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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
(I) AUTHORIZING THE DEBTORS TO USE CASH
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION
TO PREPETITION TERM LOAN SECURED PARTIES;
(III) MODIFYING AUTOMATIC STAY; AND (IV) SCHEDULING A FINAL HEARING**

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.

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.



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.

1. 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

Preliminary Statement

2. The Debtors require access to and use of cash collateral (the "Cash Collateral") to maintain operations and to administer these chapter 11 cases, both of which will preserve value for all stakeholders. The Debtors filed these cases to transition their important, life-saving products to qualified buyers who can ensure a stable supply continues to patients and will also have the capacity to continue to develop other important drugs in various stages of FDA approval. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. Accordingly, the Debtors are responsible for the payment of all operational expenses, including, but not limited to, employee wages, taxes, insurance, vendors or other general unsecured creditors creditor costs, repair costs, and other capital expenditure costs, and failure to pay these obligations could affect

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.

the ability of the operational company to continue doing business. Thus, absent authority to use Cash Collateral, the Debtors could be forced to undertake drastic measures, such as shuttering operations, which would result in the loss of virtually all of the Debtors' income and cause irreparable harm to the Debtors' estates. More importantly, such a step could harm the continuation of a stable supply of essential products to patients worldwide that rely on the Debtors' provision of life-saving drugs.

3. The Debtors' proposed use of Cash Collateral is premised upon a Budget, the interim four-week version of which is attached to the Interim Order (as defined below) as Exhibit 1 and the final version of which is attached to the Interim Order as Exhibit 2. The Budget assumes only the most integral payments are being made pending consummation of the sale process for the Debtors' assets. Prior the Petition Date, the Debtors made the determination to reduce their workforce to a skeletal staff to further limit costs during the pendency of these chapter 11 cases. Additionally, the amounts allocated to the research and development or other post-marketing disbursements are the lowest possible to ensure the Debtors' assets are not harmed pending a sale. Each disbursement was analyzed to ensure it was value accretive to the Debtors' assets as a whole and/or necessary to ensure operational stability during the pendency of these cases. Because the Debtors' use of Cash Collateral during the pendency of these chapter 11 cases is essential to preserve and maintain the going-concern value of their business, the Debtors respectfully request the Court grant them the authority to use Cash Collateral according to the terms set forth herein.

4. In support of the relief requested herein, the Debtors filed contemporaneously herewith the *Declaration of Paul Rundell, Managing Director of Alvarez & Marsal North America, LLC, in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to*

Prepetition Term Loan Secured Parties; (III) Modifying the Automatic Stay; and (IV) Scheduling a Final Hearing (the “Rundell Declaration”).

Relief Requested

5. The Debtors seek entry of an interim order, substantially in the form of the proposed interim order filed with this Motion (the “Interim Order”) and, after a Final Hearing, the Final Order (each as defined below), granting, among other things, the following relief:

- a) authorizing the Debtors, pursuant to sections 105, 361, 362, 363, 503 and 507 of the Bankruptcy Code, to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, in accordance with the terms of the Interim Order and (ii) grant adequate protection to the Prepetition Term Loan Secured Parties (as defined below);
- b) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Interim Order;
- c) subject to entry of a Final Order, the waiver of all rights to surcharge any Prepetition Collateral or Collateral under section 506(c) of the Bankruptcy Code;
- d) subject to entry of a Final Order, for the “equities of the case” exception under section 552(b) of the Bankruptcy Code to not apply to any of the Prepetition Term Loan Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law;
- e) waiver of any applicable stay with respect to the effectiveness and enforceability of the Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h));
- f) granting related relief, granting related relief, including scheduling a final hearing (the “Final Hearing”) within thirty-five (35) calendar days after the Petition Date to consider entry of the Final Order granting the relief requested in the Motion on a final basis.

Jurisdiction

6. 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.

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

8. The bases for the relief requested herein are sections 105(a), 361, 362, 363, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 4001, rules 4001-1 and 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

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

10. 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.

Summary Use of Cash Collateral³

11. Pursuant to, and in accordance with, Bankruptcy Rule 4001(c) and the Procedures for Complex Cases in the Northern District of Texas, the following is a concise statement of certain material provisions of the Interim Order:

Material Term	Summary
Parties with an Interest in Cash Collateral Interim Order ¶ E(2)	Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (the “ <u>Prepetition Term Loan Agent</u> ”) and the lenders from time to time party thereto (such lenders, the “ <u>Prepetition Term Loan Lenders</u> ”) and, together with the Prepetition Term Loan Agent, the “ <u>Prepetition Term Loan Secured Parties</u> ”).
Purposes for Use of Cash Collateral Interim Order ¶ G	The Debtors seek to use Cash Collateral in accordance with the terms set forth in the Interim Order to, among other things, (A) pay certain adequate protection payments; (B) pay the costs of administration of their estates, including the payment of professional fees and expenses; and (C) to satisfy other working capital and general corporate needs of the Debtors.
Approved Budget Exhibits 1 & 2 to the Interim Order; Interim Order ¶ 3	<p>The Debtors seek authorization to use Cash Collateral for the purposes set forth in the forecast attached to the Interim Order as <u>Exhibit 1</u> (the “<u>Approved Budget</u>”) for first four full weeks and, subject to entry of the Final Order, as set forth in the forecast attached to the Interim Order as <u>Exhibit 2</u> on a four-week (4-week) trailing period thereafter (the “<u>Budget Period</u>”).</p> <p><i>Budget Testing.</i> Except as otherwise provided in the Interim Order, the Debtors may use Cash Collateral in accordance with the Approved Budget, subject to Permitted Variances (as defined below). Permitted Variances for each Approved Budget shall be tested by no later than the fifth Friday following the Petition Date and each fourth Friday thereafter (each such date, a “<u>Testing Date</u>”). On or before 5:00 p.m. (prevailing Central time) on each Testing Date, the Debtors shall prepare and deliver to the Prepetition Term Loan Agent and its advisors, in form and substance reasonably acceptable to the Prepetition Term Loan Agent, a variance report (the “<u>Variance Report</u>”) setting forth for the prior four-week period the Debtors’ actual disbursements on an aggregate basis (the “<u>Actual Disbursements</u>”).</p>

³ Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to them in the Interim Order.

