

**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)
)
)
)

**DECLARATION OF DARLENE S. CALDERON WITH RESPECT TO THE
TABULATION OF VOTES ON THE COMBINED DISCLOSURE STATEMENT AND
CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY THE DEBTORS**

I, Darlene S. Calderon, depose and say under the penalty of perjury:

1. I am a Director of Corporate Restructuring Services employed by Kurtzman Carson Consultants LLC (“KCC”), whose main business address is 222 N. Pacific Coast Highway, Suite 300, El Segundo, California 90245.

2. I submit this declaration (this “**Declaration**”) regarding the solicitation and tabulation of Ballots cast on the *Combined Disclosure Statement and Chapter 11 Plan of Liquidation Proposed by the Debtors* [Docket No. 459] (as has been and may be further revised, supplemented, modified and/or amended from time to time, the “**Solicited Plan**”),² except as otherwise noted, all facts set forth herein are based on my personal knowledge, knowledge that I acquired from individuals under my supervision, and my review of relevant documents. I am authorized to submit this Declaration

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.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Solicited Plan, or if not defined therein, in the Solicitation Procedures Order (as defined below).



on behalf of KCC. If I were called to testify, I could and would testify competently as to the facts set forth herein.

3. The Court authorized KCC's retention (a) as claims and noticing agent to the Debtors on July 19, 2023 pursuant to the *Order Authorizing the Debtors to Employ and Retain Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date* [Docket No. 35], and (b) as administrative advisor to the Debtors on September 15, 2023 pursuant to the *Order Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Administrative Advisor Effective as of the Petition Date* [Docket No. 296] (together, the "**Retention Orders**"). The Retention Orders authorize KCC to assist the Debtors with, among other things, the service of solicitation materials and tabulation of votes cast to accept or reject the Solicited Plan. KCC and its employees have considerable experience in soliciting and tabulating votes to accept or reject chapter 11 plans.

4. On December 19, 2023, the Court entered the *Order (I) Approving the Combined Disclosure Statement and Chapter 11 Plan of Liquidation on an Interim Basis; (II) Establishing Solicitation and Tabulation Procedures; (III) Approving the Form of Ballot and Solicitation Materials; (IV) Establishing the Voting Record Date; (V) Fixing the Date, Time, and Place for the Confirmation Hearing and the Deadline for Filing Objections Thereto; and (VI) Granting Related Relief* [Docket No. 476] (the "**Solicitation Procedures Order**"), establishing, among other things, the Solicitation Procedures. KCC adhered to the procedures outlined in the Solicitation Procedures Order and the Ballots distributed to parties entitled to vote on the Solicited Plan. I supervised the solicitation and tabulation performed by KCC's employees.

A. Service and Transmittal of Solicitation Packages and Related Information

5. Pursuant to the Solicitation Procedures Order, on December 22, 2023, and from time to time thereafter, KCC caused the Solicitation Packages to be served upon all known Holders of Claims in Class 3 (NVN Unsecured Claims) and Class 4 (EPI Unsecured Claims) (together, the “**Voting Classes**”). In lieu of a Solicitation Package, all known Holders of Claims and Interests in Class 1 (Other Priority Claims), Class 2 (Other Secured Claims), Class 5 (Subordinated Claims) and Class 6 (Equity Interests) (collectively, the “**Non-Voting Classes**”) received the Notice of Non-Voting Status and the Confirmation Hearing Notice. In addition to receiving the Notice of Non-Voting Status and the Confirmation Hearing Notice, Holders of Class 5 Claims were to also receive a copy of the Disclosure Statement and Plan. However, as of the Voting Record Date, no Holders of Class 5 claims were identified. Furthermore, KCC caused the Confirmation Hearing Notice to be served on the creditor matrix and all other parties required to receive such notice pursuant to the Solicitation Procedures Order. A certificate of service evidencing the foregoing was filed with the Court on January 6, 2024 [Docket No. 512] and a supplemental certificate of service was filed with the Court on January 18, 2024 [Docket No. 532].

