

SIDLEY AUSTIN LLP  
Thomas R. Califano (TX Bar No. 24122825)  
William E. Curtin (*pro hac vice* pending)  
Anne G. Wallace (*pro hac vice* pending)  
787 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: tom.califano@sidley.com  
wcurtin@sidley.com  
anne.wallace@sidley.com

SIDLEY AUSTIN LLP  
Charles M. Persons (TX Bar No. 24060413)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (214) 981-3400  
Email: cpersons@sidley.com

*Proposed Attorneys for 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.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)  
(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION  
FOR ENTRY OF AN ORDER APPROVING  
NOTIFICATION AND HEARING PROCEDURES FOR CERTAIN  
TRANSFERS OF AND DECLARATIONS OF WORTHLESSNESS WITH  
RESPECT TO COMMON STOCK**

**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.**

<sup>1</sup> 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:<sup>2</sup>

### **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. approving certain notification and hearing procedures related to certain transfers of, or declarations of worthlessness with respect to, Eiger Biopharmaceutical, Inc.’s (“Eiger”) existing common stock, or any Beneficial Ownership<sup>3</sup> therein (any such record of Beneficial Ownership of common stock, the “Common Stock”),<sup>4</sup> as detailed in **Exhibit 1** to the Order (the “Procedures”);

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<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

<sup>3</sup> “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1-9834, as amended (the “IRC”), and the the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (*e.g.*, (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

<sup>4</sup> For the avoidance of doubt, the definition of Common Stock shall not include any securities issued in connection with a chapter 11 plan of reorganization of the Debtors.

- b. directing that any purchase, sale, or other transfer of, or declaration of worthlessness with respect to the Common Stock in violation of the Procedures shall be null and void *ab initio*; and
- c. 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) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”).

### **Background**

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 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 Tax Attributes**

7. Companies generally have a variety of tax attributes. A company generates net operating losses (“NOLs”) if the operating expenses it has incurred exceed the revenues it has earned during a single tax year. Generally, a company’s deduction for net business interest expense is limited to thirty percent (30%) of its adjusted taxable income plus certain other amounts. While NOLs are the most ubiquitous tax attributes, companies can also generate a variety of other tax attributes, including foreign tax credits, business tax credits, research and development tax credits, and capital loss carryforwards, as the case may be. A company may apply, or “carry forward,” NOLs to reduce future tax payments (subject to certain conditions as discussed below).<sup>5</sup> See IRC §§ 39, 172. Moreover, the “tax basis” in a company’s assets can be vital to determining a company’s tax attributes.

8. Eiger has incurred significant NOLs and research and development credits (“R&D Credits,” and together with the NOLs and certain other tax attributes, the “Tax Attributes”) since its inception. As of December 31, 2023, Eiger had generated federal NOLs of \$322.5 million. Eiger also has \$47.1 million of state NOLs, \$15.5 million of federal orphan drug tax credits, \$4.0 million of state R&D Credits and \$1.6 million of federal R&D Credits. Further, the Debtors estimate that they may generate additional Tax Attributes in the 2024 tax year.

9. The Tax Attributes are potentially of significant value to the Debtors and their estates because the Debtors may be able to carry forward certain Tax Attributes to offset future

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<sup>5</sup> In addition, under certain circumstances, certain NOLs may be “carried back” to offset taxable income in prior years. The specific rules regarding carrybacks and carryforwards depend on when a particular NOL was generated.

taxable income or directly offset federal tax liability in future years. Such Tax Attributes may also be utilized by the Debtors to offset any taxable income or federal tax liability generated by transactions consummated pursuant to a plan of reorganization. Accordingly, the value of the Tax Attributes will inure to the benefit of all of the Debtors' stakeholders.

**I. An "Ownership Change" May Negatively Affect the Debtors' Utilization of the Tax Attributes.**

10. Sections 382 and 383 of the IRC limit the amount of federal taxable income and federal tax liability, respectively, that can be offset by a corporation's tax attributes in taxable years (or portions thereof) following an "ownership change." Generally, an "ownership change" occurs if the percentage (by value) of the stock of a corporation owned by one or more "five-percent" shareholders has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the three-year testing period ending on the date of the ownership change. The total percentage point increases of stock owned by one or more five-percent shareholders within the measuring period is generally referred to as the amount of the "ownership shift." For example, an ownership change would occur in the following situation:

An individual ("A") owns 50.1 percent of the stock of corporation XYZ. A sells her 50.1 percent interest to another individual ("B"), who owns 5 percent of XYZ's stock. Under Section 382 of the IRC, an ownership change has occurred because B's interest in XYZ has increased by more than 50 percentage points (from 5 percent to 55.1 percent) during the testing period. The same result would follow even if B owned no XYZ stock prior to the transaction with A because B becomes both a 5 percent shareholder and increases his ownership by more than 50 percentage points during the testing period.

