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*Proposed Attorneys to the Debtors
and Debtors in Possession*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

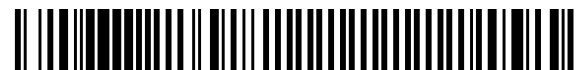
**DEBTORS' EMERGENCY MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION WAGES,
SALARIES, AND EMPLOYEE BENEFITS AND (B) CONTINUE
THE POSTPETITION MAINTENANCE OF EMPLOYEE BENEFIT
PROGRAMS, POLICIES, AND PROCEDURES IN THE ORDINARY COURSE**

Emergency relief has been requested. Relief is requested not later than 1:30 p.m. prevailing Central Time on April 3, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on April 3, 2024 at 1:30 p.m. prevailing Central Time in Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496.

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2155 Park Boulevard, Palo Alto, California 94306.



You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan’s home page. The meeting code is 479 393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the “Electronic Appearance” link on Judge Jernigan’s home page. Select the case name, complete the required fields and click “Submit” to complete your appearance.

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) state as follows in support of this motion:

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), granting, among other things, the following relief:

- a. authorizing the Debtors to:
 - i. pay prepetition wages, salaries, and employee benefits; and
 - ii. continue the post-petition maintenance of any employee benefit programs, policies and procedures in the ordinary course of business; and
- b. granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court’s entry of a final order in connection with this motion.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363, and 507(a) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003

and 6004, rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”), and the Procedures for Complex Chapter 11 Cases in the Northern District of Texas.

Background of The Debtors

5. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All five of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

6. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

The Debtors’ Workforce, Compensation, and Benefits

7. The Debtors’ employees are the lifeblood of their business. Without the support from their salespeople and the teams that support them, the Debtors’ operations could not be continued. Further, the Debtors’ employees are highly trained and uniquely well-versed in the industry in which the Debtors operate.

8. The Debtors seek to eliminate any personal hardship to their workforce resulting from these chapter 11 cases and to minimize the disruption to the Debtors’ operations. As of the Petition Date, certain of the Debtors’ obligations to their workforce and other related third-party service providers (all such wages, benefits, and other obligations described herein, collectively, the “Employee Compensation and Benefits”) remain unpaid because, among other things, amounts

related to prepetition services, while accrued in whole or in part, had not yet become due and payable by the Debtors, and amounts deducted or withheld from Employees' (as defined below) paychecks were not then due to be paid to the intended third-party recipient or bank account (collectively, the "Prepetition Employee Obligations"). These obligations include, (i) payments on behalf of the employees in respect of the Employee Benefit Programs (as defined below) or amounts due to third parties in connection therewith, (ii) income, garnishment, state disability, unemployment and other taxes for remittance to the appropriate federal, state, or local taxing authorities, (iii) amounts due to Independent Contractors (as defined below), and (iv) employee expense reimbursements.

9. The Debtors seek to pay all Prepetition Employee Obligations and related accrued administrative fees and to continue to meet their obligations under the Employee Benefit Programs (as defined below). The Debtors' employees rely on the compensation and benefits they receive through the programs described in this motion to pay their daily living expenses and support their families. Granting the relief requested will enable the Debtors to maintain the workforce necessary to run an efficient and value-maximizing sale process which, in turn, will maximize value for the benefit of all stakeholders, including the employees.

10. The Debtors seek authority to pay, remit, and/or honor the accrued and unpaid Prepetition Employee Obligations set forth below. The Debtors estimate that the prepetition amount owing to the Employees (as defined herein) in the aggregate is approximately \$217,000. Furthermore, approximately \$27,000 will be payable within thirty (30) days after the Petition Date to cover the cost of all payroll related expenses.

I. Employees.

11. As of the Petition Date, the Debtors employ and retain approximately nine employees (the "Employees"). All nine Employees are full time, contracted Employees

(the “Salaried Employees”). During these chapter 11 cases, the Employees will continue to interface with customers and counterparties and respond to inquiries and concerns regarding the business, ongoing marketing efforts, and administration of these chapter 11 cases.

