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*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 (I) AUTHORIZING THE DEBTORS  
TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) 503(B)(9) CLAIMANTS, (B) LIEN CLAIMANTS,  
(C) CRITICAL VENDORS, AND (D) FOREIGN CLAIMANTS,  
(II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY OF  
OUTSTANDING ORDERS**

**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.**

<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.



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.

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:**

- a. authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of (i) 503(b)(9) Claims, (ii) Lien Claims, (iii) Critical Vendor Claims, and (iv) Foreign Claims (each as defined herein);
- b. confirming the administrative expense priority status of Outstanding Orders (as defined herein) and authorizing, but not directing, the payment of such obligations in the ordinary course of business; and
- c. granting certain related relief.

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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 Declarations.

### **Jurisdiction and Venue**

2. 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, 503(b), 1107(a), 1108, and 1129 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, and section B of the Procedures for Complex Cases in the Northern District of Texas.

### **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.

**Overview of the Trade Claimants and the Trade Claims**

7. Vendors and suppliers are critical to the Debtors’ ability to provide high-quality pharmaceutical products to their customers. The Debtors’ business relies on continuing access to, and relationships with, the Trade Claimants (as defined herein), which includes a network of highly specialized vendors, suppliers, and other business partners that provide the Debtors with essential goods and services. Most of these Trade Claimants are virtually irreplaceable due to the specialized nature of the products and services they provide, and, even where alternatives may exist, the time and costs associated with switching to a new provider would likely be significant and detrimental to the Debtors’ estates.

8. The Debtors therefore request authorization to pay certain outstanding prepetition claims of the 503(b)(9) Claimants, the Lien Claimants, the Critical Vendors, and the Foreign Claimants (each as defined below) (collectively, the “Trade Claimants,” and such claims, the “Trade Claims”), subject to the limitations set forth in the Order. The following table summarizes the categories of Trade Claims that the Debtors request authority to pay pursuant to this Motion and the estimated prepetition amounts outstanding within each such category:

Category	Description of Services/Goods Provided	Amount For Which Authority to Pay is Sought
§ 503(b)(9) Claimants	Suppliers that provided goods to the Debtors that were received within 20 days before the Petition Date.	\$157,000
Lien Claimants	Suppliers of goods or services utilized by or provided to the Debtors that may assert mechanic’s, possessory, or other similar liens.	\$136,000
Critical Vendors	Specialized suppliers of goods and services that are critical to maintain the Debtors’ day-to-day operations, or which are sole or limited-source providers of the goods and services necessary for the uninterrupted operations of the Debtors’ business.	\$500,000

Foreign Vendors	Suppliers of goods or services who are based outside of the United States.	\$994,000
<b>Total Amount of Claims</b>		<b>\$1,787,000</b>

9. The Debtors will use their business judgement and discretion on a claim-by-claim basis and pay only those Trade Claims, or a portion thereof, that are critical to maintaining the supply chain and operations and to provide the Debtors with favorable postpetition terms.

**I. 503(b)(9) Claimants.**

10. The Debtors may have received certain inventory, goods, and/or materials from various vendors (collectively, the “503(b)(9) Claimants”) within the 20 days immediately preceding the Petition Date, thereby giving rise to claims that are accorded administrative priority under section 503(b)(9) of the Bankruptcy Code (collectively, the “503(b)(9) Claims”). As a result, vendors could refuse to supply new orders or otherwise interfere with the Debtors’ receipt of goods and services if their Trade Claims remain unpaid. Any disruption would significantly and negatively affect the Debtors’ estates as the Debtors’ business is dependent on a steady flow of inventory, without which the Debtors’ business would be unable to provide their products and services.

11. Certain of the 503(b)(9) Claimants supply goods or materials that are critical to the Debtors’ ongoing operations. Moreover, because these vendors are specialized, there are very few vendors and suppliers who provide these types of goods. The Debtors must rely on the 503(b)(9) Claimants’ services and would have exceedingly limited, if any, alternatives available to them should the existing 503(b)(9) Claimants stop providing inventory to the Debtors. Thus, any interruption in the flow of these goods would upend the Debtors’ operations and destroy value for the Debtors’ business.