11. An "ownership change" can also occur as a result of a "worthless stock deduction" claimed by any "50-percent shareholder." IRC § 382(g)(4)(D). A 50-percent shareholder is any person or entity (or group of people that is treated as a single entity under the applicable rules) with Beneficial Ownership of 50 percent or more of a corporation's stock "at any time during the 3-year period ending on the last day of the taxable year" with respect to which the worthless stock

deduction is claimed. *Id.* If the 50-percent shareholder still owns the corporation's stock at the end of the taxable year, sections 382 and 383 of the IRC essentially treat such person or entity as newly purchasing the stock on the first day of the next taxable year. For example, if a person or entity with 50 percent of a corporation's stock claims a worthless stock deduction with respect to the 2023 tax year but does not sell such stock in 2023, that person is treated: (a) as not having owned the stock at the end of 2023; and (b) as having purchased the stock on the first day of the 2024 tax year. That deemed purchase would cause an ownership change because the 50-percent shareholder would be deemed to have a 50-percentage point increase in its stock ownership.

12. Under these rules, a company can be harmed as a result of actions by parties that are unknown to the company. If a person unknown to the company were to acquire more than five percent (5%) of the company's stock, such acquisition could lead to an ownership change. By the time the company knew who the unidentified shareholder was, the shareholder would have already purchased the shares and the harm would be done.<sup>6</sup> Accordingly, for the Procedures to be effective, the Procedures must bind unknown parties.

13. All parties potentially subject to the procedural relief requested herein are receiving publication notice of the relief. In matters of corporate affairs, publication notice through the filing of Form 8-Ks and similar materials with the SEC is commonplace. As one particularly salient example, companies in certain instances may enact charter restrictions to protect their tax attributes. Such charter restrictions may impose *substantive* limitations on sales and purchases of

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<sup>6</sup> In general, for purposes of section 382 of the IRC, companies (including the Debtors) put significant weight on certain reports of equity ownership that are required to be filed with the Securities and Exchange Commission ("SEC") on a periodic basis. These filings occur *after* stock acquisitions happen, not before, and generally are not required unless and until a shareholder has crossed a five percent (5%) ownership threshold. Accordingly, companies (including the Debtors) generally have no way to know whether the relevant threshold has been crossed until after the fact. One of the primary purposes of the procedural relief requested herein is to change this dynamic and provide the Debtors with prospective notice and an opportunity to prevent a damaging transaction.

equity that are similar to the procedural limitations requested in this motion. Although such charter restrictions are put to a shareholder vote before being enacted, they always bind unknown parties (*i.e.*, persons that are not shareholders at the time the vote is taken) and do so via public information issued by the company in connection with the adoption of such charter restrictions. It is true that the relief requested in this motion is not being put to a shareholder vote—nor should it be, because the requested relief is intended to maximize the value of the Debtors for all stakeholders—but unlike charter restrictions, the relief requested in this motion merely implements *procedures* that must be observed before relevant actions are taken.

14. If an ownership change occurs, section 382 of the IRC limits the amount of a corporation’s future taxable income that may be offset by its “pre-change losses,” and section 383 of the IRC limits the amount of a corporation’s future tax liability that may be offset by its “excess credits,” in each case, to an annual amount based on the fair market value of all of the stock of the corporation prior to the ownership change multiplied by the long-term tax-exempt rate that applies to the month of the ownership change.<sup>7</sup> See IRC §§ 382(b) and 383(a). Pre-change losses and excess credits include the Debtors’ Tax Attributes and, to the extent that the Debtors have a net unrealized built-in-loss in excess of the lesser of 15% of the fair market value of their assets or \$10,000,000 on the date of an ownership change, any so-called “recognized built-in losses.”<sup>8</sup> Once

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<sup>7</sup> The applicable long-term tax-exempt rate changes from month to month. For ownership changes occurring in March 2024, the applicable long-term tax-exempt rate is 3.44%.

<sup>8</sup> The rules relating to potential limitations on the ability to offset taxable income with so-called recognized built-in losses are highly complex and depend on, among other things, the extent (if any) of a debtor’s “net unrealized built-in loss.” A net unrealized built-in loss is equal to the excess of the aggregate adjusted basis of all of a corporation’s applicable assets over their fair market value (as determined for purposes of Section 382 of the IRC) immediately prior to the ownership change. IRC § 382(h)(1)(B). Once a net unrealized built-in loss is limited under Section 382 or 383 of the IRC, its use is limited for five years.

a Tax Attribute is limited under Section 382 or 383 of the IRC, its use is generally limited forever.<sup>9</sup> Thus, certain transfers or worthless stock deductions with respect to Beneficial Ownership of Common Stock effected before the effective date of the Debtors' emergence from chapter 11 protection may trigger an "ownership change" for IRC purposes, severely endangering the Debtors' ability to utilize the Tax Attributes, which would cause substantial damage to the Debtors' estates.

