

**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)
)
) **Objection Deadline: Sept. 6, 2023 at 4:00 p.m. (ET)**
) **Re: D.I. 60, 166, 201, 241**

**SECOND ADDITIONAL NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND
CORRECTIONS AND CLARIFICATIONS TO PREVIOUS NOTICES**

PLEASE TAKE NOTICE that, on July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases (the “Chapter 11 Cases”).

PLEASE TAKE FURTHER NOTICE that, on July 17, 2023, the Debtors filed a motion [D.I. 16] (the “Bidding Procedures Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures to be used in connection with one or more sales (each a “Sale”) of the Debtors’ development and commercialization rights to their research and development portfolio (the “R&D Assets”) and to the rights to commercialize the Debtors’ commercial portfolio (the “Commercial Assets” and together with the R&D Assets, the “Assets,” as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder² for all of the Assets in connection with considering the entry of the Bidding Procedures Order; (iii) scheduling one or more auctions (each, an “Auction”), if necessary, and schedule one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “Auction Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”), of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assumed Contract (the “Cure Amounts”); and (B) certain other information regarding the potential

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 Capitalized terms used but not otherwise defined herein shall have the means ascribed to them in the Bidding Procedures Motion.



assumption and assignment of Assumed Contracts in connection with a Sale, substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the “Assumption and Assignment Notice”); and (vii) granting related relief; and (b) one or more orders of the Court (collectively, the “Sale Orders”): (i) authorizing the sale of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale(s); and (iii) granting related relief.

PLEASE TAKE FURTHER NOTICE that, on July 25, 2023, the Debtors filed and served the *Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I. 60], and on August 18, 2023, filed and served the *Supplemental Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases* [D.I. 201] (collectively, the “Initial Notices”). Schedules listing certain contracts and leases that may potentially be assumed and assigned as part of the sales were attached to the Initial Notices (the “Initial Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International). This additional notice does not alter any deadlines for those contracts and leases that were part of the Initial Contracts Schedule.

PLEASE TAKE FURTHER NOTICE that, on August 15, 2023, the Court entered the Bidding Procedures Order [D.I. 166], approving, among other things, the Bidding Procedures, which establish key dates and times relating to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

PLEASE TAKE FURTHER NOTICE that, on August 31, 2023, the Debtors filed and served the *Additional Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Corrections and Clarifications to Previous Notices* [D.I. 241]. A supplemental schedule listing additional contracts and leases that may potentially be assumed and assigned as part of the sales was attached thereto (the “Additional Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International). This additional notice does not alter any deadlines for those contracts and leases that were part of the Additional Contracts Schedule.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order and the Bidding Procedures, the Debtors are authorized to file and serve this Additional Assumption and Assignment Notice (as such term is defined in the Bidding Procedures Order) on any Counterparty to the Debtors’ universe of executory contracts and unexpired leases that may be designated as an Assumed Contract that a Winning Bidder desires to assume as part of its Winning Bid that was not already listed on the Initial Contracts Schedule.

PLEASE TAKE FURTHER NOTICE *that in accordance with the Bidding Procedures Order, the Debtors have selected and designated Ligand as the Winning Bidder for*

the R&D Assets and certain of the Commercial Assets related to Sitavig and the Qualified Bid of Mayne Pharma LLC for certain of the Commercial Assets related to Rhofade as the Winning Bidder for such Assets.