12. All of Debtors’ Employees are provided as co-employees with and through a third-party professional employer organization, TriNet Group, Inc. (“TriNet”). TriNet is responsible for administering Debtors’ payroll and Employee Benefits Programs (as defined below), including without limitation, payroll processing, sponsoring and administering of Employee Benefits Programs, processing and maintaining certain worksite Employee records, and performing other related human resources functions (collectively, the “PEO Services”).

II. Independent Contractors.

13. The Debtors supplement their workforce with various contractors and consultants (collectively, the “Independent Contractors”). Among other positions, the Independent Contractors perform various roles including, but not limited to, accounting and contract review services. The Independent Contractors send the Debtors weekly invoices for approximately \$90,000, of which \$100,000 is outstanding as of the Petition Date.

III. Prepetition Employee Obligations.

A. The Debtors’ Payroll Obligations.

14. In the ordinary course of business, the Debtors pay their Salaried Employees according to bi-monthly payment cycles on the fifteenth and last day of each month for payroll cycles between the first to the fifteenth and sixteenth to the end of the month, respectively. As such, the Salaried Employees are generally paid current or on the last business day if a payment

cycle occurs on weekends and bank holidays. On average, the Debtors' aggregate gross monthly payroll for their Employees is approximately \$315,000.²

15. The most recent regularly scheduled payroll cycle for Employees ended on March 31, 2024, which covered the period from March 16, 2024, through March 31, 2024 and was paid on March 29, 2024. The Debtors believe they owe no amounts to Employees in accrued and unpaid salary (the "Unpaid Salary") for services rendered. To the extent that any additional prepetition amounts remain outstanding, the Debtors seek authority to pay such amounts in the ordinary course.

16. In connection with the wages and salaries paid to Employees, the Debtors are required by federal, state, and local law to withhold certain amounts for federal, state, and local income taxes, and withholdings in connection with various employee benefits and other employee programs (collectively, the "Withholding Taxes and Obligations") and to remit the withheld amounts to the appropriate taxing and other governmental authorities. As part of administering payroll, the Withholding Taxes and Obligations are deducted directly from the Debtors' payroll account to remit to the appropriate taxing authorities. To the extent any additional prepetition amounts remain outstanding, the Debtors seek authority to pay unpaid amounts in accordance with pre-petition practices and to continue paying such amounts in the ordinary course of business post-petition.³

² This amount only considers the headcount of the workforce as of the Petition Date.

³ Concurrently herewith, the Debtors have sought authority, but not direction, to pay certain prepetition taxes, assessments, fees, and other charges in the ordinary course of business pursuant to the *Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Taxes and Fees* (the "Tax Motion"). By this Motion, the Debtors do not seek authority to pay prepetition claims that may be covered by the relief sought in the Tax Motion.

B. Processing Fees.

17. The Debtors' Prepetition Employee Obligations are administered and paid directly by TriNet. In order to process payroll, Debtors authorize TriNet to initiate an electronic funds transfer from Debtors' account in an amount equal to cover the cost of all Prepetition Employee Obligations, and fees owed to TriNet in respect of the PEO Services provided to Debtors.

18. The Debtors estimate that they pay approximately \$6,000 every month to TriNet on account of its PEO Services (the "Processing Fees"). Pursuant to the Order, the Debtors seek authority, but not direction, to pay the Processing Fees in the ordinary course and consistent with past practice and to continue processing of the PEO Services during the administration of these chapter 11 cases.

C. Additional Compensation Plans.

19. The Debtors maintain certain employee programs to motivate, reward, and retain certain of their non-insider Employees and consultants (the "Additional Compensation Plans").

i. Employee Stock Purchase Agreement.

20. In the ordinary course of business, eligible Employees were allowed to purchase shares in the Company at a discounted price (the "Employee Stock Purchase Plan"). The Company offered 2 periods per year for Employees to purchase shares in the company at a 15% discount, up to \$25,000 a year or a maximum of 1,500 shares per period. Any contributions to the Employee Stock Purchase Plan that resulted in overages of such purchase caps were returned to the Employees.