15. Notably, the Debtors have limited the relief requested herein to the extent necessary to preserve estate value. Specifically, the proposed Order will affect only: (a) holders of the equivalent of more than 66,431 shares of Common Stock<sup>10</sup> (*i.e.*, 4.5 percent or more of the outstanding Common Stock); (b) parties who are interested in purchasing sufficient Common Stock to result in such party becoming a holder of 4.5 percent or more of Beneficial Ownership of outstanding Common Stock; and (c) any "50-percent shareholder" seeking to claim a worthless stock deduction.

16. To maximize the use of the Tax Attributes and enhance recoveries for the Debtors' stakeholders, the Debtors seek limited relief that will enable them to closely monitor certain transfers of Beneficial Ownership of Common Stock and certain worthless stock deductions with respect to Beneficial Ownership of Common Stock so as to be in a position to act expeditiously to prevent such transfers or other worthlessness deductions, if necessary, with the purpose of preserving the Tax Attributes. By establishing and implementing such Procedures, the Debtors

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<sup>9</sup> Recognized built-in losses that are deducted beginning after the expiration of a five-year "recognition period" are no longer subject to limitation, but any recognized built-in losses that are deducted prior to the expiration of such period are limited forever.

<sup>10</sup> Based on approximately 1,476,247 shares of Common Stock outstanding as of the Petition Date.



will be in a position to object to “ownership changes” that threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

**II. Proposed Procedures for Transfers of or Declarations of Worthlessness with Respect to Common Stock.**

17. The Procedures are the mechanism by which the Debtors propose that they will monitor and, if necessary, object to certain transfers of Beneficial Ownership of Common Stock and declarations of worthlessness with respect to Beneficial Ownership of Common Stock to ensure preservation of the Tax Attributes. The Procedures are fully set forth in Exhibit 1 to the Order.

**Basis for Relief Requested**

18. Section 541 of the Bankruptcy Code provides that property of the estate comprises, among other things, “all legal or equitable interests of the debtor in property as of the commencement of the case.” The Tax Attributes are property of the Debtors’ estates. *Official Comm. of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines Inc.)*, 928 F.2d 565, 573 (2d Cir. 1991) (“We hold that the right to a carryforward attributable to its ... NOL was property of [the debtor’s] bankruptcy estate.”), *cert. denied*, 502 U.S. 821 (1991). Section 362(a)(3) of the Bankruptcy Code, moreover, stays “any act [of an entity] to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” Accordingly, any act of a holder of a debtor’s equity securities that causes the termination, or limits use, of the Tax Attributes violates the automatic stay. *See, e.g., Prudential Lines*, 928 F.2d at 574 (holding that causing the termination of or adversely affecting the value of a debtor’s NOLs violates the automatic stay).

19. Implementation of the Procedures is necessary and appropriate to enforce the automatic stay and, critically, to preserve the value of the Tax Attributes for the benefit of the

Debtors' estates. Under sections 382 and 383 of the IRC, certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock prior to the consummation of a chapter 11 plan could cause the termination or limit the use of the Tax Attributes. The Debtors estimate that, as of December 31, 2023, they had approximately \$390.8 million of federal NOLs and certain other tax attributes. These Tax Attributes may be necessary to address tax consequences resulting from the implementation of a plan of reorganization and, depending upon the structure utilized to consummate a plan of reorganization, they may provide the potential for material future tax savings (including in post-emergence years). The termination or limitation of the Tax Attributes could, therefore, be materially detrimental to all parties in interest, including by potentially limiting the Debtors' ability to utilize certain structures to consummate a plan of reorganization. Thus, granting the relief requested herein will preserve the Debtors' flexibility in operating their business during the pendency of these chapter 11 cases and implementing an exit plan that makes full and efficient use of the Tax Attributes and maximizes the value of the Debtors' estates.

20. The Procedures do not bar all transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock. The Debtors seek to establish procedures only to monitor those types of transactions that would pose a serious risk under the ownership change test pursuant to sections 382 and 383 of the IRC and to preserve the Debtors' ability to seek substantive relief if it appears that a proposed transfer or declaration of worthlessness could jeopardize the Debtors' utilization of the Tax Attributes. Because of the Tax Attributes' importance to the Debtors' restructuring, and thus all parties in interest, the benefits of implementing the Procedures outweigh subjecting a limited number of transfers to the Procedures.

**Emergency Consideration**

21. 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.

**Request for Bankruptcy Rule 6004 Waivers**

22. 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**

23. 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**

24. 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; (i) holders of 4.5 percent or more of Beneficial Ownership of outstanding Common Stock; and (j) 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 an order, substantially in the form attached hereto, 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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Thomas R. Califano (TX Bar No. 24122825)  
William E. Curtin (*pro hac vice* pending)  
Anne G. Wallice (*pro hac vice* pending)  
787 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: tom.califano@sidley.com  
wcurtin@sidley.com  
anne.wallice@sidley.com

*and*

Charles M. Persons (TX Bar No. 24060413)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (214) 981-3400  
Email: cpersons@sidley.com

*Proposed Attorneys for 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.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**ORDER APPROVING  
NOTIFICATION AND HEARING PROCEDURES  
FOR CERTAIN TRANSFERS OF AND DECLARATIONS  
OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

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Upon the motion (“Motion”)<sup>2</sup> 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) approving the Procedures related to transfers of, and declarations of worthlessness with respect to, Beneficial Ownership of Common Stock, (b) directing that any purchase, sale, or other transfer of,

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<sup>1</sup> 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.