PLEASE TAKE FURTHER NOTICE that the Debtors will seek one or more Sale Orders selling the Assets to Winning Bidder(s) on or before **September 11, 2023**; in each such instance, the Assumed Contracts may be included in such sales. A schedule adding to the Initial Contracts Schedule and the Additional Contracts Schedule with extra contracts and leases that may potentially be assumed and assigned as part of the sales is attached hereto as **Exhibit 1** (the “**Second Additional Contracts Schedule**”) and a schedule correcting certain entries on the Initial Contracts Schedule and the Additional Contracts Schedule that may potentially be assumed and assigned as part of the sales is attached hereto as **Exhibit 2** (the “**Second Corrected Previous Entries Schedule**”). These may also be viewed free of charge on the Debtors’ case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

PLEASE TAKE FURTHER NOTICE that Cure Amounts, if any, for the assumption and assignment of such contracts and leases are also set forth on the Second Additional Contracts Schedule. Each Cure Amount listed on the Second Additional Contracts Schedule represents all liabilities of any nature of the Debtors arising under a contract or lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF A SALE. *The presence of a contract or lease listed on **Exhibit 1 or 2** attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of a Sale. The Debtors reserve all their rights, claims and causes of action with respect to the contracts and leases listed on **Exhibit 1 or 2** attached hereto.*

Filing Objections

Objections to the proposed assumption and assignment of a contract or lease listed on the Second Additional Contracts Schedule attached hereto as **Exhibit 1** on any basis, including, without limitation, on the basis (i) of adequate assurance of the Winning Bidder’s future ability to perform; (ii) of the transfer of any related rights or benefits thereunder; (iii) that consent is allegedly required from any Counterparty for the assumption, assignment, and transfer of the Assumed Contract; (iv) relating to Cure Amounts, must (1)(a) be in writing; (b) state the basis for such objection; and (c) if such objection is to the Cure Amount, state with specificity what Cure Amount the counterparty believes is required (in all cases, with appropriate documentation in support thereof) and (2) be filed with the Court and served no later than **September 6, 2023 at 4:00 p.m. (ET)** on the following parties (collectively, the “**Objection Notice Parties**”): (a)

proposed 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)); (c) counsel to Ligand, Morgan Lewis and Bockius LLP, 101 Park Ave. New York, NY 10174 (Attn: Craig A. Wolfe, Esq. (craig.wolfe@morganlewis.com), Jason A. Alderson (Jason.alderson@morganlewis.com), and David K. Shim (David.shim@morganlewis.com)); and (d) counsel to the Creditors' Committee. This additional notice does not alter any deadlines for those contracts and leases that were part of the Initial Contracts Schedule or the Additional Contracts Schedule.

Consequences of Failing to Timely Assert an Objection

UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1 OR 2, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER, IF ANY, OR OTHERWISE WINNING BIDDER(S) THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 OR 2 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT OR TRANSFER (INCLUDING THE TRANSFER OF ANY RELATED RIGHTS AND BENEFITS THEREUNDER) TO THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE, OF THE YOUR CONTRACT OR LEASE AND THE ADEQUACY OF ASSURANCE OF FUTURE PERFORMANCE THEREUNDER, AND BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS OR THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE, THAT ANY ADDITIONAL DEFAULTS EXIST OR THAT CONDITIONS TO ASSUMPTION, ASSIGNMENT, AND TRANSFER MUST BE SATISFIED UNDER YOUR CONTRACT OR LEASE (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE), OR THAT ANY RELATED RIGHT OR BENEFIT UNDER SUCH CONTRACT OR LEASE CANNOT AND WILL NOT BE AVAILABLE TO THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE.

Obtaining Additional Information

Copies of the Bidding Procedures Motion, the Bidding Procedures, the proposed Bidding Procedures Order, the Stalking Horse APA, if any, and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at <https://www.kccllc.net/Novan>, or can be requested by calling the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC at (888) 251-2954 (U.S./Canada) or (310) 751-2614 (International).

Adequate assurance of future performance information for the Winning Bidders is available by contacting counsel to Ligand or Mayne, as appropriate.