21. Before the Petition Date, the Debtors discontinued the Employee Stock Purchase Plan. When the Debtors discontinued the Employee Stock Purchase Plan, Employees had contributed an approximate total of \$3,000 within the final offering period. By this Motion, the

Debtors seek authority to pay Employees that contributed to the Employee Stock Purchase Plan their respective contributed amounts from the final offering period.

D. Employee Expenses.

22. Prior to the Petition Date, and in the ordinary course of business, the Debtors reimburse Employees for certain business expenses incurred in the scope of their employment, including mobile phones plans, software licenses, travel expenses, professional subscriptions, internet, and other miscellaneous business expenses (collectively, the “Employee Expenses”).

23. Certain Employees, for the benefit of the Debtors, pay Employee Expenses with the understanding that they will be reimbursed upon the submission of a receipt or claim itemizing expenses in accordance with the Debtors’ reimbursement policy. Employees are permitted to use their personal credit cards to pay for Employee Expenses and are reimbursed, at a minimum, on a monthly basis, and as often as on a weekly basis. The Debtors estimate, on average, that approximately \$20,000 per month is reimbursed to Employees on account of Employee Expenses. As of the Petition Date, the Debtors estimate that approximately \$20,000 remains due and owing on account of Employee Expenses, the entirety of which is due and payable in the first 21 days of these chapter 11 cases.

24. Although Employees must submit their reimbursement request monthly, sometimes submissions are delayed, which may result in Employees submitting requests for prepetition Employee Expenses after the Petition Date. The Debtors seek authority, in their discretion, to continue their Employee Expenses’ policy in the ordinary course during these chapter 11 cases.

E. Director Compensation.

25. As of the Petition Date, the Debtors maintain a board of directors, comprised of eight (8) directors (each, a “Director” and collectively the “Directors”). Each of the Directors is compensated on average \$75,500 per year, paid quarterly and generally in arrears (together,

the “Director Payments”). The Director Payments are comprised of cash compensation and equity compensation. In addition, the Directors are reimbursed for all reasonable and documented out-of-pocket business expenses incurred in connection with the Director services to the Debtors as a member of the Board (the “Director Fees”).⁴ The Directors are also covered by the Debtors’ directors’ and officers’ insurance policy, in an amount and on terms as reasonably determined by the Board (the “Director Insurance Coverage” and, collectively with the Director Payments and Director Fees, the “Director Compensation”).

26. The Debtors believe there are no outstanding amounts with respect to the Director Compensation as of the Petition Date. The Debtors request the authority to honor any prepetition obligations on account of Director Compensation and to continue paying such Director Compensation on a post-petition basis in the ordinary course of business and consistent with historical practice.

IV. Employee Benefit Programs.

27. In the ordinary course of business, the Debtors maintain various employee benefit plans and policies, including, but not limited to, medical plans, dental plans, vision plans, Life and AD&D Insurance (as defined below), short-term and long-term disability plans, other paid time off, and a 401(k) plan (collectively, the “Employee Benefit Programs”).⁵ The Employee Benefit Programs are, in each case, available to all full-time employees who satisfy the eligibility requirements for any Employee Benefit Program (the “Eligible Employees” and, with respect to

⁴ However, all board meetings have been virtual since the start of the COVID-19 pandemic and no expenses related to board meetings have been reimbursed for virtual board meetings.

⁵ The descriptions of the Debtors’ compensation and benefits programs contained in this motion are provided for convenience only and are qualified in all respects by the actual terms of such programs. Nothing contained in this motion shall have the effect of modifying the terms of the compensation and benefits programs or altering any party’s rights and obligations thereunder.

each plan or program in which they participate, the “Plan Participants”). Coverage for Eligible Employees becomes effective the first month following or coinciding with their date of hire.