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



or declaration of worthlessness with respect to, Beneficial Ownership of Common Stock in violation of the Procedures shall be null and void *ab initio*, and (c) 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 relief requested in the Motion is GRANTED on a final basis as set forth herein.
2. The Procedures, as set forth in **Exhibit 1** attached hereto, are hereby approved, *provided, however*, any party in interest may request emergency relief from the Procedures.
3. Any transfer of or declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, shall be null and void *ab initio*.
4. In the case of any such transfer of Beneficial Ownership of Common Stock in violation of the Procedures, including but not limited to the notice requirements, the person or entity making such transfer shall be required to take remedial actions specified by the Debtors to appropriately reflect that such transfer is null and void *ab initio*.

5. In the case of any such declaration of worthlessness with respect to Beneficial Ownership of Common Stock in violation of the Procedures, including the notice requirements, the person or entity making such declaration shall be required to file an amended tax return revoking such declaration and any related deduction to appropriately reflect that such declaration is void *ab initio*.

6. Any person or entity that acquires or trades in the Beneficial Ownership of Common Stock (including directly or indirectly, and including Options to acquire Beneficial Ownership of Common Stock) in violation of this Order or the Procedures or that otherwise fails to comply with their requirements shall be subject to such sanctions as this Court may consider appropriate pursuant to this Court's equitable power under section 105(a) of the Bankruptcy Code.

7. The Debtors may retroactively or prospectively waive any and all restrictions, stays, and notification procedures set forth in the Procedures and shall provide notice of such waiver to the U.S. Trustee and counsel to any official committee appointed in these chapter 11 cases within seven (7) days of such waiver.

8. The Debtors shall post the Procedures to the website established by Kurtzman Carson Consultants LLC for these chapter 11 cases ([www.kccllc.net/Eiger](http://www.kccllc.net/Eiger)), such notice being reasonably calculated to provide notice to all parties that may be affected by the Procedures, whether known or unknown.

9. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate and other laws and do not excuse noncompliance therewith.

10. Nothing herein shall preclude any person desirous of acquiring any Common Stock from requesting relief from this Order from this Court, subject to the Debtors' rights to oppose such relief.

11. Other than to the extent that this Order expressly conditions or restricts trading in Common Stock, nothing in this Order or in the Motion shall, or shall be deemed to, prejudice, impair, or otherwise alter or affect the rights of any holders of Common Stock, including in connection with the treatment of any such stock under any chapter 11 plan or any applicable bankruptcy court order.

12. 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.

13. 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 Bankruptcy Local Rules are satisfied by such notice.

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

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

16. The 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 ###**

Dated: April 1, 2024  
Dallas, Texas

**SIDLEY AUSTIN LLP**

*/s/ Thomas R. Califano*

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Thomas R. Califano (TX Bar No. 24122825)  
William E. Curtin (*pro hac vice* pending)  
Anne G. Wallace (*pro hac vice* pending)  
787 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: tom.califano@sidley.com  
wcurtin@sidley.com  
anne.wallice@sidley.com

*and*

Charles M. Persons (TX Bar No. 24060413)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (214) 981-3400  
Email: cpersons@sidley.com

