. Bank. P. 2104 and 2016, De. Bankr. L.R. 2014-1 and 2016-1, Authorizing Retention and Employment or Morris, Nichols, Arsht & Tunnell LLP as Bankruptcy Counsel for the Debtors *Nunc Pro Tunc* to the Petition Date ([D.I. 170](#), filed 8/16/23).

Status: On August 16, 2023, the Debtors submitted a certificate of no objection with respect to this matter. Accordingly, a hearing on this matter is only necessary if the Court has questions.

8. Debtors' Application for Entry of an Order (I) Authorizing the Employment and Retention of Raymond James & Associates, Inc. as Investment Banker for the Debtors Effective as of the Petition ([D.I. 85](#), filed 7/31/23).

Response Deadline: August 14, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee
- b) Informal comments received from the U.S. Trustee

Related Documents:

- a) Omnibus Notice of Second Day Motions and Applications ([D.I. 93](#), filed 8/1/23);
- b) Supplemental Declaration of Geoffrey Richards in Connection with the Order Authorizing the Employment and Retention of Raymond James & Associates, Inc. as Investment Banker for the Debtors ([D.I. 151](#), filed 8/14/23); and
- c) Certification of Counsel Regarding Debtors' Application for Entry of an Order (I) Authorizing the Employment and Retention of Raymond James & Associates, Inc. as Investment Banker for the Debtors, Effective as of the Petition Date, (II) Waiving Certain Reporting Requirement Pursuant to Local Rule 2016-2, and (III) Granting Related Relief ([D.I. 180](#), filed 8/17/23).

Status: On August 17, 2023, the Debtors submitted a revised order under certification of counsel resolving informal comments from the Committee and the U.S. Trustee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

9. Application of the Debtors for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtors, Effective as of the Petition Date ([D.I. 87](#), filed 7/31/23).

Response Deadline: August 14, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the U.S. Trustee

Related Documents:

- a) Omnibus Notice of Second Day Motions and Applications ([D.I. 93](#), filed 8/1/23); and
- b) Certification of Counsel Regarding Application of the Debtors for Entry of an Order Authorizing the Retention and Employment of SierraConstellation Partners, LLC as Financial Advisor to the Debtors, Effective as of the Petition Date ([D.I. 179](#), filed 8/17/23).

Status: On August 17, 2023, the Debtors submitted a revised order under certification of counsel resolving informal comments from the U.S. Trustee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

MATTERS GOING FORWARD

10. Debtors' Motion for Entry of Interim and Final Orders (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 ([D.I. 7](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 17, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) 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 ([D.I. 51](#), entered 7/21/23); and
- b) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23); and
- c) Certification of Counsel Regarding Debtors' Motion for Entry of Interim and Final Orders (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 ([D.I. 187](#), filed 8/18/23).

Status: On August 18, 2023, the Debtors submitted a revised order under certification of counsel resolving informal comments from the Committee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

11. Debtors' Motion for Interim and Final Orders (I) Authorizing Payment of Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief ([D.I. 12](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 17, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee

Related Documents:

- a) Interim Order (I) Authorizing Payment of Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief ([D.I. 39](#), entered 7/19/23); and
- b) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23); and
- c) Certification of Counsel Regarding Debtors' Motion for Interim and Final Orders (I) Authorizing Payment of Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief ([D.I. 188](#), filed 8/18/23).

Status: On August 18, 2023, the Debtors submitted a revised order under certification of counsel resolving informal comments from the Committee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

12. Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief ([D.I. 15](#), filed 7/17/23).

Response Deadline: August 4, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from the Committee
- b) Informal comments received from the U.S. Trustee
- c) Informal comments received from Integrated Commercialization Solutions, Inc.

Related Documents:

- a) Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief ([D.I. 54](#), entered 7/21/23);
- b) Omnibus Notice of First Day Motions and Final Hearing Thereon ([D.I. 57](#), 7/21/23);
- c) Notice of Filing of Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to the

Prepetition Secured Lender, and (III) Granting Related Relief ([D.I. 159](#), filed 8/14/23);

- d) Notice of Filing of Revised Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to the Prepetition Secured Lender, and (III) Granting Related Relief ([D.I. 202](#), filed 8/18/23); and
- e) Certification of Counsel Regarding Debtor's Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief ([D.I. 210](#), filed 8/21/23).

Status: On August 21, 2023, the Debtors submitted a revised final order under certification of counsel which resolved the informal comments from the Committee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

- 13. Debtors' Motion for Entry of an Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Certain Related Relief ([D.I. 20](#), filed 7/17/23).

Response Deadline: August 9, 2023 at 4:00 p.m. (ET); extended to August 16, 2023 at 4:00 p.m. (ET) for the Committee

Responses Received:

- a) Informal comments received from Committee
- b) The United States Trustee's Objection to Debtors' Motion for Entry of an Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Certain Related Relief ([D.I. 164](#), filed 8/15/23)

Related Documents:

- a) Notice of Motion and Hearing Regarding Debtors' Motion for Entry of an Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Certain Related Relief ([D.I. 63](#), filed 7/26/23);
- b) Notice of Filing of Revised Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Certain Related Relief ([D.I. 200](#), filed 8/18/23); **and**
- c) Certification of Counsel Regarding Debtors' Motion for Entry of an Order (I) Approving Debtors' Key Employee Incentive Program and (II) Granting Related Relief ([D.I. 209](#), filed 8/21/23).

Status: On August 21, 2023, the Debtors submitted a revised order under certification of counsel resolving the objection of the U.S. Trustee. Accordingly, a hearing on this matter is only necessary if the Court has questions.

Dated: August 21, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Scott D. Jones

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

Derek C. Abbott (No. 3376)

Daniel B. Butz (No. 4227)

Tamara K. Mann (No. 5643)

Scott D. Jones (No. 6672)

1201 Market Street, 16th Floor

Wilmington, Delaware 19801

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: dabbott@morrisnichols.com

dbutz@morrisnichols.com

tmann@morrisnichols.com

sjones@morrisnichols.com

Proposed Counsel to the Debtors and Debtors in Possession