12. In light of the immense importance of the 503(b)(9) Claimants to the Debtors' operations, the Debtors believe that payment of the 503(b)(9) Claimants is essential to avoid disruptions to the Debtors' operations. For the avoidance of doubt, the Debtors do not seek to accelerate or modify existing payment terms with respect to 503(b)(9) Claims, if any. Rather, the Debtors will pay the applicable 503(b)(9) Claim, if any, as they come due in the ordinary course of business. Moreover, because the 503(b)(9) Claims are accorded administrative expense priority, such claims will need to be paid pursuant to any chapter 11 plan, and payment in the ordinary course is only a matter of payment timing.

## **II. Lien Claimants.**

13. The Debtors routinely do business with vendors that may be able to assert a variety of statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered (collectively, the "Lien Claimants"). These Lien Claimants perform various services for the Debtors: including shipping, warehousing, manufacturing component parts necessary for the production of drug therapies; and the packaging and assembly of components owned by the Debtors into finished product to be distributed.

14. The Debtors' business depends on the uninterrupted flow of inventory through their supply chain and distribution network. The Debtors' supply chain relies on services provided by, among others, contract manufacturers that hold the Debtors' in-process product during the manufacturing process, shipping providers, third-party warehouses where products are stored until utilized to fulfill customer orders, and distributors who store the Debtors' products and assist the Debtors with logistics (collectively, the "Manufacturers, Shippers, and Warehousemen"). For example, the Debtors partner with certain shippers to conduct smooth, efficient, and reliable deliveries of drug therapies to patients globally. Possible loss of long-term relationships with the

Manufacturers, Shippers, and Warehousemen could result in serious reputational, financial, and logistical damage to the Debtors' business.

15. Under certain non-bankruptcy laws, the Lien Claimants may be able to assert liens on the goods in their possession or on the property they improved, as applicable, to secure payment of the charges or expenses incurred in connection with these prepetition obligations (the "Lien Claims"). Should these Lien Claims remain unpaid, the Lien Claimants will likely discontinue shipping, warehousing, and distribution services and refuse to release the Debtors' products. Such actions would impede the Debtors' use of property until their claims are satisfied and their liens redeemed. The Lien Claimants' possession (and retention) of the Debtors' goods and supplies or enforcement of a mechanic's or other statutory lien would disrupt the Debtors' operations and affect the Debtors' ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates in many cases would likely be greater than the applicable Lien Claims. Pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of any valid possessory lien, which would drain estate assets.

16. For the 12 months prior to the Petition Date, on average, the Debtors paid the Lien Claimants, including the Manufacturers, Shippers, and Warehousemen, approximately \$137,000 per month. The Debtors estimate that, as of the Petition Date, approximately \$136,000 remains outstanding on account of Lien Claims.

17. To continue using the Lien Claimants' goods and services and avoid the value destruction that would accompany the Manufacturers, Shippers, and Warehousemen asserting statutory liens or refusing to release the Debtors' goods and materials, the Debtors request authority to pay the prepetition Lien Claims as they become due and payable and to continue paying the Lien Claims in the ordinary course of business. For the avoidance of doubt, the Debtors

seek authority to pay only those amounts of Lien Claims that the Debtors determine, in their sole discretion, to be necessary or appropriate to (a) obtain the release of critical or valuable goods, (b) maintain reliable, efficient, and smooth distribution systems, and (c) induce the Lien Claimants to continue performing and otherwise supporting the Debtors' operations on a postpetition basis.

### **III. Critical Vendors.**

18. The Debtors' ability to continue operating in the ordinary course of business and generating revenue, and thus the success of these chapter 11 cases, hinges on the Debtors' continued relationships with their valued vendors, suppliers, and other business partners. Unfortunately, given the reality of these cases, the Debtors cannot provide critical vendor payments to all of their valued partners. Accordingly, the Debtors, with the assistance of their advisors, identified a limited critical vendor pool to make payments to certain subsets of vendors that provide essential services without which the Debtors would struggle to operate and generate crucial revenue during these cases (collectively, the "Critical Vendors").

19. The Debtors believe that attempting to procure such products and services from replacement vendors would impose a severe strain on the Debtors' business operations and, due to the limited existence of possible replacements, would likely prove futile and result in further and significant revenue loss. Even a temporary interruption of the provision of such products and services would impede the Debtors' operations, and the cumulative impact of such events could have a severe adverse effect on the Debtors' business and, in turn, these chapter 11 cases. Thus, the Debtors' selection process balanced the need to ensure that these chapter 11 cases do not disrupt their operations or negatively impact customers with the need to limit the expenditure of estate resources. The Critical Vendors represent those that are most vital to the Debtors' ongoing operations.