*Proposed Attorneys for the Debtors and Debtors  
in Possession*

**Exhibit 1**

**Procedures for Transfers of and Declarations of  
Worthlessness with Respect to Beneficial Ownership of Common Stock**

**PROCEDURES FOR TRANSFER OF AND DECLARATIONS  
OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

The following procedures apply to transfers of Common Stock:<sup>1</sup>

- a. Any entity (as defined in section 101(15) of the Bankruptcy Code) who is a Substantial Shareholder (as defined herein) and wishes to effectuate a transfer of Beneficial Ownership of Common Stock that would affect the size of a Substantial Shareholder's Beneficial Ownership or would result in another entity becoming or ceasing to be a Substantial Shareholder must file with the Court, and serve upon: (i) Eiger Biopharmaceuticals, Inc., 2155 Park Boulevard, Palo Alto, California 94036; (ii) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: William E. Curtin and Anne G. Wallace; (iii) counsel to Innovatus Life Sciences Lending Fund I, LP, ; (iv) counsel to any statutory committee appointed in these cases; (v) the Office of the United States Trustee for the Northern District of Texas, 1100 Commerce Street, Room 976, Dallas, Texas 75242; and (vi) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"), a declaration of such status, substantially in the form of **Exhibit 1A** attached to these Procedures (each, a "Declaration of Status as a Substantial Shareholder"), on or before the later of (A) thirty (30) calendar days after the date of the Notice of NOL Order (as defined herein), and (B) ten (10) calendar days after becoming a Substantial Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any Substantial Shareholder even if no Declaration of Status as a Substantial Shareholder has been filed.
- b. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in an increase in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual becoming a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of the Common Stock, substantially in the form of **Exhibit 1B** attached to these Procedures (each, a "Declaration of Intent to Accumulate Common Stock").
- c. Prior to effectuating any transfer of Beneficial Ownership of Common Stock that would result in a decrease in the amount of Common Stock of which a Substantial Shareholder has Beneficial Ownership or would result in an entity or individual ceasing to be a Substantial Shareholder, the parties to such transaction must file with the Court, and serve upon the Notice Parties, an advance written declaration of the intended transfer of Common Stock, substantially in the form of **Exhibit 1C** attached to these Procedures (each, a "Declaration of Intent to Transfer Common Stock," and, together with a

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

Declaration of Intent to Accumulate Common Stock, each, a “Declaration of Proposed Transfer”).

- d. The Debtors shall have thirty (30) calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock, described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors’ ability to utilize their Tax Attributes. If the Debtors file an objection, such transaction will remain ineffective unless such objection is withdrawn by the Debtors, or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such thirty-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional thirty-day (30-day) waiting period for each Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to any statutory committee(s) appointed in these chapter 11 cases.
- e. For purposes of these Procedures (i) a “Substantial Shareholder” is any entity or individual person that has Beneficial Ownership of at least: 66,431 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock)<sup>2</sup>; and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1-9834, as amended (the “IRC”), and the Treasury Regulations (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

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<sup>2</sup> Approximately 1,476,247 shares of Common Stock are outstanding for purposes of Section 382 of the IRC as of the Petition Date.



The following procedures apply for Declarations of Worthlessness of Common Stock:<sup>3</sup>

- a. Any person or entity that currently is or becomes a 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of such status, substantially in the form attached to these procedures as **Exhibit 1D** (each, a “Declaration of Status as a 50-Percent Shareholder”), on or before the later of (i) thirty (30) calendar days after the date of the Notice of NOL Order, and (ii) ten (10) calendar days after becoming a 50-Percent Shareholder; *provided* that, for the avoidance of doubt, the other procedures set forth herein shall apply to any 50-Percent Shareholder even if no Declaration of Status as a 50-Percent Shareholder has been filed.
- b. Prior to filing any federal or state tax return, or any amendment to such a return, or taking any other action that claims any deduction for worthlessness of Beneficial Ownership of Common Stock for a taxable year ending before the Debtors’ emergence from chapter 11 protection, such 50-Percent Shareholder must file with the Court and serve upon the Notice Parties a declaration of intent to claim a worthless stock deduction, substantially in the form attached to these procedures as **Exhibit 1E** (a “Declaration of Intent to Claim a Worthless Stock Deduction”).
  - i. The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors’ ability to utilize their Tax Attributes.
  - ii. If the Debtors or the other Notice Parties timely object, the filing of the tax return or amendment thereto with such claim will not be permitted unless approved by a final and non-appealable order of the Court, unless such objection is withdrawn.
  - iii. If the Debtors and the other Notice Parties do not object within such twenty-day (20-day) period, the filing of the return or amendment with such claim will be permitted solely as described in the Declaration of Intent to Claim a Worthless Stock Deduction. Additional returns and amendments within the scope of this section must be the subject of additional notices as set forth herein, with an additional twenty-day (20-day) waiting period. To the extent that the Debtors receive an appropriate Declaration of Intent to Claim a Worthless Stock Deduction

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<sup>3</sup> For purposes of the Procedures, a “50-Percent Shareholder” is any person or entity that, at any time in the three-year period ending on the last day of the taxable year in which the worthless stock deduction is claimed, has owned Beneficial Ownership of 50 percent (50%) or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations thereunder).

and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to any statutory committee(s) appointed in these chapter 11 cases.

### **NOTICE PROCEDURES**

The following notice procedures apply to these Procedures:

