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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.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION
FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO PAY CERTAIN TAXES AND FEES**

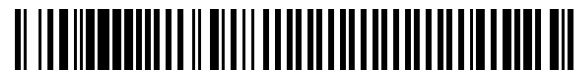
Emergency relief has been requested. Relief is requested not later than 1:30 p.m. prevailing Central Time on April 3, 2024.

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.

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

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



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:²

Relief Requested

1. The Debtors seek entry of an interim order and a final order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting, among other things, the following relief:

- a. authorizing the Debtors to pay, in their sole discretion, undisputed prepetition Taxes and Fees (as defined below) owed to state and local Taxing Authorities (as defined below); and
- b. granting related relief, including scheduling a final hearing to consider approval of the motion on a final basis.

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.

² 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.

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 rule 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”), and 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.

The Debtors’ Obligations to the Taxing Authorities

7. In the ordinary course of their business, the Debtors are subject to a variety of use, franchise, real property taxes, business-related taxes and charges, regulatory fees, assessments and related obligations (collectively, the “Taxes and Fees”). The Debtors pay the Taxes and Fees to various federal, state, and local taxing, regulatory, and governmental authorities (collectively, the “Taxing Authorities”) through checks and electronic funds transfers that are processed through

their banks. A schedule identifying the Taxing Authorities is attached hereto as **Exhibit C**.³ The Debtors pay the Taxes and Fees to the Taxing Authorities on a periodic basis—bimonthly, quarterly, and annually, as applicable, depending on their nature and incurrence. Some of the Debtors’ most significant Taxes and Fees include:

- i. *Franchise Taxes.* The Debtors are required to make payments to certain Taxing Authorities that collect franchise taxes and *de minimis* registration and other filing fees (collectively, the “Franchise Taxes”) from the Debtors for the right to exist as a domestic corporation, for the privilege of doing business in a state as a foreign corporation or for the actual conduct of carrying on of business in the state. The Franchise Taxes are generally measured by net income, gross receipts, capital stock or some other measure of value and are payable quarterly or annually. The Debtors typically pay quarterly and annual Franchise Taxes to various Taxing Authorities. The Debtors have approximately \$253,000 in accrued Franchise Taxes. It is estimated that approximately \$3,200 will come due during the interim period.
- ii. *Income Taxes.* The Debtors incur federal and state taxes on the income they earn (the “Income Taxes”), and the Debtors pay the Income Taxes annually if due, however, due to historical net operating losses, the Debtors ordinarily do not pay Income Taxes. As of the Petition Date, the Debtors have no accrued and unpaid Income Taxes due to such net operating losses.
- iii. *Property Taxes.* The Debtors are required to pay real and personal property taxes in the ordinary course of operating their business (the “Property Taxes”). The Debtors typically pay the Property Taxes annually. The Debtors estimate they will have accrued approximately \$4,500 in Property Taxes as of the Petition Date.
- iv. *Foreign Taxes.* The Debtors incur taxes related to performing business activities through a subsidiary in Ireland. The Debtors estimate they will have accrued approximately \$6,200 in Foreign Taxes as of the Petition Date.
- v. *Regulatory and Filing Fees.* The Debtors are required by law to register with certain federal agencies, as well as foreign agencies, in order to perform ordinary course business activities. In addition, the Debtors are required in certain states to acquire licenses and permits for purposes of performing business activities in those jurisdictions. Payments of these fees may be made directly to the agency, or to a third-party for submitting licenses to multiple jurisdictions. The Debtors estimate

³ Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted Taxing Authorities from **Exhibit C**. The Debtors request relief with respect to Taxes and Fees payable to all Taxing Authorities, regardless of whether such Taxing Authority is specifically identified on **Exhibit C**. Additionally, the Debtors do not seek authority to collect and remit state and federal employee-related withholding taxes by this motion. That relief is requested in the *Debtors’ Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, and Employee Benefits and (B) Continue the Postpetition Maintenance of Employee Benefit Programs, Policies, and Procedures in the Ordinary Course*.

they have accrued approximately \$9,200 in Regulatory and Filing Fees as of the Petition Date.

- vi. *Other Taxes and Fees.* The Debtors also pay a variety of taxes and fees required to operate their business in certain states, including business and occupation taxes, excise taxes, import taxes, and other miscellaneous license and permit fees (collectively, the “Other Taxes and Fees”). The Debtors pay the Other Taxes and Fees to certain Taxing Authorities either quarterly or annually, or as they may otherwise arise, depending on their nature. The Debtors estimate they have accrued approximately \$1,200 in Other Taxes and Fees as of the Petition Date.

8. The Debtors estimate that there are approximately \$267,900 in prepetition amounts owing to the Taxing Authorities as of the Petition Date.