Dated: September 1, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel B. Butz

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*Counsel to the Debtors and
Debtors in Possession*

Exhibit 1

(Second Additional Contracts Schedule)

ID #	Debtor Name	Contract Counterparty	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
1	Novan, Inc.	Catalent Pharma Solutions - RTP	Catalent_MSA_FE_8Apr2015 as amended	4/8/2015	—
2	Novan, Inc.	Clarkston-Potomac Group, Inc.	Clarkston_SOW_23-01_FE_30Mar2023	3/30/2023	—
3	Novan, Inc.	Copper II 2020, LLC	Lincoln Harris_Lease Am2_FE_19Nov2021	1/18/2021	—
4	Novan, Inc.	Copper II 2020, LLC	Lincoln Harris_Lease Am1_FE_18Mar2021	3/18/2021	—
5	Novan, Inc.	Copper II 2020, LLC	Lincoln Harris_Lease_FE_18Jan2021	1/18/2021	—
6	Novan, Inc.	Copper II 2020, LLC	Lincoln Harris_EstoppeI_FE_1Dec2021	12/1/2021	—
7	Novan, Inc.	Copper II 2020, LLC	Lincoln Harris_EstoppeI_FE_11Oct2022	10/11/2022	—
8	Novan, Inc.	EPL Archives	EPL_MSA_FE_20Jul2015	7/20/2015	—
9	Novan, Inc.	MasterControl	Mastercontrol_Quote_FE_4May2023	5/4/2023	—
10	Novan, Inc.	Mobile Mini	Mobile Mini_Rental Agreement_40' Container_27Apr2021	4/27/2021	—
11	Novan, Inc.	NDA Regulatory Development, Inc.	NDA Group_WO1_FE_5May2021	5/4/2023	—
12	Novan, Inc.	NDA Regulatory Development, Inc.	NDA Group_WO3_FE_24May2023	5/24/2023	—
13	Novan, Inc.	NDA Regulatory Development, Inc.	NDA Group_WO2_FE_20Aug2021	8/20/2021	—
14	Novan, Inc.	Orion Corporation	Orion_SOW15_FE	2/22/2023	—
15	Novan, Inc.	Orion Corporation	Orion_MCMA_FE_15Oct2018	10/15/2018	—
16	Novan, Inc.	Sato Pharmaceutical Co. Ltd.	Sato Data Transfer Agreement_FE_10Mar2023	3/10/2023	—
17	Novan, Inc.	Sato Pharmaceutical Co. Ltd.	Sato_Novan PV Agreement_FE_29Jun2018	6/29/2018	—
18	Novan, Inc.	Sato Pharmaceutical Co. Ltd.	Sato Quality Agreement_FE_30Jul2018	7/30/2018	—
19	Novan, Inc.	Technical Safety Services, LLC	TSS_SOW3_FE_1Jan2023	1/1/2023	—
20	Novan, Inc.	Therapeutics, Inc.	Therapeutics Inc_SOW5_FE_	3/24/2023	—
21	Novan, Inc.	UNC Chapel Hill	UNC-CH_Koch Sponsored Research_FE as amended	3/8/2018	—
22	Novan, Inc.	Verta Life Sciences LLC	Verta Life Sciences_SOW4_FE_10Jan2023	1/10/2023	—

Exhibit 2

(Second Corrected Previous Entries Schedule)

ID #	Debtor Name	Contract Counterparty	Contract Title & Description	Date of Contract or Lease	Estimated Cure Amount
1	Novan, Inc.	KNOW Bio, LLC	UNC Sublicense Agreement, dated December 29, 2015, by and between Novan, Inc. and KNOW Bio,	12/29/2015	–
2	Novan, Inc.	KNOW Bio, LLC	Novan Patent and Know-How License Agreement, dated December 29, 2015, by and between Novan,	12/29/2015	–
3	Novan, Inc.	University of North Carolina	Amended, Restated and Consolidated License Agreement between The University of North Carolina	6/27/2012	–
4	EPI Health, LLC	Vicept Therapeutics, Inc. & Aspect Pharmaceuticals, LLC	Assignment and License Agreement dated as of August 3, 2009, by and between Vicept Therapeutics, Inc	8/3/2009	217,131