Material Term	Summary
	<p><i>Professional Fee Reserve Account.</i> Upon entry of the Interim Order, the Debtors are authorized and directed to fund a segregated account of the Debtors designated by the Debtors for such purpose for the sole purpose of reserving for and paying unpaid Allowed Professional Fees (as defined in paragraph 5(a) of the Interim Order) (the “<u>Professional Fee Reserve Account</u>”). The Professional Fee Reserve Account shall be held for the benefit of Estate Professionals (defined below) and shall not be property of the Debtors’ estates. On a weekly basis and solely up to the amounts set forth for Estate Professionals for each such week in the Approved Budget, the Debtors shall fund the Professional Fee Reserve Account (such amounts, the “<u>Reserve Amounts</u>”), and such Reserve Amounts may be applied from time to time to pay the Allowed Professional Fees prior to any and all other claims. If, after payment in full of all Reserve Amounts on account of Allowed Professional Fees, the Professional Fee Reserve Account has not been reduced to zero, all remaining funds shall be returned to the Debtors for distribution in accordance with a further order of this Court. For the avoidance of doubt, the Debtors’ obligation to pay Allowed Professional Fees shall not be limited or deemed limited to funds held in the Professional Fee Reserve Account.</p> <p><i>Permitted Variance.</i> The Debtors shall not permit, during any Budget Period, the Debtors’ Actual Disbursements on an aggregate basis for such four-week period to be more than 120% of the projected disbursements in the aggregate as set forth in the Approved Budget over such time (such deviations, the “<u>Permitted Variances</u>”); <i>provided</i> that, any positive Permitted Variances may be carried over to a subsequent Budget Period to offset any negative Permitted Variance for such Budget Period. For the avoidance of doubt, the cash disbursements considered for determining compliance with the Permitted Variances shall exclude the Debtors’ disbursements in respect of (x) the restructuring professional fees of the Debtors, any Committee, and the Prepetition Term Loan Secured Parties on account of professional fees under paragraph 4(d) of the Interim Order and (y) the fees of the Office of the United States Trustee (the “<u>U.S. Trustee</u>”); <i>provided</i> that the aggregate payments on account of such restructuring professional fees and U.S. Trustee fees shall not exceed the aggregate amounts for such fees provided in the Approved Budget through the applicable budget period.</p> <p><i>Update of Budget.</i> By no later than 5:00 p.m. (prevailing Central Time) on the Friday following each Budget Period (or as</p>

Material Term	Summary
	<p>otherwise consented to by the Prepetition Term Loan Agent), the Debtors shall deliver to the Prepetition Term Loan Advisors (as defined below) an updated budget, consistent with the form and level of detail set forth in the Initial Budget (each, a “<u>Proposed Budget</u>”), and each Proposed Budget shall constitute the “Budget” for purposes of the Interim Order upon written approval delivered by the Prepetition Term Loan Advisors or the Prepetition Term Loan Agent (email being sufficient); <i>provided</i>, however, that, following the consummation of any sale of the Debtors’ assets in accordance with the Bid Procedures, the Budget Period shall reset and a new Proposed Budget shall be delivered to the Prepetition Term Loan Advisors in accordance with this paragraph. In the absence of such approval, the prior Approved Budget shall remain in full force and effect; <i>provided, however</i>, in the event the Prepetition Term Loan Agent does not approve a Proposed Budget within fifteen (15) business days of its delivery, the Debtors may request an emergency hearing with the Court (but on not less than five (5) business days’ written notice to the Prepetition Term Loan Agent) to seek Court approval of the Proposed Budget for purposes of the Interim Order. When required under the terms of the Interim Order, the consent or approval of the Prepetition Term Loan Agent may be communicated via email to the Debtors or their professionals by the Prepetition Term Loan Advisors</p>
<p>Events of Default and Termination Interim Order ¶ 7</p>	<ul style="list-style-type: none"> a) The violation of any material term of the Interim Order by the Debtors that is not cured within ten (10) business days of receipt by the Debtors of notice from the Prepetition Term Loan Agent of such default, violation, or breach (which may be provided to the Debtors by email); b) Entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending the Interim Order without the express written consent of the Prepetition Term Loan Agent; c) These Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or the Debtors file any motion, pleading or proceedings (or supports any such motion, pleading or proceeding filed by a third party) seeking or consenting to the granting of any of the foregoing relief, or any order is entered granting any of the foregoing relief; d) Other than with respect to the Bid Protections, and except in connection with a motion for debtor in possession financing or any order entered in connection therewith, in each case, on