9. Other than as set forth herein, the Debtors’ books and records reflect that they are substantially current with the Taxes and Fees that were due and payable prior to the Petition Date. However, to the extent that any additional prepetition amounts remain outstanding, the Debtors seek authority to pay them in the ordinary course. The Taxing Authorities will continue to invoice the Debtors for Taxes and Fees relating to periods before the Petition Date.

10. The Debtors seek authority to pay any Taxes and Fees that have accrued or were incurred prior to the Petition Date. The Debtors also seek authority to continue paying all Taxes and Fees on a postpetition basis in the ordinary course, whether arising before or after the Petition Date, to ensure uninterrupted business operations during the sale process and thereafter. The continued payment of the prepetition Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors’ estates. If such obligations are not timely paid, the Debtors’ business operations may be suspended or the Debtors may incur additional fees, and the Debtors will be required to expend time and money to resolve these issues.

Basis for Relief Requested

I. Certain of the Taxes and Fees May not Be Property of the Debtors' Estates.

11. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest ... becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtors’ legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” Certain of the Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Taxing Authorities and are held in trust by the Debtors. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate). For example, all U.S. federal internal revenue tax withheld is considered to be held in trust for the benefit of the United States. *Id.* at 60. Because the Debtors may not have an equitable interest in “trust funds” held on account of such taxes, the Debtors should be permitted to pay those funds to the Taxing Authorities as they become due.⁴

12. The federal government and states in which the Debtors operate have laws providing that the Debtors’ officers, directors or other responsible employees could, in certain circumstances, potentially be held personally liable for the nonpayment of such Taxes and Fees. To the extent that any accrued Taxes and Fees of the Debtors were unpaid as of the Petition Date in these jurisdictions, the Debtors’ officers and directors could be subject to lawsuits during the pendency of these chapter 11 cases. Such events and collection efforts by the Taxing Authorities would be extremely distracting for the Debtors and their directors and officers in their efforts to bring these chapter 11 cases to an expeditious, successful conclusion.

⁴ For the avoidance of doubt, the Debtors hereby request authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

II. Certain of the Taxes and Fees May Be Secured or Priority Claims Entitled to Special Treatment Under the Bankruptcy Code.

13. Claims for certain of the Taxes and Fees are or may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, Taxing Authorities may attempt to assess interest and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (granting priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain of the Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not prejudice the rights and recoveries of junior creditors. Payment of such Taxes and Fees likely will give the Taxing Authorities no more than that to which they otherwise would be entitled under a chapter 11 plan of reorganization and will save the Debtors the potential interest expense, legal expense, and penalties that might otherwise accrue on Taxes and Fees during these chapter 11 cases.

III. Payment of the Taxes and Fees as Provided Herein Is a Sound Exercise of the Debtors’ Business Judgment.

14. Section 363 of the Bankruptcy Code provides authority for the Debtors to pay Taxes and Fees as and when they become due. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Under this section, a court may authorize the payment of certain prepetition claims where a debtor “show[s] that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Cmp.*, 242 B.R. 147, 153 (D. Del. 1999). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a

decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

15. The standard is satisfied here. The Debtors' ability to pay the Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Taxing Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting such key personnel from the administration of these chapter 11 cases. *See, e.g., In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (stating "[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax" and finding director personally liable for unpaid taxes) (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 547 (1990)). Any collection action on account of such claims, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and essential to the orderly administration and, ultimately, the success of these chapter 11 cases.

16. Notably, with regard to certain regulatory bodies such as the United States Food & Drug Administration (the "FDA") that may be included in the Taxing Authorities, non-payment of the Debtors' obligations could result in the Debtors being unable to continue operating their various facilities when the applicable regulatory body stops providing certification or other

services. This is a risk the Debtors cannot tolerate and that is avoidable through the payment of the applicable prepetition Taxes and Fees.

17. Furthermore, the Debtors' liability to pay the Taxes and Fees may ultimately result in increased tax liability for the Debtors if interest and penalties accrue on the Tax and Fee claims, which amounts also may be entitled to priority treatment. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders. As noted above, many of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8)(C) of the Bankruptcy Code. As priority claims, these obligations must be paid in full before any general unsecured obligations of the Debtors may be satisfied. To the extent that the Debtors are not able to timely pay the prepetition taxes and Fees, they may ultimately be required to pay those amounts with additional interest and penalties. The Debtors' failure to pay the prepetition Taxes and Fees as they come due thus may ultimately increase the amount of priority claims held by the Taxing Authorities against the Debtors' estates to the detriment of the Debtors' general unsecured creditors and other stakeholders. Accordingly, the Court should grant the Debtors authority to pay the prepetition Taxes and Fees as provided herein.