20. The Debtors rely on these Critical Vendors for, among other things, virology study preparation and data generation, drug product packaging and labelling, distribution and storage of clinical material. Through extensive research, the Debtors have curated an educated and reliable chain of suppliers and manufacturers, who together make the complex process of assembling various drug therapies seamless. Without the Critical Vendors, the Debtors, would not be able to produce any drug therapies. Even a short interruption in the provision of any of these products or services could have potentially disastrous effects on the Debtors' business and daily operations, with compounding long-term effects on the Debtors' reputation and, in turn, the success of these chapter 11 cases.

21. In light of the foregoing, paying targeted prepetition claims of Critical Vendors (the "Critical Vendor Claims") benefits the Debtors' estates, both monetarily and operationally, by preserving liquidity and enabling the Debtors to operate smoothly during these chapter 11 cases.<sup>3</sup> The Debtors estimate that, as of the Petition Date, approximately \$500,000 remains outstanding on account of Critical Vendor Claims.

22. To maintain stability during this critical stage of these chapter 11 cases and to avoid jeopardizing the Debtors' sales and business operations going forward, the Debtors request authority to pay the Critical Vendor Claims as they become due and to continue paying the Critical Vendor Claims in the ordinary course of business, including on account of prepetition claims. For the avoidance of doubt, the Debtors intend to pay the Critical Vendor Claims only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs.

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<sup>3</sup> Notwithstanding the relief requested herein, the Debtors reserve all of their rights and remedies under the Bankruptcy Code and other applicable law to pursue any cause of action against any Critical Vendor on account of, among other things, any violation of the automatic stay pursuant to section 362(a)(6) of the Bankruptcy Code.

#### **IV. Foreign Claimants.**

23. A critical component of the Debtors' business activities across the globe involves transacting with certain potential foreign claimants (collectively, the "Foreign Claimants"). The Foreign Claimants supply goods and services to the Debtors that are crucial to the Debtors' ongoing global operations and for the continuation of their business in the ordinary course during these chapter 11 cases. Due to the broad reach of the Debtors' business, it is often logistically impracticable—and significantly more cost prohibitive—for the Debtors to purchase goods and services from a U.S.-based vendor rather than the Foreign Claimants. Moreover, as described above, many of the Foreign Claimants are irreplaceable due to the specialized and customized nature of their products and services. Failure to pay prepetition claims held by certain Foreign Claimants and accrued in the ordinary course of business (collectively, the "Foreign Claims") could cause such Foreign Claimants to refuse to provide the goods and services necessary for the Debtors to continue business operations.

24. Many of the Foreign Claimants lack meaningful, if any, contacts with the United States. The Foreign Claimants might consider themselves beyond the jurisdiction of the Court and, therefore, disregard (or simply be unaware of) the automatic stay, notwithstanding its global effect. Efforts to exercise remedies in non-U.S. jurisdictions, including lawsuits in non-U.S. courts and the assertion of liens by the Foreign Claimants, could result from a failure to make payment to such parties in the ordinary course, including on account of prepetition claims. It would be unduly time-consuming and burdensome for the Debtors to seek to enforce an order of the Court in the creditor's home country in many instances, thereby compounding the loss and disruption in services.

25. For the 12 months before the Petition Date, on average, the Debtors paid the Foreign Claimants approximately \$239,000 per month. The Debtors estimate that, as of the

Petition Date, approximately \$994,000 is outstanding on account of Foreign Claims. To maintain access to the critical goods and services provided by the Foreign Claimants, the Debtors request authority to pay all prepetition Foreign Claims as they become due and payable and to continue paying the Foreign Claims in the ordinary course of business.

**V. Customary Trade Terms.**

26. As a condition to receiving payment on account of the Critical Vendor Claims, the Debtors may require such Critical Vendors to: (a) continue supplying goods and services to the Debtors on trade terms that are at least as favorable to the Debtors as those in effect prior to the Petition Date; and (b) agree that they shall not be permitted to cancel any contract or agreement pursuant to which they provide services to the Debtors (collectively along with any other terms, the “Agreed Terms”); provided that the Debtors continue to pay for such goods and services and are not otherwise in breach of such contract or agreement. The Debtors may seek such agreement in writing in advance of any payment on a Critical Vendor Claim (which may be agreed to via email between the Critical Vendor and the Debtors (or their respective counsel)). The Debtors reserve the right to require more favorable trade terms from any Critical Vendor as a condition to payment of any prepetition claim.