- a. No later than two (2) business days following entry of the Order, the Debtors shall serve a notice by first class mail, substantially in the form attached to these Procedures as **Exhibit 1F** (the “Notice of NOL Order”), on: (i) the U.S. Trustee for the Northern District of Texas; (ii) the entities listed on the consolidated list of creditors holding the 30 largest unsecured claims; (iii) the U.S. Securities and Exchange Commission; (iv) the Internal Revenue Service; (v) Innovatus Life Sciences Lending Fund I, LP as agent to the Debtors’ secured lenders, and counsel thereto; (vi) any official committee(s) appointed in these chapter 11 cases; and (vii) all registered and nominee holders of Common Stock (with instructions to serve down to the beneficial holders of Common Stock, as applicable).
- b. All registered and nominee holders of Common Stock shall be required to serve the Notice of NOL Order on any holder for whose benefit such registered or nominee holder holds such Common Stock, down the chain of ownership for all such holders of Common Stock.
- c. Any entity or individual, or broker or agent acting on such entity’s or individual’s behalf who sells Common Stock to another entity or individual shall be required to serve a copy of the Notice of NOL Order on such purchaser of such Common Stock, or any broker or agent acting on such purchaser’s behalf.
- d. Within two (2) business days following the entry of the Order, the Debtors shall post the Notice of NOL Order to the website established by the Debtors’ proposed claims, noticing, and solicitation agent for these chapter 11 cases, Kurtzman Carson Consultants LLC (which website address shall be identified in the Notice of NOL Order).
- f. To the extent confidential information is required in any declaration described in these Procedures, such confidential information may be filed and served in redacted form; *provided, however*, that any such declarations served on the Debtors *shall not* be in redacted form. The Debtors shall keep all information provided in such declarations strictly confidential and shall not disclose the contents thereof to any person except (i) to the extent necessary to respond to a petition or objection filed with the Court; (ii) to the extent otherwise required by law; or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional advisors, who shall keep all such notices strictly

confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to a petitioner objection filed with the Court, such confidential information shall be filed under seal or in a redacted form.

**Exhibit 1A**

**Declaration of Status as a Substantial Shareholder**

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

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**DECLARATION OF STATUS AS A SUBSTANTIAL SHAREHOLDER<sup>2</sup>**

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The undersigned party is/has become a Substantial Shareholder with respect to the common stock of Eiger Biopharmaceuticals, Inc. (“Eiger”) or of any Beneficial Ownership therein (respectively, the “Common Stock”). Eiger is a debtor and debtor in possession in Case No. 24-80040 (SGJ) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

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<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 66,431 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock) and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

As of \_\_\_\_\_, 2024, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	Date Acquired

(Attach additional page or pages if necessary)

The last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

Pursuant to that certain *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. \_\_\_\_] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

**Exhibit 1B**

**Declaration of Intent to Accumulate Common Stock**



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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

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**DECLARATION OF INTENT TO ACCUMULATE COMMON STOCK<sup>2</sup>**

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The undersigned party hereby provides notice of its intention to purchase, acquire, or otherwise accumulate (the “Proposed Transfer”) one or more shares of common stock of Eiger Biopharmaceuticals, Inc. (“Eiger”) or of any Beneficial Ownership therein (the “Common Stock”). Eiger is a debtor and debtor in possession in Case No. 24-80040 (SGJ) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

If applicable, on \_\_\_\_\_, 2024, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

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<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 66,431 shares of Common Stock (representing approximately 4.5 percent of all issued and outstanding shares of Common Stock) and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

The undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

Pursuant to the Proposed Transfer, the undersigned party proposes to purchase, acquire, or otherwise accumulate Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

The last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

Pursuant to that certain *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. \_\_\_\_] (the "Order"), this declaration (this "Declaration") is being filed with the Court and served upon the Notice Parties (as defined in the Order).

Pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

The Debtors have thirty (30) calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such thirty-day (30-day) period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

Any further transactions contemplated by the undersigned party that may result in the undersigned party purchasing, acquiring, or otherwise accumulating Beneficial Ownership of additional shares of Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Declaration.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

**Exhibit 1C**

**Declaration of Intent to Transfer Common Stock**

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

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**DECLARATION OF INTENT TO TRANSFER COMMON STOCK<sup>2</sup>**

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The undersigned party hereby provides notice of its intention to sell, trade, or otherwise transfer (the “Proposed Transfer”) one or more shares of common stock of Eiger Biopharmaceuticals, Inc. (“Eiger”) or of any Beneficial Ownership therein (the “Common Stock”). Eiger is a debtor and debtor in possession in Case No. 24-80040 (SGJ) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

If applicable, on \_\_\_\_\_, 2024, the undersigned party filed a Declaration of Status as a Substantial Shareholder with the Court and served copies thereof as set forth therein.

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<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 66,431 shares of Common Stock (representing 4.5 percent of all issued and outstanding shares of Common Stock) and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

The undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

Pursuant to the Proposed Transfer, the undersigned party proposes to sell, trade, or otherwise transfer Beneficial Ownership of \_\_\_\_\_ shares of Common Stock or an Option with respect to \_\_\_\_\_ shares of Common Stock. If the Proposed Transfer is permitted to occur, the undersigned party will have Beneficial Ownership of \_\_\_\_\_ shares of Common Stock, after such transfer becomes effective.

The last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

Pursuant to that certain *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common* [Docket No. \_\_\_\_] (the "Order"), this declaration (this "Declaration") is being filed with the Court and served upon the Notice Parties (as defined in the Order).

Pursuant to the Order, the undersigned party acknowledges that it is prohibited from consummating the Proposed Transfer unless and until the undersigned party complies with the Procedures set forth therein.