Emergency Consideration

18. 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

19. 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 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)

20. 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

21. 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

22. 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) the Taxing Authorities; 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 interim and final orders 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 Interim Order

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**INTERIM ORDER AUTHORIZING
THE DEBTORS TO PAY CERTAIN TAXES AND FEES**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an interim order (this “Interim Order”) (a) authorizing the Debtors to pay prepetition taxes and related obligations; and (b) granting related relief, including scheduling a final hearing to consider approval of the Motion on a final basis, each as more fully set forth in the Motion; and upon consideration of the First Day

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

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

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 an interim basis as set forth herein.

2. A final hearing on the Motion shall be held on _____, 2024 at _____ (prevailing Central Time) (the "Final Hearing"). Any objections or responses to entry of the proposed final order shall be filed on or before 4:00 p.m. (prevailing Central Time) on _____, 2024. In the event no objections to entry of a final order on the Motion are timely received, the Court may enter a final order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to: (a) pay or remit the Taxes and Fees that accrued prior to the Petition Date, if any, and that will become payable in the ordinary course during the pendency of these chapter 11 cases only at such time when the Taxes and Fees are payable; (b) pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis consistent with prepetition practices and, in each case, solely to the extent that such Taxes and Fees become payable in accordance with applicable law; and (c) to seek an order from the Court requiring that any payment made on account of any "straddle" portion of the

applicable Taxes and Fees be returned in the event that the Court determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code.

4. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

5. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim 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.

6. 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 Interim Order.

7. 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.

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

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

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

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

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

END OF ORDER

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

Thomas R. Califano (TX Bar No. 24122825)

William E. Curtin (*pro hac vice* pending)

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*Proposed Attorneys for the Debtors and Debtors
in Possession*

Exhibit B

Proposed Final Order

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**FINAL ORDER AUTHORIZING
THE DEBTORS TO PAY CERTAIN TAXES AND FEES**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of a final order (this “Final Order”) (a) authorizing the Debtors to pay prepetition taxes and related obligations; and (b) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C.

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

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

§ 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 Debtors are authorized, but not directed, to: (a) pay or remit the Taxes and Fees that accrued prior to the Petition Date, if any, and that will become payable in the ordinary course during the pendency of these chapter 11 cases only at such time when the Taxes and Fees are payable; (b) pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis consistent with prepetition practices and, in each case, solely to the extent that such Taxes and Fees become payable in accordance with applicable law; and (c) to seek an order from the Court requiring that any payment made on account of any "straddle" portion of the applicable Taxes and Fees be returned in the event that this Court determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code.
3. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.
4. 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.

5. 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.

6. 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.

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

8. 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.

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

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

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

END OF ORDER

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*

Exhibit C

Taxing Authorities

Tax Type	Authority Type	Address
Franchise Tax	Delaware Secretary of State	Division of Corporations PO Box 898 Dover, DE 19903
Property Tax	County of Santa Clara Office of The Assessor	110 West Tasman Drive San Jose, CA 95134-1700
Other Taxes and Fees	County of Santa Clara Office of The Assessor	110 West Tasman Drive San Jose, CA 95134-1700
Franchise Tax	State of California Franchise Tax Board	PO Box 942857 Sacramento, CA 94257-0531
Franchise Tax	New Jersey Division of Taxation	PO Box 666 Trenton NJ 08646-0666
Property Tax	Texas Comptroller of Public Accounts	P.O. Box 149348 Austin, TX 78714
Other Taxes and Fees	State Of Delaware Department Of Finance - Office Of Unclaimed Property	Attn: Holder Reporting Team P.O. Box 8923 Wilmington, DE 19899
Other Taxes and Fees	Department of Tax and Collections	70 West Hedding Street East Wing, 6th Floor San Jose, CA 95110-1767
Other Taxes and Fees	San Diego County Treasurer	1600 Pacific Highway Room 162 San Diego, CA 92101
Regulatory and Filing Fee	U.S. Food & Drug Administration	10903 New Hampshire Ave Silver Spring, MD 20993-0002
Regulatory and Filing Fee	European Medicines Agency	Domenico Scarlattilaan 6 1083 HS Amsterdam The Netherlands
Regulatory and Filing Fee	Medicines & Healthcare products Regulatory Agency	10 South Colonnade London, E14 4PU United Kingdom
Regulatory and Filing Fee	Pharma Solutions USA, Inc.	705 Montgomery Ave. #200 Penn Valley, PA 19072
Regulatory and Filing Fee	Texas Department of State Health Services, Food & Drug Licensing	1100 West 49th Street Austin, TX 78756-3199
Regulatory and Filing Fee	Oregon Department of Consumer & Business Services	350 Winter Street NE P.O. Box 14480 Salem, OR 97309-0405
Regulatory and Filing Fee	New Jersey Department of Health	140 E Front St, Trenton, NJ 08608
Regulatory and Filing Fee	California Board of Pharmacy	2720 Gateway Oaks Dr Suite 100 Sacramento, CA 95833
Regulatory and Filing Fee	Kentucky Board of Pharmacy	125 Holmes St Suite 300 Frankfort, KY 40601