6. On December 22, 2023, KCC posted links to the electronic versions of the Solicited Disclosure Statement and Plan, Solicitation Procedures Order, Committee Letter, Notice of Non-Voting Status and Confirmation Hearing Notice on the public access website at www.kcellc.net/novan.

7. On December 22, 2023, the Publication Notice was published in *USA Today (National Edition)*. An affidavit evidencing the publication of the Publication Notice was filed with the Court on December 22, 2023 [Docket No. 496].

8. KCC also forwarded Solicitation Packages, Notices of Non-Voting Status and Confirmation Hearing Notices to voting, non-voting, and creditor matrix parties, as applicable, whose packages were returned with a forwarding address or if an alternate address was available. The supplemental certificates of service evidencing the foregoing were filed with the Bankruptcy Court on January 19, 2024 at Docket Nos. 535 and 537 (together with the certificates of service filed on January 6, 2024 and January 18, 2024, the “**Solicitation Certificates**”).

B. The Tabulation Process

9. The Solicitation Procedures Order established December 19, 2023 as the Voting Record Date to determine which Holders of Claims and Interests were entitled to receive the Solicitation Package or the Notice of Non-Voting Status, as applicable. Pursuant to the Solicitation Procedures Order, Holders of Claims in Class 3 (NVN Unsecured Claims) and Class 4 (EPI Unsecured Claims) were entitled to vote to accept or reject the Solicited Plan. No other Classes were entitled to vote on the Solicited Plan.

10. In accordance with the Solicitation Procedures, KCC worked closely with the Debtors’ counsel and financial advisors to identify the Holders of Claims in the Voting Classes entitled to vote as of the Voting Record Date, and to coordinate the distribution of Solicitation Packages to such Holders. A detailed description of KCC’s distribution of Solicitation Packages is set forth in the Solicitation Certificates.

11. In accordance with the Solicitation Procedures, KCC received, reviewed, determined the validity of, and tabulated the Ballots submitted to vote on the Solicited Plan. Each Ballot submitted to KCC was date-stamped, scanned, assigned a Ballot number, entered into KCC’s voting database, and processed. To be included in the tabulation results as valid, a Ballot must have been (a) properly completed pursuant to the Solicitation Procedures, (b) executed by the relevant Holder

entitled to vote on the Solicited Plan (or such Holder's representative), (c) returned to KCC via an approved method of delivery set forth in the Solicitation Procedures, and (d) received by KCC on or before the Voting Deadline (*i.e.*, 4:00 p.m. (Eastern Time) on January 18, 2024), which was established by the Solicitation Procedures Order.

12. The final tabulation of votes cast by timely and properly completed Ballots received by KCC is attached hereto as Exhibit A. The detailed Ballot report for the Class 3 (NVN Unsecured Claims) and Class 4 (EPI Unsecured Claims) Ballots is attached hereto as Exhibit A-1 and Exhibit A-2, respectively.

C. Ballots That Were Not Counted

13. A report of any Ballots from parties in the Voting Classes excluded from the final tabulation, and the reasons for exclusion of such Ballots, is attached hereto as Exhibit B. All such Ballots were not included in the tabulation because they did not satisfy the requirements for a valid Ballot as set forth in the Solicitation Procedures Order for the reasons described therein.

D. Conclusion

14. To the best of my knowledge, information and belief, I declare under penalty of perjury that the foregoing information concerning the distribution, submission, and tabulation of Ballots in connection with the Solicited Plan is true and correct.

