

**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
)
)

**AMENDED² NOTICE OF AGENDA FOR HEARING
SCHEDULED FOR AUGUST 15, 2023 AT 10:00 A.M. (ET)**

This hearing will be conducted in-person. Any exceptions must be approved by chambers.

Parties may observe the hearing remotely by registering with the Zoom link below no later than August 15, 2023 at 8:00 a.m. (Eastern Time)

Please use the following link to register for this hearing:

https://debuscourts.zoomgov.com/meeting/register/vJltcO2orD4vGMj_UDgJsCXNAkrX_bux34oo

After registering your appearance by Zoom, you will receive a confirmation email containing information about joining the hearing.

Topic: Novan, Inc., et al.
Time: August 15, 2023 at 10:00 a.m. (Eastern Time)

MATTER GOING FORWARD

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

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 in **bold**.



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 Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder ([D.I. 16](#), filed 7/17/23).

Response Deadline: August 11, 2023 at 4:00 p.m. (ET)

Responses Received:

- a) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from CareMarkPCS Health, L.L.C. and Zinc Health Services, L.L.C. ("CVS and Affiliates");
- b) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from OptumRx, Inc. and Emisar Pharma Services, LLC;
- c) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from TBC Stirrup Creek Owner LLC Corporate Headquarters Lease Assumption;
- d) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from Sato Pharmaceutical Co. Ltd.;
- e) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from Aclaris Therapeutics;
- f) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from SAP America, Inc. and affiliate Concur Technologies, Inc.;
- g) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from USI Insurance Services;
- h) Informal comments to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases received from Dr. Reddy's Laboratories;
- i) Informal comments to the Motion and Bid Procedures from the Committee;

- j) Reedy Creek Investments LLC's Preliminary Objection and Reservation of Rights Regarding (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 Ligand 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 ([D.I. 98](#), filed 8/1/23);
- k) Objection of the United States Trustee to the 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 Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder (D.I. 16) ([D.I. 99](#), filed 8/1/23);
- l) Mayne Pharma Group Limited's Limited Objection to 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 Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder ([D.I. 100](#), filed 8/1/23);
- m) 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 ([D.I. 124](#), filed 8/7/23);

- n) 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 ([D.I. 129](#), filed 8/8/23);
- o) Objection of Aspect Pharmaceuticals, LLC to the Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 130](#), filed 8/8/23);
- p) Notice of Filing of Exhibit 1 to 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 ([D.I. 140](#), filed 8/9/23); and
- q) 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 ([D.I. 141](#), filed 8/10/23); and
- r) Limited Objection of USI Insurance Services LLC to Debtors' Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 142](#), filed 8/11/23);
- s) **Limited Objection and Reservation of Rights of OptumRx, Inc. and Emisar Pharma Services, LLC to Cure Amounts of Executory Contracts That May be Assumed and Assigned in Asset Sale ([D.I. 144](#), filed 8/11/23); and**
- t) **Objection of CaremarkPCS Health, L.L.C. and Zinc Health Services, L.L.C. to Debtor's Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 146](#), filed 8/11/23).**

Related Documents:

- a) Notice of 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 Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder ([D.I. 46](#), filed 7/20/23);

- b) Notice of Filing of Private Sale Order ([D.I. 59](#), filed 7/25/23);
- c) Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 60](#), filed 7/25/23); and
- d) Notice of Rescheduled Hearing for Bidding Procedures Motion [D.I. 16] ([D.I. 119](#), filed 8/4/23);
- e) **Notice of Filing of Revised 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 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, and (II) Granting Related Relief ([D.I. 158](#), filed 8/14/23); and**
- f) **Statement of Official Committee of Unsecured Creditors in Support of the Revised Bidding Procedures ([D.I. 160](#), filed 8/14/23).**

Status: This matter is going forward. Please take note that all objections, responses or informal comments (found at Responses a, b, c, d, e, f, g, h, m, n, o, p, q, and r, above) in response to the Notice of Possible Assumption and Assignment of certain executory contracts and unexpired leases will NOT be heard at this bid procedures hearing but will be heard in connection with the sale hearing, which will be noticed for a later date. The Debtors are in negotiations with some of the parties who filed objections to the bidding procedures (found at Responses i, j, k and l, above), **and have filed a revised order and bid procedures prior to the hearing.**

Dated: August 15, 2023
Wilmington, Delaware

Respectfully submitted,

/s/ Scott D. Jones

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Proposed Counsel to the Debtors and Debtors in Possession