Material Term	Summary
	<p>terms acceptable to the Prepetition Term Loan Agent, the Debtors file any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, any lien or other interest pari passu with or senior to any of the Prepetition Term Loan Liens, Adequate Protection Liens, or Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties under the Interim Order, or any order of the Court is entered reversing, staying for a period in excess of ten (10) business days, vacating or otherwise amending, supplementing, or modifying the Interim Order in a manner adverse to the Prepetition Term Loan Secured Parties, in each case without the written consent of the Prepetition Term Loan Agent;</p> <p>e) The Debtors file any motion, pleading, or proceeding (or support any motion, pleading or proceeding filed by a third party) seeking or consenting to, or an order is entered granting, (i) the invalidation, subordination, or other challenge to the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims or (ii) any relief under sections 506(c) or 552 of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against any of the Prepetition Term Loan Secured Parties, in each case without the written consent of the Prepetition Term Loan Agent;</p> <p>f) Other than as expressly permitted in the Interim Order, the Debtors file any motion, pleading or proceeding (or support any motion, pleading or proceeding filed by a third party) seeking or consenting to the granting of, or an order is entered granting, relief which could reasonably be expected to result in a material impairment of the rights or interests of the Prepetition Term Loan Secured Parties (except any motion or other pleading otherwise expressly permitted by the Interim Order) and such motion, pleading, proceeding or order is not withdrawn or vacated within three (3) business days after notice thereof is delivered to the Debtors;</p> <p>g) The failure of the Debtors to meet any of the deadlines (or such later dates as may be approved by the Prepetition Term Loan Agent) set forth on <u>Exhibit 2</u> to the Interim Order (collectively, the “<u>Milestones</u>”).</p>

Material Term	Summary
<p>Adequate Protection Interim Order ¶ 4</p>	<p>The Prepetition Term Loan Agent, for the benefit of itself and the other the Prepetition Term Loan Secured Parties, are granted the following through the Interim Order:</p> <ul style="list-style-type: none"> <p><i>Adequate Protection Liens.</i> Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control by the Prepetition Term Loan Agent or any other party, the Debtors are authorized to grant, and hereby are deemed to have granted, to the Prepetition Term Loan Agent, for the benefit of itself and the other Prepetition Term Loan Secured Parties, Adequate Protection Liens on (i) the Prepetition Collateral and (ii) Collateral, subject only to the Permitted Prior Liens and the Carve Out, in which case the Adequate Protection Liens shall be immediately junior in priority to such Permitted Prior Liens and to the Carve Out; notwithstanding the foregoing, the Collateral shall exclude the Professional Fee Reserve Account (other than with respect to the residual interest therein provided in the Interim Order) and all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code (other than claims and causes of action arising under section 549 of the Bankruptcy Code) (the “<u>Avoidance Actions</u>”), but, subject to entry of a Final Order, shall include any and all proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Action (“<u>Avoidance Proceeds</u>”).</p> <p><i>Adequate Protection Superpriority Claims.</i> To the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Secured Parties, allowed superpriority administrative expense claims in these Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in these Chapter 11 Cases to the extent of any Diminution in Value (the “<u>Adequate Protection Superpriority Claims</u>”), junior only to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims shall not be junior or <i>pari</i></p>

Material Term	Summary
	<p><i>passu</i> to any other administrative claims against the Debtors and shall have priority over all now or hereinafter incurred administrative expense claims against the Debtors, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code; <i>provided</i> that any recovery against Avoidance Proceeds shall be subject to entry of a Final Order.</p> <ul style="list-style-type: none"> • <i>Reporting.</i> The Debtors shall use reasonable best efforts to comply with those reporting requirements described <i>infra Reporting Interim Order</i> ¶ (4)(d). • <i>Other Covenants.</i> The Debtors shall maintain their cash management arrangements in a manner consistent with this Court’s order(s) granting the Debtors’ cash management motion unless otherwise consented to by the Prepetition Term Loan Lenders. The Debtors shall continue ordinary course practices to maintain good standing under the jurisdiction in which each Debtor and each of its subsidiaries is incorporated or organized and continue to operate the business in the ordinary course of business customary in the normal course of ordinary operations consistent with past practice taking into account these Chapter 11 Cases and the funding available under the Approved Budget unless otherwise consented to by the Prepetition Term Loan Lenders. The Debtors shall continue to comply in all respects with those covenants contained in the Prepetition Term Loan Credit Agreement, in each case as in effect on the Petition Date, solely with respect to the preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights, in each case, that are material to the conduct of the business and the maintenance of properties and insurance. The Debtors shall cooperate in good faith and coordinate with the Prepetition Term Loan Secured Parties with respect to any transactions to be taken in these Chapter 11 Cases. • <i>Miscellaneous.</i> <ul style="list-style-type: none"> ○ Except for (i) the Carve Out and (ii) as otherwise provided as Adequate Assurance, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties pursuant to the

Material Term	Summary
	<p>Adequate Assurance provided for in the Interim Order shall not be subject, junior, or <i>pari passu</i>, to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to or made <i>pari passu</i> with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise in these Chapter 11 Cases or any Successor Case.</p> <ul style="list-style-type: none"> ○ The Adequate Protection Liens are deemed automatically perfected as of the Petition Date without the necessity of recording same and without further notice or order. The Prepetition Term Loan Agent shall not be required to file any UCC financing statements or other instruments (or to take any other action) to perfect such Adequate Protection Liens. ○ The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified to the extent necessary to permit the Prepetition Term Loan Agent to perform any act authorized or permitted under or by virtue of the Interim Order including, without limitation, to take any act to create, validate, evidence, attach or perfect any of the Adequate Protection Liens and to receive any payments expressly authorized by the Interim Order with respect to the Prepetition Term Loan Secured Indebtedness or adequate protection. ● <i>Right to Seek Additional Adequate Protection.</i> The Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Term Loan Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Term Loan Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition

Material Term	Summary
	<p>Collateral during these Chapter 11 Cases or any Successor Case. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Term Loan Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Term Loan Secured Parties against any Diminution in Value of their interests in the Prepetition Collateral (including the Cash Collateral).</p>
<p>507(b) Superpriority Claim Interim Order ¶ 4(b)</p>	<p>The Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Secured Parties, allowed superpriority administrative expense claims in these Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in these Chapter 11 Cases to the extent of any Diminution in Value (the “<u>Adequate Protection Superpriority Claims</u>”), junior only to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims shall not be junior or <i>pari passu</i> to any other administrative claims against the Debtors and shall have priority over all now or hereinafter incurred administrative expense claims against the Debtors, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code; <i>provided</i> that any recovery against Avoidance Proceeds shall be subject to entry of a Final Order.</p>
<p>Cash Management Interim Order ¶ 4(e)</p>	<p>The Debtors shall maintain their cash management arrangements in a manner consistent with the Court’s order(s) granting the Debtors’ cash management motion unless otherwise consented to by the Prepetition Term Loan Lenders.</p>
<p>Interim Carve-Out Interim Order ¶ 5</p>	<p>Notwithstanding anything to the contrary herein, the Debtors’ obligations to the Prepetition Term Loan Secured Parties, and the liens, security interests and superpriority claims granted by the Interim Order or under the Prepetition Term Loan Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (a) the payment of unpaid fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (c) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, all unpaid fees and expenses (the “<u>Allowed Professional Fees</u>”) incurred by persons or firms</p>

Material Term	Summary
	<p>retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “<u>Debtor Professionals</u>”), and any official Committee (the “<u>Committee Professionals</u>” and, together with the Debtor Professionals, the “<u>Estate Professionals</u>”) at any time before the delivery by the Prepetition Term Loan Agent of a Carve-Out Trigger Notice (defined below) and without regard to whether such fees and expenses are provided for in any Approved Budget or were invoiced after the Carve-Out Trigger Notice Date (the amounts set forth in this clause (c) being the “<u>Pre Carve-Out Trigger Notice Cap</u>”); and (d) the Allowed Professional Fees of Debtor Professionals in an aggregate amount not to exceed \$500,000, less the amount of any retainer held by such Estate Professional and not previously returned or applied to fees and expenses, incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, (the amount set forth in this clause (d) being the “<u>Debtor Post Carve-Out Trigger Notice Cap</u>”); (e) Allowed Professional Fees of Committee Professionals in an aggregate amount not to exceed \$75,000 incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court (the amount set forth in this clause (e) being the “<u>Committee Post Carve-Out Trigger Notice Cap</u>” and together with the Debtor Post Carve-Out Trigger Notice Cap, such amount, the “<u>Post Carve-Out Trigger Notice Cap</u>” and the Pre Carve-Out Trigger Notice Cap together with the Post Carve-Out Trigger Notice Cap and the amounts set forth in clauses (a) and (b), the “<u>Carve-Out Cap</u>”) (the foregoing clauses (a) through (e), collectively, the “<u>Carve-Out</u>”). The term “<u>Carve-Out Trigger Notice</u>” shall mean a written notice stating that the Post-Carve-Out Trigger Notice Cap has been invoked, delivered by hard copy or email by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to lead bankruptcy counsel for the Debtors, the U.S. Trustee, Prepetition Term Loan Secured Parties, and counsel to the Committee, if any, which notice may be delivered following the occurrence and during the continued existence of a Termination Event (as defined herein) under the terms of the Interim Order. The term “<u>Carve-Out Trigger Notice Date</u>” shall mean the day on which a Carve-Out Trigger Notice is delivered by the Prepetition Term Loan Agent or Prepetition Term Loan Advisors, as applicable. On the Carve-Out Trigger Notice Date, the Carve-Out Trigger Notice shall</p>

Material Term	Summary
	<p>constitute a demand to the Debtors to transfer cash in an amount equal to the Carve-Out Cap (which shall be determined by the applicable Estate Professional in its reasonable discretion based on the amount of then-unpaid Allowed Professional Fees plus a reasonable estimate of fees and expenses not yet allowed) less any amount then held in the Professional Fee Reserve Account to the Professional Fee Reserve Account.</p> <p>Immediately following receipt of a Carve-Out Trigger Notice, and prior to the payment of any Prepetition Term Loan Secured Indebtedness or Adequate Protection Superpriority Claims, Bid Protections, or Adequate Protection Payments, the Debtors shall be required to deposit into the Professional Fee Reserve Account cash in an amount equal to the difference between the Carve-Out Cap and the balance held in the Professional Fee Reserve Account as of the Carve-out Trigger Notice Date. Notwithstanding anything to the contrary herein or in the Prepetition Term Loan Documents, following delivery of a Carve-Out Trigger Notice, the Prepetition Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Professional Fee Reserve Account has been fully funded as permitted above in an amount equal to all applicable obligations benefitting from the Carve-Out. Any payment or reimbursement made to any Estate Professional in respect of any Allowed Professional Fees prior to the delivery of the Carve-Out Trigger Notice shall not reduce the Carve-Out.</p> <p>The Debtors shall use funds held in the Professional Fee Reserve Account to pay Estate Professional fees as they become allowed and payable pursuant to interim or final orders from the Court; <u>provided</u>, that the Debtors' obligations to pay the allowed fees and expenses of the Estate Professionals shall not be limited or deemed limited to funds held in the Professional Fee Reserve Account. The amounts in the Professional Fee Reserve Account shall be available only to satisfy Allowed Professional Fees and other amounts included in the Carve-Out until such amounts are paid in full. Notwithstanding anything to the contrary herein, (i) the failure of the Professional Fee Reserve Account to satisfy in full the amount set forth in the Carve-Out shall not affect the priority of the Carve-Out and (ii) in no way shall the Carve-Out, the Professional Fee Reserve Account, or any Approved Budget be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final</p>