28. The Debtors seek authority, in their discretion, to pay prepetition claims (if applicable), to honor obligations, and to continue programs in the ordinary course of business and consistent with prior practice relating to the Employee Benefit Programs,⁶ subject to the Debtors’ ability to modify or discontinue any Employee Benefit Programs in their discretion and to reduce applicable costs, the scope of benefits provided, or reporting periods permitted thereunder.

A. Insurance Plans.

29. The Debtors offer Employees the opportunity to participate in a variety of health and insurance benefit plans, including the Medical Plans, the Dental Plan, the Vision Plan, voluntary life insurance, AD&D insurance, disability insurance, HSA / FSA plan, Critical Illness Insurance, Hospital Indemnity Insurance, Employee Assistance Program and COBRA (each as defined herein, and collectively, the “Insurance Plans”).

30. Plan Participants’ contributions to the Insurance Plans are deducted from payroll. The Debtors also contribute to certain of the Insurance Plans as a benefit, as well as pay certain administrative fees where applicable. As of the Petition Date, the Debtors estimate there is \$4,000 due and owing under the Insurance Plans.

31. The Debtors seek authority to: (a) continue the Insurance Plans in the ordinary course; (b) make any payments on account of any accrued but unpaid prepetition amounts due and owing under the Insurance Plans, which shall not be subject to the Priority Limit; and (c) remit

⁶ Relief requested in this motion shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Programs under section 365(a) of the Bankruptcy Code.

any payments withheld from Plan Participants through payroll deductions under the Insurance Plans. The Insurance Plans include:

- a. Medical Plans. The Debtors offer both HSA and PPO medical plans (the “Medical Plans”) with Aetna, BlueShield, and Kaiser. The Debtors cover 100% of employee premiums and 100% of dependent premiums under the HSA option. The Debtors cover 100% of employee premiums and 100% of dependent premiums under the PPO option. The Debtors pay approximately \$81,000 per month in premiums related to the Medical Plans. As of the Petition Date, the Debtors estimate that no amounts are due and owing under the Medical Plans.
- b. Life and AD&D Insurance. The Debtors provide basic life and accidental death and dismemberment insurance (“Life and AD&D Insurance”), as well as short-term and long-term disability (“Disability Benefits”), to all Employees, through TriNet. The Life and AD&D Insurance provides eligible Employees with twice their base salary, up to \$1,000,000. The Disability Benefits provide eligible Employees with 50 to 60% of their earnings, subject to certain monthly or weekly limits. The Debtors pay the Life and AD&D Insurance and the Disability Benefits, with no contributions from the Employees, and these programs cost the Debtors approximately \$2,000 in the aggregate per month in premiums and administrative expenses for the Employees. The Debtors remit to TriNet the payments for the Life and AD&D Insurance and Disability Benefits with each paycheck in advance for that month’s benefits. As of the Petition Date, the Debtors estimate that no amounts are due and owing under the Life and AD&D Insurance and the Disability Benefits.
- c. COBRA Plans. The Debtors offer COBRA coverage (the “COBRA Plan”) for employees and their qualified beneficiaries to temporarily extend their medical, vision and dental insurance coverage when a “qualifying event” would normally result in the loss of eligibility. The extension of coverage is generally fully paid by the employee or beneficiary at their own expense. As of the Petition Date, the Debtors estimate that they owe \$4,000 under the COBRA Plans.
- d. Dental and Vision Plans. The Debtors offer a fully insured dental and vision plan (the “Dental & Vision Plans”) with Aetna (dental and vision), Delta Dental (dental), Guardian (dental), MetLife (dental), and VSP (vision). The Debtors pay approximately \$4,000 per month in premiums related to the Dental & Vision Plans. As of the Petition Date, the Debtors estimate that no amounts are currently outstanding under the Dental & Vision Plans.
- e. Health Savings Accounts. Employees have the option to enroll in a health savings account (the “HSA”), administered by TriNet. Under the HSA program, the Debtors offer their Employees the ability to contribute a portion of their pre-tax compensation to an HSA to pay for health benefits and eligible out-of-pocket health care premiums and expenses. The Debtors pay no amounts on account of the HSA—costs are covered entirely by the Plan Participants. Accordingly, as of the Petition Date, no amounts are due and owing under the HSA.