27. If any Critical Vendor accepts payment for a prepetition obligation of the Debtors premised on compliance with the above conditions, and thereafter fails to comply with the Agreed Terms, the Debtors request that such payment be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code, and that such Critical Vendor be required to immediately repay the Debtors any payment made on account of its asserted claim to the extent the aggregate amount of such payments exceeds the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims or otherwise.

## **VI. Payment of Outstanding Orders.**

28. Before the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (collectively, the “Outstanding Orders”). To avoid the risk of becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

### **Basis For Relief Requested**

#### **I. The Court Should Authorize the Payment of the Trade Claims.**

29. Under Bankruptcy Code section 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, section 105(a) of the Bankruptcy Code allows a court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 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) (“While

pre-petition 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.”).

30. 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 sections 1107(a) and 1108 of the Bankruptcy Code, 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 section 1107(a)) provides a bridge from section 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.*

31. 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. Allowing the Debtors to pay the Trade Claims is especially appropriate where, as in the case here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving the going-concern value for the Debtors’ business

and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. LaSalle St. P'Ship*, 526 U.S. 434, 453 (1999).

32. As discussed above, every segment of the Debtors' supply chain is indispensable to the safe and economic operation of the Debtors' assets. To ensure that the Debtors continue to maintain their historically excellent operational standards, it is imperative that the Debtors have the authority to pay all of the Trade Claimants if determined necessary to preserve the Debtors' operations and reputation as well as the go-forward success of the Debtors' business. 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), 363(b), 1107(a), and 1108 of the Bankruptcy Code.

**A. The Court Should Authorize the Payment of the 503(b)(9) Claims.**

33. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within twenty days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Payment of these claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan unless they consented otherwise. The timing of payment also lies squarely within the Court's discretion. *See In re Glob. Home Prods., LLC*, No. 06-10340 (KG), 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006). The Debtors' ongoing ability to obtain raw materials, inputs to their products, and other goods as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied

access to the raw materials, inputs, and other goods necessary to maintain the Debtors' business operations and maximize the value of the Debtors' estates.

**B. The Court Should Authorize the Payment of the Lien Claims.**

34. Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' goods or equipment in their possession— notwithstanding the automatic stay under section 362 of the Bankruptcy Code—in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers “are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection”). The Debtors anticipate that certain of the Lien Claimants may assert or perfect liens, refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' inventory, equipment, or products, mere possession or retention could disrupt the Debtors' operations.

35. Paying the Lien Claims should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claimant's claim, such party may be a fully-secured creditor of the Debtors' estates. In such instances, payment now only provides such party with what they might be entitled to receive under a plan of reorganization, without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy.

**C. The Court Should Authorize the Payment of the Critical Vendor Claims.**

36. The Debtors require a steady provision of goods and services provided by the Critical Vendors to continue operating their business and maintain operational stability. Without such products and services, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers and may have to forego existing favorable trade terms as a result in their haste to find new vendors, which would prevent the Debtors from capturing revenue. Critical Vendors claims must be processed timely, as any delay in scheduled payment could risk disruption to the Debtors' business. Importantly, any such disruption to the Debtors' supply chain could result in a significant loss of operational efficiency, thereby decreasing the value of the Debtors' business, which could impair stakeholder value at the outset of these chapter 11 cases.

**D. The Court Should Authorize the Payment of the Foreign Claims.**

37. Each of the Foreign Claimants are based outside of the United States. The Foreign Claimants may, and likely do, lack minimum contacts with the United States. There is significant risk that the Foreign Claimants consider themselves beyond the jurisdiction of the Court and therefore may disregard the automatic stay or be entirely unaware of its global effect. Failure to make payment to such parties in the ordinary course could lead to a proliferation of lawsuits in foreign courts and efforts to exercise other detrimental remedies overseas. In many instances, it would be unduly time-consuming and expensive to seek to enforce an order of the Court in the creditor's home country.

38. Nonpayment of any claims owing to Foreign Claimants could lead to immediate and significant disruption to the Debtors' business that would heavily outweigh the cost of paying such parties in connection with their prepetition claims, and continuing to pay them on a postpetition basis, in the ordinary course of business. The Debtors believe that paying prepetition



claims of Foreign Claimants is necessary to protect the Debtors' business and ensure that the Debtors are able to maximize the value of their estates during these chapter 11 cases.