Material Term	Summary
	<p>order, or otherwise). All funds in the Professional Fee Reserve Account shall be used first to pay all obligations benefitting from the Pre Carve-Out Trigger Notice Cap, until paid in full, and then the obligations benefitting from the Post Carve-Out Trigger Notice Cap. The amount in the Professional Fee Reserve Account shall be reduced on a dollar-for-dollar basis for Allowed Professional Fees that are paid after the delivery of the Carve-Out Trigger Notice, and the Professional Fee Reserve Account shall not be replenished for such amounts so paid.</p> <p>Payments from the Carve-Out shall be subject to any terms and conditions of the engagement agreements and appurtenant orders for the employment of each Estate Professional. The Debtors shall be permitted to pay compensation and reimbursement of expenses incurred prior to a Termination Declaration Date to the extent allowed and payable under sections 330 and 331 of the Bankruptcy Code.</p> <p>Until such time as the Prepetition Term Loan Secured Indebtedness shall have been indefeasibly paid and satisfied in full in accordance with the Prepetition Term Loan Documents, any remaining unapplied retainer funds at the conclusion of an Estate Professional’s engagement shall be immediately returned to the Prepetition Term Loan Agent. If, after paying all amounts set forth in the definition of Carve-Out, the Professional Fee Reserve Account has not been reduced to zero, all remaining funds in the Professional Fee Reserve Account shall be distributed to the Prepetition Term Loan Agent on account of the Prepetition Term Loans, unless the Prepetition Term Loans have been indefeasibly paid in full in cash.</p> <p>The Prepetition Term Loan Secured Parties reserve the right to object to the allowance of any fees and expenses, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Except for permitting the funding of the Carve-out as provided herein, the Prepetition Term Loan Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or expenses of any Estate Professionals incurred in connection with the Chapter 11 Cases or any successor case(s) under any chapter of the Bankruptcy Code (a “<u>Successor Case</u>”) under any chapter of the Bankruptcy Code, regardless of whether payment of such fees or disbursement has been allowed by the Court. Nothing in the Interim Order or otherwise shall be construed to obligate any of the Prepetition Term Loan Secured Parties in any way to pay compensation to or reimburse expenses</p>

Material Term	Summary
	of any Estate Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or expense reimbursement.
Stipulations Interim Order ¶ E	<p>The Debtors stipulate to the following:</p> <ul style="list-style-type: none"> • The Debtors borrowed, and were liable to, and the Prepetition Term Loan Guarantors unconditionally and irrevocably guaranteed for the benefit of, the Prepetition Term Loan Secured Parties pursuant to the Prepetition Term Loan Documents (x) an aggregate principal amount of not less than \$41,685,030.30 of Term A (the “<u>Prepetition Term Loans</u>”), subject to the relative rights, rankings, and priorities set forth in the Prepetition Term Loan Credit Agreement, plus (y) all accrued and unpaid interest (clauses (x) and (y), collectively, the “<u>Prepetition Term Loan Secured Indebtedness</u>”). • The Prepetition Term Loan Secured Indebtedness is secured, in favor of the Prepetition Term Loan Secured Parties, by valid, binding, properly perfected, continuing and enforceable security interests in and liens on all “Collateral” as defined in the Prepetition Term Loan Credit Agreement subject to the relative rights, rankings, and priorities of the Term A Loan set forth in the Prepetition Term Loan Credit Agreement. • The Prepetition Term Loan Liens encumber all of the Prepetition Collateral, as the same existed on the Petition Date; (ii) the Prepetition Term Loan Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (iii) the Prepetition Term Loan Liens were granted to or for the benefit of the Prepetition Term Loan Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; (iv) the Prepetition Term Loan Secured Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors and is enforceable in accordance with the terms of the Prepetition Term Loan Documents; (v) the Prepetition Term Loan Liens are subject and subordinate only to Permitted Prior Liens;⁴ (vi) no offsets, challenges,

⁴ As used herein, “Permitted Prior Liens” shall mean any legal, valid, binding, perfected, enforceable liens on or security interests in the Prepetition Collateral in existence as of the Petition Date, or which are perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy

Material Term	Summary
	<p>objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Loan Liens or Prepetition Term Loan Secured Indebtedness exist, and no portion of the Prepetition Term Loan Liens or Prepetition Term Loan Secured Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination, attack, offset, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law or regulation, including in any Successor Cases; and (vii) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Term Loan Secured Parties or any of their affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees in such capacity arising out of, based upon, or related to the Prepetition Term Loan Documents, the Prepetition Term Loan Secured Indebtedness, or the Prepetition Term Loan Liens.</p> <ul style="list-style-type: none"> • None of the Prepetition Term Loan Secured Parties (i) control the Debtors or their properties or operations, have authority to determine the manner in which any Debtors’ operations are conducted, or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Interim Order or the Prepetition Term Loan Documents, (ii) owe any fiduciary duty to the Debtors, their creditors, or estates or (iii) are deemed to be acting as a “Responsible Person” or “Owner” or

Code, in each case which have priority over the Prepetition Term Loan Liens and that are not subject to avoidance, recharacterization, offset, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law or other challenge.

