

**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. )  
 ) Jointly Administered  
 )  
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**SECOND AMENDED<sup>2</sup> NOTICE OF AGENDA FOR HEARING  
SCHEDULED FOR SEPTEMBER 11, 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 September 11, 2023 at 9:00 a.m.**

**Please use the following link to register for this hearing:**

**[https://debuscourts.zoomgov.com/meeting/register/vJltduyrpzwiH3qih4Sp6S\\_kbOZQL7RxFgM](https://debuscourts.zoomgov.com/meeting/register/vJltduyrpzwiH3qih4Sp6S_kbOZQL7RxFgM)**

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

Topic: Novan, Inc., et al.  
Time: September 11, 2023 at 10:00 a.m. (Eastern Time)

**MATTERS UNDER CERTIFICATION**

1. Debtors' Motion for an Order Authorizing the Retention and Employment of Professionals Used in the Ordinary Course of Business *Nunc Pro Tunc* to the Petition Date ([D.I. 172](#), filed 8/16/23).

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<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> Amended items appear in bold.



Response Deadline: August 30, 2023 at 4:00 p.m. (ET)

Responses Received:

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

Related Documents:

- a) Omnibus Notice of Motion and Application ([D.I. 174](#), filed 8/16/23);
- b) Certification of Counsel Regarding Debtors' Motion for an Order Authorizing the Retention and Employment of Professionals Used in the Ordinary Course of Business *Nunc Pro Tunc* to the Petition Date ([D.I. 252](#), filed 9/6/23); and
- c) Order Authorizing Procedures to Retain, Compensate and Reimburse Professionals Utilized in the Ordinary Course of Business *Nunc Pro Tunc* to the Petition Date ([D.I. 264](#), entered 9/7/23).

Status: An order has been entered. A hearing on this matter is not necessary.

- 2. Debtors' Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(e) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1 Authorizing Retention and Employment of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP as Corporate Counsel for the Debtors *Nunc Pro Tunc* to the Petition Date ([D.I. 173](#), filed 8/16/23).

Response Deadline: August 30, 2023 at 4:00 p.m. (ET)

Responses Received:

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

Related Documents:

- a) Omnibus Notice of Motion and Application ([D.I. 174](#), filed 8/16/23);
- b) Certification of Counsel Regarding Debtors' Application for Entry of an Order Pursuant to 11 U.S.C. §§ 327(e) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1 Authorizing Retention and Employment of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP as Corporate Counsel for the Debtors *Nunc Pro Tunc* to the Petition Date ([D.I. 253](#), filed 9/6/23); and
- c) Order Pursuant to 11 U.S.C. §§ 327(e) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a), and Local Rule 2014-1 Authorizing Retention and Employment of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP as

Corporate Counsel for the Debtors *Nunc Pro Tunc* to the Petition Date ([D.I. 265](#), entered 9/7/23).

Status: An order has been entered. A hearing on this matter is not necessary.

3. Application of the Official Committee of Unsecured Creditors for an Order Authorizing and Approving the Employment and Retention of Goodwin Procter LLP as Lead Counsel Effective as of July 31, 2023 ([D.I. 221](#), filed 8/21/23).

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

Responses Received: None.

Related Documents:

- a) Certificate of No Objection Regarding Application of the Official Committee of Unsecured Creditors for an Order Authorizing and Approving the Employment and Retention of Goodwin Procter LLP as Lead Counsel Effective as of July 31, 2023 ([D.I. 256](#), filed 9/6/23); and
- b) Order Authorizing and Approving the Employment and Retention of Goodwin Procter LLP as Lead Counsel for the Official Committee of Unsecured Creditors Effective as of July 31, 2023 ([D.I. 266](#), entered 9/7/23).

Status: An order has been entered. A hearing on this matter is not necessary.

4. Application of the Official Committee of Unsecured Creditors for an Order Pursuant to Bankruptcy Code Sections 328(a) and 1103 Authorizing and Approving the Employment and Retention of Womble Bond Dickinson (US) LLP as Co-Counsel Effective as of August 1, 2023 ([D.I. 222](#), filed 8/21/23).