Dated: January 22, 2024

/s/ Darlene S. Calderon
Darlene S. Calderon
KCC
222 N Pacific Coast Highway, 3rd Floor
El Segundo, CA 90245
Tel 310.823.9000

Exhibit A

**Exhibit A
Ballot Tabulation Summary**

Class Name	Class Description	Not Tabulated	Members Voted	Members Accepted	Members Rejected	% Members Accepted	% Members Rejected	Total \$ Voted	\$ Accepted	\$ Rejected	% \$ Accepted	% \$ Rejected	Class Accepted or Rejected
3	NVN Unsecured Claims	2	18	16	2	88.89%	11.11%	\$7,571,966.33	\$7,535,150.08	\$36,816.25	99.51%	0.49%	Accepted
4	EPI Unsecured Claims	0	9	8	1	88.89%	11.11%	\$4,674,010.19	\$4,666,660.19	\$7,350.00	99.84%	0.16%	Accepted

Exhibit A-1

Exhibit A-1
Class 3 Ballot Detail
NVN Unsecured Claims

Creditor Name	Date Received	Ballot No.	Voting Amount	Vote
AirGas USA LLC	01/11/2024	16	\$12,684.72	Accept
Brady Trane Service, Inc.	01/18/2024	25	\$16,465.65	Accept
Brian M. Johnson	12/28/2023	2	\$370,983.25	Accept
Business Ready Solutions, LLC	01/14/2024	20	\$3,990.40	Accept
CHRISTY CRUMP	01/11/2024	15	\$5,000.00	Accept
Clinical Supplies Management, Inc.	01/18/2024	24	\$11,705.95	Accept
Easysnap Technology US Corp	01/08/2024	11	\$10,448.50	Accept
Economy Exterminator	01/03/2024	8	\$576.80	Accept
ENG Solutions, Inc.	01/11/2024	14	\$500.00	Reject
Evening Post Group, LLC	01/18/2024	26	\$6,000,000.00	Accept
Evening Post Industries, Inc.	01/12/2024	19	\$800.00	Accept
Frankel Staffing Partners	12/28/2023	3	\$2,350.00	Accept
Innoeva Technologies, LLC	01/18/2024	22	\$36,316.25	Reject
Ligand Pharmaceuticals Incorporated	01/10/2024	13	\$1,000,000.00	Accept
Officers and Directors of Novan, Inc.	01/11/2024	18	\$75,569.81	Accept
Regan Madison Inc.	12/31/2023	5	\$16,875.00	Accept
SDCMK Ventures, LLC	12/28/2023	1	\$200.00	Accept
Womens Dermatologic Society	01/10/2024	12	\$7,500.00	Accept

Exhibit A-2

Exhibit A-2
Class 4 Ballot Detail
EPI Unsecured Claims

Creditor Name	Date Received	Ballot No.	Voting Amount	Vote
Aclaris Therapeutics, Inc. ⁽¹⁾	01/17/2024	21	\$4,417,278.52	Accept
American Brazilian Export Resources, inc	01/18/2024	23	\$69,124.38	Accept
Evening Post Group, LLC	01/18/2024	27	\$800.00	Accept
Inman Promotional Team, Inc.	01/07/2024	10	\$23,260.48	Accept
Jeff Chaffin	12/29/2023	4	\$65,500.00	Accept
Novus Proximus LLC (Patrick Coyle)	01/02/2024	7	\$7,350.00	Reject
Officers and Directors of EPI Health, LLC	01/11/2024	17	\$75,569.81	Accept
Palmetto Parking, Inc.	01/05/2024	9	\$1,602.00	Accept
TRC MASTER FUND LLC	01/02/2024	6	\$13,525.00	Accept

(1) Voting amount updated to \$4,417,278.52 pursuant to proposed Settlement Agreement with Aclaris Therapeutics, Inc. [Docket No. 507].

Exhibit B

**Exhibit B
Ballots Excluded from Tabulation**

Creditor Name	Date Received	Ballot No.	Voting Amount	Vote	Class	Reason Not Tabulated
MEDSCRIPT PHARMACY	01/18/2024	28	\$57,992.27	Accept	3 - NVN Unsecured Claims	Late Filed
Shawna Cannon Lemon	01/19/2024	29	\$36,800.00	Accept	3 - NVN Unsecured Claims	Late Filed