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	<p>“Operator” with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any similar federal or state statute).</p> <ul style="list-style-type: none"> • All of the Debtors’ cash constitutes cash collateral of the Prepetition Term Loan Secured Parties within the meaning of Bankruptcy Code section 363(a). • The Debtors do not maintain any bank accounts other than those accounts covered by any motion or order authorizing the Debtors to continue to use the Debtors’ existing cash management system.
<p>Reporting Interim Order ¶ 4(d)</p>	<p>The Debtors shall use reasonable best efforts to comply with those reporting requirements set forth in the Prepetition Term Loan Credit Agreement in a manner consistent with prior practices (other than the reporting requirements pursuant to Section 6.2(a)(ii), (v) of the Prepetition Term Loan Credit Agreement) and shall further provide, subject to any applicable limitations set forth below, to (i) the Prepetition Term Loan Agent and (ii) the Prepetition Term Loan Advisors:</p> <ul style="list-style-type: none"> • weekly (or with such other frequency as may be agreed to between the Debtors and the Prepetition Term Loan Agent) calls with the Prepetition Term Loan Agent and the Prepetition Term Loan Advisors with respect to (a) business updates, (b) the Debtors’ discussions with any potential financing party, strategic partner, or acquirer, (c) the status of any material litigation, litigation claims, and other claims, and (d) any other updates in form and scope reasonably agreed by the Debtors and the Prepetition Term Loan Agent; • at the times specified in the Variance Report; • timely delivery of each Proposed Budget as set forth in the Interim Order; • promptly, all written demands or claims related to or asserting any liens in respect of property or assets of the Debtors (including liens imposed by law, such as landlord’s, vendors’, suppliers’, carriers’, warehousemen’s, repairmen’s, construction contractors’, workers’ and mechanics’ liens and other similar liens) if the amount demanded or claimed exceeds \$50,000 individually or \$500,000 in the aggregate; • promptly upon request after the end of each prior month (a) net receivables/payables due to third parties, (b)

Material Term	Summary
	<p>account payables and payments, and (c) accounts payable aging; and</p> <ul style="list-style-type: none"> • as soon as reasonably practicable after written request from the Prepetition Term Loan Advisors, the Debtors will provide the Prepetition Term Loan Agent and the Prepetition Term Loan Advisors with reasonable access to any consultant, turnaround management, broker or financial advisory firm retained by the Debtors in these Chapter 11 Cases.
<p>Waiver or Modification of the Automatic Stay Interim Order ¶¶ 12; 4(f)(iii); 8(a)</p>	<p>The Debtors are authorized and directed to perform all acts and to make, execute, and deliver any and all instruments as may be necessary to implement the terms and conditions of the Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code will be modified to permit the parties to accomplish the transactions contemplated by the Interim Order.</p> <p>The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified to the extent necessary to permit the Prepetition Term Loan Agent to perform any act authorized or permitted under or by virtue of the Interim Order including, without limitation, to take any act to create, validate, evidence, attach or perfect any of the Adequate Protection Liens and to receive any payments expressly authorized by the Interim Order with respect to the Prepetition Term Loan Secured Indebtedness or adequate protection.</p> <p>Following the delivery of a Termination Declaration, unless the Court has determined after the procedures set forth in the Interim Order that a Termination Event has not occurred and/or is not continuing or the Court orders otherwise, the automatic stay, as to all of the Prepetition Term Loan Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order</p>
<p>Milestones Interim Order, Exhibit 2</p>	<p>The Debtors and the Prepetition Term Loan Secured Parties have agreed to the following milestones:</p> <ul style="list-style-type: none"> • No later than three (3) calendar days following the Petition Date, the Debtors shall have filed all first day motions, including a motion seeking entry of the Interim Order, in each case which motions and all related documents shall be in form and substance reasonably acceptable to the Prepetition Term Loan Lenders.

Material Term	Summary
	<ul style="list-style-type: none"> • No later than five (5) calendar days following the Petition Date (subject to extension to the extent necessary to accommodate the Court’s availability), the Court shall have entered the Interim Order. • No later than thirty-five (35) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court’s availability), the Court shall have entered an order approving the Bidding Procedures, which order shall be in form and substance reasonably acceptable to the Prepetition Term Loan Lenders. • The Court shall have held the Final Hearing and entered the Final Order no later than forty (40) calendar days following the Petition Date (subject to extension to the extent necessary to accommodate the Court’s availability). • No later than eighty-five (85) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court’s availability), the Court shall have entered an order(s) approving the sale(s) under the Sale Motion (the “<u>Sale Order(s)</u>”), which order(s) shall be in form and substance reasonably acceptable to the Prepetition Term Loan Lenders. • If applicable, no later than one hundred (100) calendar days after the Petition Date, the Debtors shall have consummated the sale(s) approved pursuant to the Sales Motion. • No later than one hundred fifteen (115) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court’s availability), the Debtors shall have obtained conditional approval of a disclosure statement (the “<u>Disclosure Statement</u>”) in accordance with a chapter 11 plan reasonably acceptable to the Prepetition Term Loan Lenders (the “<u>Plan</u>”). • No later than one hundred and fifty-five (155) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court’s availability), the Court shall have entered an order granting final approval of both the Disclosure Statement and the Plan. • No later than one hundred eighty (180) calendar days after the Petition Date, the effective date of the Plan shall have occurred.
Cross-collateralization	None.
Rollup	None.

Material Term	Summary
<p>Releases Interim Order ¶ 15</p>	<p>Effective upon entry of the Final Order, the Debtors shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Term Loan Secured Parties (each in their roles as such), and each of their affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, agents, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Prepetition Term Loans, the Prepetition Term Loan Liens, the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Documents, or the Interim Order, as applicable, and/or the transactions contemplated hereunder or thereunder, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Term Loan Secured Parties; <i>provided, however,</i> that no such parties will be released to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties’ gross negligence, fraud, or willful misconduct.</p>
<p>Surcharge Interim Order ¶ 10</p>	<p>Except to the extent of the Carve Out, subject to entry of the Final Order, all rights to surcharge the interests of the Prepetition Term Loan Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in these Chapter 11 Cases.</p>
<p>Marshaling Interim Order ¶ 24</p>	<p>Subject to entry of the Final Order granting such relief, the Prepetition Term Loan Secured Parties shall not be subject to the</p>

Material Term	Summary
	equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral.
Equities of the Case Interim Order ¶ 23	Subject to entry of the Final Order, (i) the Prepetition Term Loan Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Term Loan Secured Parties with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral or the Collateral.
Final Hearing Interim Order ¶ 31	The Debtors request the scheduling of a final hearing (the “ <u>Final Hearing</u> ”) to consider entry of an order granting the relief requested in the Motion on a final basis (the “ <u>Final Order</u> ”).