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

Responses Received: None.

Related Documents:

- a) Certificate of No Objection Regarding Application of the Official Committee of Unsecured Creditors for an Order Pursuant to Bankruptcy Code Sections 328(a) and 1103 Authorizing and Approving the Employment and Retention of Womble Bond Dickinson (US) LLP as Co-Counsel Effective as of August 1, 2023 ([D.I. 257](#), filed 9/6/23); and
- b) Order Authorizing and Approving the Employment and Retention of Womble Bond Dickinson (US) LLP as Co-Counsel for the Official Committee of Unsecured Creditors Effective as of August 1, 2023 ([D.I. 267](#), entered 9/7/23).

Status: An order has been entered. A hearing on this matter is not necessary.

5. Application of the Official Committee of Unsecured Creditors of Novan, Inc., *et al.*, for Entry of an Order Authorizing and Approving the Employment and Retention of Dundon Advisers LLC as Financial Advisor Effective as of August 2, 2023 ([D.I. 224](#), filed 8/21/23).

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

Responses Received: None.

Related Documents:

- a) Certificate of No Objection Regarding Application of the Official Committee of Unsecured Creditors of Novan, Inc., *et al.*, for Entry of an Order Authorizing and Approving the Employment and Retention of Dundon Advisers LLC as Financial Advisor Effective as of August 2, 2023 ([D.I. 258](#), filed 9/6/23); and
- b) Order Authorizing and Approving the Retention of Dundon Advisers LLC as Financial Advisor to the Official Committee of Unsecured Creditors of Novan, Inc., *et al.*, Effective as of August 2, 2023 ([D.I. 268](#), filed 9/7/23).

Status: An order has been entered. A hearing on this matter is not necessary.

### **MATTER GOING FORWARD**

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

Initial Sale Objection/Response Deadline: August 28, 2023 at 4:00 p.m. (ET)

Sale Objection/Response Deadline: September 1, 2023 at 4:00 p.m. (ET)

Objections to Assumption/Proposed Cure Amounts: September 6, 2023, at 4:00 p.m. (ET); extended for Allergan, Sato Pharmaceutical Co. Ltd and Padagis Israel Pharmaceuticals Ltd

Responses Received:

- a) Informal comments received from Allergan Sales, LLC, regarding Assumption/Proposed Cure Amounts;
- b) Informal comments received from Sato Pharmaceutical Co. Ltd regarding Assumption/Proposed Cure Amounts;
- c) Informal comments received from Padagis Israel Pharmaceuticals Ltd regarding Assumption/Proposed Cure Amounts;
- d) Informal comments received from TBC Stirrup Creek Owner LLC regarding Assumption/Proposed Cure Amounts;
- e) Informal comments received from CaremarkPCS Health, LLC and Zinc Health Services, LLC regarding Assumption/Proposed Cure Amounts;
- f) Reedy Creek Investments LLC's Limited Objection to Sale and Reservation of Rights ([D.I. 232](#), filed 8/28/23);
- g) Limited Objection and Reservation of Rights of Dr. Reddy's Laboratories Ltd. and Certain Affiliates to the Debtors' Sale ([D.I. 233](#), filed 8/28/23);
- h) Objection by the United States to the Debtors' Sale Motion ([D.I. 244](#), filed 9/1/23);
- i) Letter Regarding Sale ([D.I. 248](#), filed 9/1/23);
- j) Limited Objection of Aclaris Therapeutics, Inc. to the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances ([D.I. 255](#), filed 9/6/23);
- k) Reedy Creek Investments LLC's Preliminary Objection and Reservation of Rights Regarding (I) 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 Ligan 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 on 8/1/2023);