- f. Flexible Spending Accounts. Historically, Employees have had the option to enroll in a flexible spending account program (the “FSA”) administered by TriNet. Employee contributions to the FSA program are forwarded to TriNet as they are deducted. As of the Petition Date, the Debtors were not in possession of any amounts deducted from Employees’ paychecks in accordance with the FSA program.
- g. Critical Illness Insurance. The Debtors offer an insurance plan to help with the treatment costs of covered critical illnesses, such as heart attack or stroke (the “Critical Illness Insurance”). Cash benefits go directly to Employees (unless otherwise specified), to pay bills related to treatment or everyday living expenses. The Employees pay 100% of the premiums associated with the Critical Illness Insurance. As of the Petition Date, the Debtors estimate that no amounts are due and owing under the Critical Illness Insurance.
- h. Hospital Indemnity Insurance. The Debtors offer an insurance plan that helps with the out-of-pocket costs associated with a covered hospital stay, including benefits for hospital admission, confinement and intensive care (the “Hospital Indemnity Insurance”). It provides financial assistance to enhance Employees current coverage if they are hospitalized due to a covered accident or sickness. The Debtors pay approximately \$100 per month in premiums related to the Hospital Indemnity Insurance. As of the Petition Date, the Debtors estimate that no amounts are due and owing the Hospital Indemnity Insurance.
- i. Employee Assistance Program. The Debtors offer an employee assistance program (the “EAP”) available at no cost to Employees. Employees may access free, confidential counseling and referral services. This program provides 24-hour confidential assistance with personal, family and work-related concerns – plus online resources. The Debtors incur no fees on account of the EAP. Accordingly, as of the Petition Date, no amounts are due and owing under the EAP.

B. Other Benefit Programs.

i. Workers’ Compensation Program.

32. The Debtors maintain workers’ compensation programs and workers’ compensation insurance at the levels required by law in the states in which the Debtors have Employees and, where applicable, make payments on account of workers’ compensation claims (the “Workers’ Compensation Program”). The Debtors maintain coverage under the Workers Compensation Program through TriNet. In the twelve months before the Petition Date, the Debtors paid approximately \$41,000 in fees and premiums under the Workers’ Compensation Program.

As of the Petition Date, the Debtors estimate that no amounts are due and owing on account of the Workers' Compensation Program.

33. The Debtors must continue the claim assessment, determination, adjudication, and payment process pursuant to the Workers' Compensation Program without regard to whether such liabilities arose before the Petition Date to ensure that the Debtors comply with applicable workers' compensation laws and requirements during the pendency of these chapter 11 cases.⁷ To the extent any Employees assert claims under the Workers' Compensation Program, the Debtors request that the Court modify the automatic stay under section 362 of the Bankruptcy Code to the extent necessary to permit the Employees to proceed with their claims under the Workers' Compensation Program. This required modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

ii. Paid Time Off.

34. The Debtors provide several time off and paid leave benefit programs for Employees, providing paid leave for the PTO Policy (as defined below).

35. In the ordinary course, all Employees are eligible for paid time off ("PTO"), which can be used for vacation, personal appointments, family matters, sick days, school activities, religious observances, rest and relaxation, and other personal obligations (the "PTO Policy"). During the first three years of continuous, full-time employment, Employees accrue five hours of vacation per pay period, up to a maximum of 120 hours per year. After three years of service, Employees earn 160 hours per year. The maximum amount of vacation that may be accrued is 160 hours. Upon termination of employment, Employees will be paid up to 160 hours of unused

⁷ The Debtors' Workers' Compensation Program may change post-petition in the ordinary course of business due to changes in applicable laws and regulations and the Debtors' ability to meet requirements thereunder. The Debtors request authority to make any changes to current policy and practices that become necessary.

and accrued PTO, unless termination was the result of gross negligence, although some states may require that additional PTO be paid upon termination if PTO is not paid concurrent with the last day of employment. As of the Petition Date, the accrued PTO is valued at approximately \$190,000. The Debtors seek authorization to continue the PTO Policy in the ordinary course of business.