The Debtors’ Prepetition Capital Structure

12. As of the Petition Date, the Debtors’ prepetition funded indebtedness consisted of the following:

Name	Principal Amount (approx.)	Lien Priority and Collateral
Term A Loan	\$41,685,030.30	Substantially all of the Debtors’ assets.
Trade and Related Debt	\$4,678,506.00	None
Equity	Approximately 1.5 million shares of common stock issued and outstanding ⁵	None
Total	\$46,363,536.30	

⁵ As of December 31, 2023 (adjusted to reflect the 1-for-30 reverse stock split effected on January 5, 2024).

A. Prepetition Term Loans

13. On June 1, 2022, Eiger entered into that certain Loan and Security Agreement (as from time to time amended and restated, the “Prepetition Term Loan Credit Agreement” and the loans made thereunder, the “Prepetition Term Loans”) and related security agreements (together with the Prepetition Term Loan Credit Agreement, the “Prepetition Term Loan Documents”), dated as of June 1, 2022, with Innovatus Life Sciences Lending Fund I, LP (“Innovatus”), as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto, the “Prepetition Term Loan Agent”), the subsidiary guarantors from time to time party thereto (the “Prepetition Term Loan Guarantors”) and the lenders from time to time party thereto (such lenders, the “Prepetition Term Loan Lenders” and, together with the Prepetition Term Loan Agent, the “Prepetition Term Loan Secured Parties”) in the original principal amount of \$40 million. The Prepetition Term Loans mature on August 31, 2027, and bear interest equal to the sum of (a) the greater of (i) Prime Rate or (ii) 3.50%, and (b) 3.75%. Under the Prepetition Term Loan Documents, Eiger is required to make monthly interest-only payments, with monthly payments of principal and interest due to begin on July 1, 2027. All remaining principal and interest is due on the maturity date. Under the Prepetition Term Loan Documents, Eiger is subject to a minimum liquidity requirement of a cash balance of not less than five percent of the aggregate principal amount of the Prepetition Term Loans funded and outstanding at all times (the “Minimum Liquidity Covenant”).

14. The Prepetition Term Loans are secured by substantially all real, personal, and mixed property of Eiger, including equity interests.

B. Trade and Related Debt

15. As of the Petition Date, the Debtors estimate that they have approximately \$4.7 million in obligations to trade and other general unsecured creditors. These amounts consist primarily of accounts payable to various trade creditors and other third-party service providers as of the Petition Date.

C. Equity

16. Eiger's equity is publicly traded, with Eiger authorized to issue 10 million shares of preferred stock and 300 million shares of common stock. As of January 5, 2024, Eiger had no preferred shares issued or outstanding and approximately 1.5 million shares of common stock issued and outstanding.

Debtors' Urgent Need for Use of Cash Collateral

17. As set forth in the Rundell Declaration, the Debtors urgently need to use the Cash Collateral for both the ongoing operation of their business and to fund the administration of these chapter 11 cases. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. Specifically, the Debtors are the sole source for a vital drug that treats ultra-rare, fatal diseases characterized by premature aging in children. To continue an uninterrupted supply-chain for Zokinvy, the Debtors are responsible for the payment of all operational expenses, including, but not limited to, employee wages, taxes, insurance, vendors or other general unsecured creditors creditor costs, repair costs, and other capital expenditure costs, and failure to pay these obligations could affect the ability of the Debtors to continue doing business.

18. The Debtors estimate that they have approximately \$9.9 million in cash on hand as of the Petition Date. Without access to these funds, the Debtors will not have sufficient liquidity

to pay the costs highlighted above or pay the administrative expenses of these chapter 11 cases. All of the foregoing expenditures are necessary to preserve the value of the Debtors' estates as a going concern.

19. Without immediate access to the Cash Collateral, the Debtors would be forced to cease operations and dismiss these chapter 11 cases, which would result in the loss of virtually all of the Debtors' income and cause irreparable harm to the Debtors' estates. Such an outcome would also deny creditors with the right to fair and impartial distribution of the Debtors' assets in accordance with the principles of bankruptcy law. Additionally, absent interim relief, the Debtors will be unable to, among other things, provide vital drugs, fund payroll for employees, satisfy their other working capital and general corporate requirements, and continue operating their business. Any delay in the Debtors' ability to access cash collateral beyond such date would irreparably harm the Debtors and their estates. Accordingly, the Debtors respectfully request that the Court authorize the use of Cash Collateral on the terms and conditions set forth in the Interim Order.

Basis for Relief Requested

20. A debtor's use of property of the estate, including cash collateral, is governed by section 363 of the Bankruptcy Code, which provides, in pertinent part, as follows:

If the business of the debtor is authorized to be operated under section . . . 1108 . . . of [the Bankruptcy Code] and unless the court orders otherwise, the [debtor] may . . . use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1). A debtor may use cash collateral (a) with the consent of the secured party or (b) without the consent of the secured party if the court, after notice and a hearing, authorizes the debtor to use cash collateral in accordance with the provisions of section 363 of the Bankruptcy Code.