- l) 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 on 8/7/2023);
- m) 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 on 8/8/2023);
- n) 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 on 8/8/2023);
- o) 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 on 8/10/2023);
- p) 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 on 8/11/2023);
- q) Limited Objection and Reservation of Rights of Optimurx, 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 8/22/23);
- r) Objection of CaremarkPCS Health, L.L.C. and Zinc Health Services, L.L.C. to Debtors' Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 146](#), filed 8/11/2023);
- s) Informal Objection of Brian M. Johnson to Supplemental Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases;
- t) **Motion of Aclaris Therapeutics, Inc. for Entry of an Order Granting Leave to File a Sur-Reply ([D.I. 275](#), filed 9/8/2023);**
- u) **Limited Objection and Reservation of Rights of Allergan, Inc. and Allergan Sales, LLC to the Sale of the Debtors' Assets Free and Clear of liens, Claims, Interests, and Encumbrances ([D.I. 276](#), filed 9/9/2023); and**
- v) **[SEALED] Notice of Filing Exhibits to Limited Objection and Reservation of Rights of Allergan, Inc. and Allergan Sales, LLC to the Sale of the Debtors' Assets Free and Clear of liens, Claims, Interests, and Encumbrances (D.I. 277, filed 9/9/2023).**

Related Documents:

- a) Notice of Filing of Private Sale Order ([D.I. 59](#), filed 7/25/23);
- b) 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 Ligan 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. 166](#), entered 8/15/23);
- c) Notice of Sale, Bidding Procedures, Auction, Sale Hearing, and Other Deadlines Related Hereto ([D.I. 168](#), filed 8/16/23);
- d) Supplemental Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 201](#), filed 8/18/23);
- e) Notice of Virtual Auction ([D.I. 240](#), filed 8/30/23);
- f) Additional Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Corrections and Clarifications to Previous Notices ([D.I. 241](#), filed 8/31/23);
- g) Notice of Debtors' Designation of Mayne Pharma LLC as Winning Bidder and the Mayne APA as the Winning Bid for Certain of the Debtors' Assets ([D.I. 242](#), filed 8/31/23);
- h) Second Additional Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Corrections and Clarifications to Previous Notices ([D.I. 245](#), filed 9/1/23);
- i) Notice of Debtors' Designation of Stalking Horse as Winning Bidder and the Stalking Horse APA as the Winning Bid for Certain of the Debtors' Assets ([D.I. 246](#), filed 9/1/23);
- j) Initial Notice of Possible Assumption and Assignment of Certain Executory Contracts and Unexpired Leases ([D.I. 60](#), filed on July 25, 2023);
- k) Debtors' Motion for Leave to File a Late Reply Regarding the Limited Objection of Aclaris Therapeutics, Inc. to the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances (D.I. 272, filed 9/8/23);
- l) Declaration of Simon Wein in Support of Entry of Orders Authorizing Sale of Substantially all of the Debtors' Assets Free and Clear of All Encumbrances (D.I. 273, filed 9/8/2023); and

- m) **Debtors' Objection to Motion of Aclaris Therapeutics, Inc. for Entry of an Order Granting Leave to File a Sur-Reply and Request for the Court to Consider a Response Thereto ([D.I. 279](#), filed 9/10/23).**

Status: This matter is going forward. The Debtors and the proposed purchasers, Ligand and Mayne, are working to resolve, or have resolved, the cure objections found at Responses (a) through (d) and (n), above, and the sale objection at Responses (f) and (k), above. Responses (c) and (d) have been resolved through language added to the proposed orders. The cure objections found at Responses (e), (g), (l), (m), (o), (p), (q) (r) and (s) are moot as neither Ligand nor Mayne will be assuming and assigning such agreements. The objection of the USA at Response (h), above, which relates only to the Ligand sale order, **is resolved by the parties through language inserted in the sale order**; the concerns of the USA to the Mayne sale order were resolved by informal comments. The Debtors have filed a reply to address the late objection found at Response (j), above. **Further, Aclaris has filed a Motion for Leave regarding a sur-reply and the Debtors have filed a Response to that Motion. The Limited Objection filed by Allergan at (u) above has been resolved.**

Dated: September 11, 2023  
Wilmington, Delaware

Respectfully submitted,

*/s/ Scott D. Jones*

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

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