**II. The Court Should Confirm That Outstanding Orders Are Administrative Expense Priority Claims and That Payment of Such Claims Is Authorized.**

39. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the Debtors' estates postpetition. Granting the relief sought with respect to the Outstanding Orders will not afford such claimants any greater priority than they would have been provided absent such relief, and it will not prejudice any other party in interest.

40. Denying this relief, however, would require the Debtors to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority status. The disruption to the continuous and timely flow of critical goods and inventory to the Debtors would force the Debtors to potentially halt operations and production, damage the Debtors' business reputation, erode the Debtors' customer base, and ultimately harm revenue, all to the detriment of the Debtors and their creditors. In light of the foregoing, the Court should confirm the administrative expense priority status of the Outstanding Orders and authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

**Emergency Consideration**

41. 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.

**Processing of Checks and Electronic Fund Transfers**

42. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be honored inadvertently. Therefore, the Debtors request that the Court authorize and direct all applicable financial institutions at the Debtors’ request to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

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

43. 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**

44. 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**

45. 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) Trade Claimants; 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 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 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**

<p>In re:</p> <p>EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i><sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 24-80040 (SGJ)</p> <p>(Joint Administration Requested)</p>
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**ORDER (I) AUTHORIZING THE  
DEBTORS TO PAY CERTAIN PREPETITION  
CLAIMS OF (A) 503(B)(9) CLAIMANTS, (B) LIEN  
CLAIMANTS, (C) CRITICAL VENDORS, AND (D) FOREIGN  
CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

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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”)

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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.

(a) authorizing the Debtors to pay, in the ordinary course of business, certain prepetition amounts owing on account of (i) 503(b)(9) Claims, (ii) Lien Claims, (iii) Critical Vendor Claims, and (iv) Foreign Claims; (b) confirming the administrative expense priority status of Outstanding Orders and authorizing, but not directing, the payment of such obligations in the ordinary course of business; and (c) granting certain 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 Motion is granted on a final basis, except as specifically provided herein.
2. Subject to the provisions of this Order, the Debtors are authorized, but not directed, to pay, in their discretion, Trade Claims up to an aggregate amount of \$1,787,000.
3. The Debtors are authorized, but not directed, to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.



4. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code.

5. As a condition to receiving payment on account of a Trade Claim, the Debtors may require that the Trade Claimant agree in writing (which may be by email) to: (a) continue supplying goods and services to the Debtors on trade terms that are at least as favorable to the Debtors as those in effect prior to the Petition Date; and (b) agree that it shall not be permitted to cancel on less than 90 days' notice any contract or agreement pursuant to which they provide services to the Debtors (collectively along with any other terms, the "Agreed Terms"); provided that the Debtors continue to pay for such goods and services and are not otherwise in breach of such contract or agreement. The Debtors may require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim.

6. If any Trade Claimant accepts payment pursuant to this Order for a prepetition obligation of the Debtors premised on compliance with this Order, and thereafter fails to comply with the Agreed Terms, or such other terms agreed to by the Debtors (including, for the avoidance of doubt, any prepetition arrangement), any payments made pursuant to this Order shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code, and the Trade Claimant shall be required to immediately repay to the Debtors any payment made to it on account of its asserted claim to the extent the aggregate amount of such payment exceeds the postpetition obligations then outstanding, without the right of any setoffs, claims, provision for payment of reclamation or trust fund claims or otherwise. Upon recovery by the Debtors, the claim shall be reinstated as a prepetition claim in the amount so recovered. The Debtors shall provide a copy of this Order to the applicable party prior to such party's acceptance of any payment hereunder.

7. Any party that accepts payment from the Debtors on account of all or a portion of such party's claim pursuant to this Order shall be deemed to (a) agree to the terms and provisions of this Order and (b) have waived, to the extent so paid, Trade Claims of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties.

8. The Debtors shall maintain a matrix or schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Order, including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date. The Debtors shall provide a copy of such matrix or schedule to the U.S. Trustee and any statutory committee appointed in these chapter 11 cases by the 15th of the month, for the previous month, following entry of this Order.

9. 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.

10. The Debtors are authorized to issue postpetition checks or to effect postpetition 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.

11. The Debtors are authorized, but not directed, to the extent they deem it necessary to preserve the value of their businesses, to place any vendor on cash on demand.

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, 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. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

14. 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.

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

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

17. 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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