36. The Debtors also offer Employees paid parental leave for full-time employees to take time off to care for a newborn or a child placed with the employee for adoption or foster care (the “Parental Leave”). The Debtors seek authorization to continue Parental Leave in the ordinary course of business.

37. The Debtors comply with local regulations regarding paid time off for various other causes, including sick and medical leave, family leave for, among other things, the birth of a child or serious health condition of a spouse or child, and government leave for, among other things, voting, jury duty, and military obligations.

38. The Debtors seek authority to continue the PTO Policy for their Employees in the ordinary course of business.

iii. 401(k) Plan.

39. The Debtors offer Employees an opportunity to participate in and contribute to a 401(k) plan (the “401(k) Plan”), which is administered by TriNet. Participating Employees can make Roth and pre-tax contributions to the 401(k) Plan, up to the maximum amount allowed under the Internal Revenue Code. Most Employees have current account balances in the 401(k) Plan (the “401(k) Program Participants”). According to the last payroll cycle, approximately \$15,000 is withheld from active employed 401(k) Program Participants’ paychecks relating to contributions to the 401(k) Plan (the “401(k) Savings Plan Withholdings”). The Debtors match 100% of the first 4% each 401(k) Program Participant contributes to the 401(k) Plan each pay period, plus a varied quarterly match on the Commissions. The Debtors ordinarily contribute approximately

\$7,000 per month of matching contributions under the 401(k) Plan. As of the Petition Date, Debtors estimate that no amounts are due and owing to the Employees' accounts under the 401(k) Plan. The Debtors seek authority to continue to maintain the 401(k) Plan and honor their obligations in the ordinary course.

Basis For Relief Requested

I. Sufficient Cause Exists to Authorize the Debtors to Honor the Compensation and Benefits Obligations.

A. Payment of Certain Employee Compensation and Benefits Is Required by Law.

40. Certain Compensation and Benefits Are Entitled to Priority Treatment. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the compensation and benefits owed to the Employees to priority treatment, to the extent such payments do not exceed \$15,150 for each individual as provided for under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code. The Debtors are required to pay these priority claims in full to confirm a chapter 11 plan. 11 U.S.C. § 1129(a)(9)(b) (requiring payment in full of certain allowed unsecured claims, given priority under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, for (a) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). Further, California, where Impel maintains a portion of its workforce, requires that when an employer policy provides for paid time off, and an employee is terminated without having taken off their vested vacation time, all vested vacation must be paid. *See, e.g.*, Cal. Labor Code § 227.3 (West 2023). Granting the relief sought herein will not negatively affect other creditors. Rather, payment of the compensation and benefits at this time enhances value for the benefit of all interested parties by motivating the Employees to remain active and engaged through a value-maximizing sale process. *See In re Equalnet Commc 'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000) (“The need to pay [employee wage] claims in an

ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted.”). Maintaining and motivating the Debtors’ Employees is vital to the Debtors’ efforts to implement a sale through this chapter 11 case and otherwise wind down its operations and sell its assets.

41. In addition, the Debtors seek authority to pay the applicable Withholding Taxes and Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees’ paychecks. Certain Withholding Taxes and Obligations are not property of the Debtors’ estates because the Debtors have withheld such amounts from the Employees’ paychecks on another party’s behalf. *See* 11 U.S.C. §§ 541(b)(1), (d); *see also In re Equalnet Commc’ns*, 258 B.R. at 370 (noting that, for tax obligations where funds are held by the debtor in trust, “the legal right to payment of such claims at any time appears irrefutable.”) (citing *In re Al Copeland Enter., Inc.*, 991 F.2d 233 (5th Cir. 1993)).