The Debtors have thirty (30) calendar days after receipt of this Declaration to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will remain ineffective unless such objection is withdrawn by the Debtors or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such thirty-day (30-day) period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Declaration.

Any further transactions contemplated by the undersigned party that may result in the undersigned party selling, trading, or otherwise transferring Beneficial Ownership of additional shares of Common Stock will require an additional notice filed with the Court to be served in the same manner as this Declaration.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

**Exhibit 1D**

**Declaration of Status as a 50-Percent Shareholder**



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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**DECLARATION OF STATUS AS A 50-PERCENT SHAREHOLDER**

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The undersigned party is/has become a 50-Percent Shareholder<sup>2</sup> with respect to one or more shares of the existing classes of common stock of Eiger Biopharmaceuticals, Inc. (“Eiger”) or of any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”). Eiger is a debtor and debtor in possession in Case No. 24-80040 (SGJ) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

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<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that, at any time in the three-year period ending on the last day of the taxable year in which the worthless stock deduction is claimed, has had Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

As of \_\_\_\_\_, 2024, the undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock. The following table sets forth the date(s) on which the undersigned party acquired Beneficial Ownership of such Common Stock:

Number of Shares	Date Acquired

(Attach additional page or pages if necessary)

The last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

Pursuant to that certain *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. \_\_\_\_] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

**Exhibit 1E**

**Declaration of Intent to Claim a Worthless Stock Deduction**

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**DECLARATION OF INTENT TO CLAIM A WORTHLESS STOCK DEDUCTION**

The undersigned party hereby provides notice of its intention to claim a worthless stock deduction (the “Worthless Stock Deduction”)<sup>2</sup> with respect to one or more shares of the existing classes of common stock of Eiger Biopharmaceuticals, Inc. (“Eiger”) or of any Beneficial Ownership therein (any such record or Beneficial Ownership of common stock, collectively, the “Common Stock”). Eiger is a debtor and debtor in possession in Case No. 24-80040 (SGJ) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

<sup>1</sup> 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.

<sup>2</sup> For purposes of this Declaration: (i) a “50-Percent Shareholder” is any person or entity that, at any time in the three-year period ending on the last day of the taxable year in which the worthless stock deduction is claimed, has had Beneficial Ownership of 50 percent or more of the Common Stock (determined in accordance with section 382(g)(4)(D) of the IRC and the applicable Treasury Regulations); (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1-9834, as amended (the “IRC”), and the Treasury Regulations thereunder (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire); and (iii) an “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

If applicable, on \_\_\_\_\_, 2024, the undersigned party filed a Declaration of Status as a 50-Percent Shareholder with the Court and served copies thereof as set forth therein.

The undersigned party currently has Beneficial Ownership of \_\_\_\_\_ shares of Common Stock.

Pursuant to the Worthless Stock Deduction, the undersigned party proposes to declare that \_\_\_\_\_ shares of Common Stock became worthless during the tax year ending \_\_\_\_\_.

The last four digits of the taxpayer identification number of the undersigned party are \_\_\_\_\_.

Pursuant to that certain *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. \_\_\_\_] (the “Order”), this declaration (this “Declaration”) is being filed with the Court and served upon the Notice Parties (as defined in the Order).

At the election of the undersigned party, the Declaration to be filed with this Court (but not the Declaration that is served upon the Notice Parties) may be redacted to exclude the undersigned party’s taxpayer identification number and the amount of Common Stock that the undersigned party beneficially owns.

The Debtors have twenty (20) calendar days after receipt of this Declaration to object to the Worthless Stock Deduction described herein. If the Debtors file an objection, such Worthless Stock Deduction will remain ineffective unless such objection is withdrawn by the Debtors or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such twenty-day (20-day) period, then after expiration of such period the Worthless Stock Deduction may proceed solely as set forth in this Declaration.

Any further claims of worthlessness contemplated by the undersigned party will each require an additional notice filed with the Court to be served in the same manner as this Declaration and are subject to an additional twenty-day (20-day) waiting period.

Pursuant to 28 U.S.C. § 1746, under penalties of perjury, the undersigned party hereby declares that he or she has examined this Declaration and accompanying attachments (if any), and, to the best of his or her knowledge and belief, this Declaration and any attachments hereto are true, correct, and complete.

Respectfully submitted,

(Name of Declarant)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Dated: \_\_\_\_\_, 2024  
\_\_\_\_\_, \_\_\_\_\_  
(City) (State)

**Exhibit 1F**

**Notice of NOL Order**



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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**NOTICE OF DISCLOSURE  
PROCEDURES APPLICABLE TO  
CERTAIN HOLDERS OF COMMON STOCK  
AND DISCLOSURE PROCEDURES FOR TRANSFERS OF AND  
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK<sup>2</sup>**

**TO: ALL ENTITIES (AS DEFINED BY SECTION 101(15) OF THE BANKRUPTCY CODE) THAT MAY HOLD BENEFICIAL OWNERSHIP OF COMMON STOCK OF EIGER BIOPHARMACEUTICALS, INC. (THE “COMMON STOCK”):**

On April 1, 2024 (the “Petition Date”), Eiger Biopharmaceuticals, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), filed petitions with the United States Bankruptcy Court for the Northern District of Texas (the “Court”) under chapter

<sup>1</sup> 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.