42. Federal and state laws require the Debtors to withhold certain tax payments from the Employees’ paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees’ wages created a trust relationship between debtor and the city for payment of withheld income taxes). Because the Withholding Taxes and Obligations may not be property of the Debtors’ estates, the Debtors request that the Court authorize them to transmit the Withholding Taxes and Obligations on account of the Employees to the proper parties in the ordinary course of business.

II. Payment of the Compensation and Benefits Is Proper Pursuant to Section 363(b) of the Bankruptcy Code.

43. Under Bankruptcy Code § 363(b), a debtor may, in the exercise of its sound business judgment and after notice and hearing, use property of the estate outside of the ordinary course of business. 11 U.S.C. § 363(b). A debtor may also use property of the estate in the ordinary course of business without notice or a hearing. 11 U.S.C. § 363(c). Furthermore, Bankruptcy Code § 105(a) allows a court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” § 105(a); see *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (recognizing and applying §§ 105(a) and 363 of the Bankruptcy Code to justify the payment of prepetition obligations in appropriate circumstances); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr. W.D. La. 1989) (“[w]hile prepetition claims are normally disposed of in a plan of reorganization and in accordance with statutory priorities, there are well-established ‘necessity of payment’ and similar exceptions.”).

44. Courts have developed the “Doctrine of Necessity” (also known as the “Necessity of Payment Rule”) for use in determining whether payment of certain prepetition obligations is permissible. See *In re CoServ, L.L.C.*, 273 B.R. 487, 492–93 (Bankr. N.D. Tex. 2002) (discussing the doctrine). The Debtors, operating their businesses as debtors in possession under Bankruptcy Code §§ 1107(a) and 1108, are fiduciaries with the implicit duty to “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.* at 497. As observed in *CoServ*, the debtor-in-possession’s role as the equivalent of a trustee (pursuant to Bankruptcy Code § 1107(a)) provides a bridge from § 105(a) to the Doctrine of Necessity. *Id.* at 496–97. Thus, in certain instances, “it is only logical that the bankruptcy court be able to use Section 105(a) of the Code to authorize satisfaction of a prepetition claim in aid of preservation or enhancement of the estate.” *Id.*

45. In *CoServ*, this Court held that a debtor must demonstrate the following three elements in order to meet the “necessity” requirement: (1) it must be critical that the debtor deal with the claimant; (2) unless the debtor deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim; and (3) there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim. *Id.* at 498.

46. Many courts have recognized the importance of employees to a debtor’s reorganization and the severe harm to employees that can arise if courts do not grant motions such as this one. Similar relief to that requested herein has been granted by bankruptcy courts in this district. *See, e.g., In re Impel Pharmaceuticals Inc.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. 2023) [Docket No. 50]; *In re Ebix, Inc.*, Case No. 23-80004 (SWE) (Bankr. N.D. Tex. 2023) [Docket No. 62]; *In re Tuesday Morning*, Case No. 23-90001 (ELM) (Bankr. N.D. Tex. 2023) [Docket No. 219]; *In re Northwest Senior Housing Corp.*, Case No. 22-30659 (MVL) (Bankr. N.D. Tex. 2022) [Docket No. 94]; *In re Tuesday Morning Corp.*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. May 28, 2020) [Docket No. 69].

47. Payment of the Prepetition Employee Obligations is warranted under these authorities and the facts of this chapter 11 case. The Debtors submit that the relief requested herein represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rule 6003. Paying prepetition compensation, benefits, and similar items to Employees and Independent Contractors will benefit the Debtors’ estate by allowing the Debtors’ business operations to continue without interruption as the Debtors

seek to implement an asset sale through this chapter 11 case and otherwise wind down its operations.

48. The majority of Employees and Independent Contractors rely exclusively on the Employee Compensation and Benefits to satisfy their daily living expenses. Consequently, Employees and Independent Contractors will be exposed to significant financial difficulties if the Debtors are not permitted to honor its obligations related thereto. Moreover, failure to satisfy such obligations will jeopardize morale and loyalty at a time when Employees' and Independent Contractors' support is critical to the Debtors' business.

49. Additionally, without the relief requested herein, Employees or Independent Contractors may seek alternative employment opportunities. Such a development would deplete the Debtors' workforce, thereby hindering the Debtors' ability to efficiently winddown its business while it seeks to consummate a sale that will maximize the value of the Debtors' assets. The loss of valuable Employees and Independent Contractors would be harmful at this crucial time when the Debtors need to focus on successfully implementing a sale and wind-down. Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario. Accordingly, there can be no doubt that the Debtors must do its utmost to retain its remaining workforce by, among other things, continuing to honor all wages, benefits, and related obligations, including the Prepetition Employee Obligations.

50. Accordingly, the Debtors respectfully request that the Court authorize, but not direct, the Debtors to pay the Prepetition Employee Obligations and to continue the Employee Compensation and Benefits on a postpetition basis in the ordinary course of business consistent with past practices.

Emergency Consideration

51. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Failure to receive the relief requested in this motion during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture, jeopardizing the Debtors’ ability to run a value maximizing sale process for the benefit of its creditors and parties in interest. The Debtors have satisfied the “immediate and irreparable” harm standard in Bankruptcy Rule 6003 and request that the Court approve the relief requested on an emergency basis.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

52. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h), which is necessary to implement the relief requested in this motion.

Reservation of Rights

53. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any party in interest’s rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors’ or any other party in interest’s rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt,

or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

Notice

54. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for the states in which the Debtors conduct business; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

[Remainder of page intentionally left blank.]

The Debtors respectfully request entry of the Order granting the relief requested herein and granting such other relief as the Court deems appropriate under the circumstances.

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on April 1, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano
Thomas R. Califano

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**ORDER AUTHORIZING
THE DEBTORS TO (I) PAY PREPETITION WAGES,
SALARIES, AND EMPLOYEE BENEFITS AND (II) CONTINUE
THE POSTPETITION MAINTENANCE OF EMPLOYEE BENEFIT
PROGRAMS, POLICIES, AND PROCEDURES IN THE ORDINARY COURSE**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (this “Order”) (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, and employee

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2155 Park Boulevard, Palo Alto, California 94036.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

benefits and (ii) to continue the post-petition maintenance of any employee benefit programs, policies, and procedures in the ordinary course of business in accordance with the Debtors' prepetition practices; and (b) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are hereby authorized, but not directed, to pay or cause to be paid all amounts required under or related to the Prepetition Employee Obligations or any portion thereof, as described in the Motion.

2. The Debtors are authorized, but not directed, to continue to pay and honor their obligations arising under or related to their plans, practices, programs, and policies for Employees as described in the Motion, including, without limitation, those giving rise to the Prepetition Employee Obligations, as those employee programs were in effect as of the Petition Date and as such employee programs may be modified, terminated, amended, or supplemented from time to time in the ordinary course of the Debtors' business and in accordance with the Debtors' prepetition policies and practices.

3. The Debtors are authorized, but not directed, to continue and/or modify the Employee Compensation and Benefits on a post-petition basis, in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices, and, in the Debtors' discretion, to pay and honor prepetition and post-petition amounts related thereto.

4. Pursuant to section 362(d) of the Bankruptcy Code: (a) Employees are authorized, but not directed, to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to pay all prepetition amounts relating thereto in the ordinary course of business; and (b) the notice requirements of Bankruptcy Rule 4001(d) with respect to clause (a) are waived. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program and any such claims must be pursued in accordance with the applicable Workers' Compensation Program. Payment on account of any recoveries obtained in connection with a claim brought pursuant to this paragraph is limited to the terms and conditions of the applicable Workers' Compensation Program, including with regard to any policy limits or caps.

5. Nothing herein shall be deemed to authorize the payment of any amounts which are subject to section 503(c) of the Bankruptcy Code; *provided that* nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code pursuant to a separate motion.

6. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed (a) an admission as to the amount of, basis for, priority or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of

the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this order or any other order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) an approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved in this Order.

8. The Debtors are authorized to issue post-petition checks or to effect post-petition fund transfer requests in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all such reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

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