<sup>2</sup> For purposes of this Notice: (i) a “Substantial Shareholder” is any entity or individual that has Beneficial Ownership of at least 66,431 shares of Common Stock (representing 4.5 percent of all issued and outstanding shares of Common Stock) and (ii) “Beneficial Ownership” will be determined in accordance with the applicable rules of sections 382 and 383 of the Internal Revenue Code of 1986, 26 U.S.C. §§ 1–9834, as amended (the “IRC”), and the Regulations thereunder (the “Treasury Regulations”) (other than Treasury Regulations section 1.382-2T(h)(2)(i)(A)), and includes direct, indirect, and constructive ownership (e.g., (1) a holding company would be considered to beneficially own all equity securities owned by its subsidiaries, (2) a partner in a partnership would be considered to beneficially own its proportionate share of any equity securities owned by such partnership, (3) an individual and such individual’s family members may be treated as one individual, (4) persons and entities acting in concert to make a coordinated acquisition of equity securities may be treated as a single entity, and (5) a holder would be considered to beneficially own equity securities that such holder has an Option to acquire). An “Option” to acquire stock includes all interests described in Treasury Regulations section 1.382-4(d)(9), including any contingent purchase right, warrant, convertible debt, put, call, stock subject to risk of forfeiture, contract to acquire stock, or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

11 of title 11 of the United States Code (the “Bankruptcy Code”). Subject to certain exceptions, section 362 of the Bankruptcy Code operates as a stay of any act to obtain possession of property of or from the Debtors’ estates or to exercise control over property of or from the Debtors’ estates.

On the Petition Date, the Debtors filed the *Debtors’ Emergency Motion for Entry of an Order Approving Notification and Hearing Procedures for Certain Transfers of Common Stock* [Docket No. \_\_\_] (the “Motion”).

On [●], 2024, the Court entered the *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. \_\_\_] (the “Order”), approving procedures for certain transfers of and declarations of worthlessness with respect to Common Stock, set forth in **Exhibit 1** attached to the Order (the “Procedures”).<sup>3</sup>

Pursuant to the Order, a Substantial Shareholder may not consummate any purchase, sale, or other transfer of Common Stock or Beneficial Ownership of Common Stock in violation of the Procedures, and any such transaction in violation of the Procedures shall be null and void *ab initio*.

Pursuant to the Order, the Procedures shall apply to the holding and transfers of Common Stock or any Beneficial Ownership therein by a Substantial Shareholder or someone who may become a Substantial Shareholder.

Pursuant to the Order, a 50-Percent Shareholder may not claim a worthless stock deduction with respect to Common Stock, or Beneficial Ownership of Common Stock, in violation of the Procedures, and any such deduction in violation of the Procedures shall be null and void *ab initio*,

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<sup>3</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Order or the Motion, as applicable.

and the 50-Percent Shareholder shall be required to file an amended tax return revoking such proposed deduction.

Upon the request of any entity, the proposed claims, noticing, and solicitation agent for these chapter 11 cases, Kurtzman Carson Consultants LLC, will provide a copy of the Order and a form of each of the declarations required to be filed by the Procedures in a reasonable period of time. Such declarations are also available via PACER on the Court's website at <https://ecf.txnb.uscourts.gov/> for a fee, or free of charge by accessing the Debtors' restructuring website at [www.kccllc.net/Eiger](http://www.kccllc.net/Eiger).

Failure to follow the Procedures set forth in the Order shall constitute a violation of, among other things, the automatic stay provisions of section 362 of the Bankruptcy Code.

Any prohibited purchase, sale, or other transfer of or declaration of worthlessness with respect to Common Stock, Beneficial Ownership thereof, or Option with respect thereto in violation of the Order is prohibited and shall be null and void *ab initio* and may be subject to additional sanctions as this Court may determine.

The requirements set forth in the Procedures are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws and do not excuse non-compliance therewith.

Dated: April 1, 2024  
Dallas, Texas

**SIDLEY AUSTIN LLP**

*/s/ Thomas R. Califano*

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Thomas R. Califano (TX Bar No. 24122825)  
William E. Curtin (*pro hac vice* pending)  
Anne G. Wallice (*pro hac vice* pending)  
787 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: tom.califano@sidley.com  
wcurtin@sidley.com  
anne.wallice@sidley.com

*and*

Charles M. Persons (TX Bar No. 24060413)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (214) 981-3400  
Email: cpersons@sidley.com

*Proposed Attorneys for the Debtors and Debtors  
in Possession*