21. Section 363 of the Bankruptcy Code further provides that a debtor must “provide adequate protection” of the secured party’s interest in the property against any diminution in value of such interest resulting from the debtor’s use of the property. *See* 11 U.S.C. § 363(3). Notably, the Bankruptcy Code does not define “adequate protection.” Instead, section 361 of the Bankruptcy Code provides a non-exhaustive list of examples of adequate protection, including additional or replacement liens and other relief that will “result in the realization by such [secured party] of the indubitable equivalent of such entity’s interest in such property.” *See* 11 U.S.C. § 361. Generally, courts decide what constitutes adequate protection on a case-by-case basis. *See In re Braniff Airways, Inc.*, 783 F.2d 1283, 1286 (5th Cir. 1986); *see also In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); *In re N.J. Affordable Homes Corp.*, No. 05-60442, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) (“The term ‘adequate protection’ is intended to be a flexible concept.”); *In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01 [1] at 361-66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”); *In re Columbia Gas Sys., Inc.*, No. 91-803, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (emphasizing that “the varying analyses and results contained in the . . . slew of cases demonstrate that what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis”).

22. The focus of the adequate protection requirement is to preserve the secured party’s position at the time of the bankruptcy filing and protect the secured party from diminution in the value of its collateral during the reorganization process. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564 (“The whole purpose of adequate protection for a creditor is to insure that the creditor

receives the value for which he bargained prebankruptcy”) (quoting *In re O’Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987)); see also *In re WorldCom, Inc.*, 304 B.R. 611, 618–19 (Bankr. S.D.N.Y. 2004) (“The legislative history for section 361 of the Bankruptcy Code, which sets forth how adequate protection may be provided under section 363, makes clear that the purpose . . . is to insure that the secured creditor receives the value for which the creditor bargained for prior to the debtor’s bankruptcy.”). “However, neither the legislative history nor the Bankruptcy Code require the Court to protect a creditor beyond what was bargained for by the parties.” *In re WorldCom, Inc.*, 304 B.R. at 619.

23. Furthermore, the Bankruptcy Code mandates that a secured party be protected against diminution in the value of its interest in cash collateral only during the period of use. See *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (holding that if there is no diminution in the value of the secured party’s collateral and the debtor can operate profitably postpetition, then the secured creditor is adequately protected against the use of cash collateral); *In re Cont’l Airlines, Inc.*, 146 B.R. 536, 539–40 (Bankr. D. Del. 1992) (noting that a secured party is only entitled to adequate protection to the extent the collateral declined in value); see also *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization.”). The preservation of a debtor’s business as a going concern itself provides “adequate protection” under the Bankruptcy Code. See *In re 495 Cent. Park Ave. Corp.*, 136 B.R. at 631 (noting that whether the value of a debtor’s property will increase as a result of the use of collateral is part of considering whether a party is adequately protected).

24. Here, in the interest of reaching a consensual Interim Order with the Prepetition Term Loan Secured Parties, in addition to implementing a controlled process for the sale of the

Debtors' assets to maximize realizable value, the Debtors have offered as additional adequate protection: (a) replacement liens and security interests on any post-petition property acquired by the Debtors; and (b) an Adequate Protection Superpriority Claim junior to only the Carve Out. Courts in this and other districts have approved similar adequate protection provisions in recent chapter 11 cases. *See, e.g., In re Impel Pharm. Inc.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. Jan. 12, 2024) [ECF No. 149] (authorizing use of cash collateral); *In re Tuesday Morning Corp.*, Case No. 23-90001 (ELM) (Bankr. N.D. Tex. June 16, 2023) [ECF No. 1221] (authorizing limited use of cash collateral); *In re The Pill Club Pharm. Holdings, LLC*, Case No. 23-41090 (ELM) (Bankr. N.D. Tex. May 16, 2023) (authorizing use of cash collateral); *In re J. Hilburn, Inc.*, Case No. 20-31308 (HDH) (Bankr. N.D. Tex. May 22, 2020) [ECF No. 100] (same). In light of the adequate protection offered herein, the Debtors submit that the Prepetition Term Loan Secured Parties' interests in the Collateral will be protected through the pendency of these chapter 11 cases.

25. The use of Cash Collateral will permit the Debtors to continue operating their business and administer these chapter 11 cases for the benefit of all creditors and other parties in interest. In addition, the Adequate Protection provided for herein is fair and reasonable under the circumstances of these cases. Therefore, the Debtors submit that the terms of the Interim Order and Final Orders are reasonable and in the best interests of the Debtors' estates and creditors and request that the Court authorize the use of Cash Collateral according to the terms set forth herein.

D. Modification of the Automatic Stay Is Warranted.

26. The relief requested herein contemplates a modification of the automatic stay to (a) permit the Debtors to grant the security interests, liens, and superpriority claims described above and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens and (b) as otherwise, and to the extent necessary, to effectuate the terms

of the Interim Order. Notably, the exercise of remedies (including remedies with respect to prepetition claims and collateral) will be subject to ten (10) business days' notice to allow the Debtors to cure or seek other relief. Under these circumstances, the Debtors believe that the extent of the modifications to the automatic stay under the Interim Order is reasonable and should be approved.

E. Immediate Access to Cash Collateral Should Be Approved.

27. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code if, as here, interim relief is “necessary to avoid immediate and irreparable harm to the estate pending a final hearing.” Fed. R. Bankr. P. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, courts generally apply the same business judgment standard applicable to other business decisions. *See In re Ames Dep’t Stores*, 115 B.R. at 36.

28. The Debtors are responsible for the payment of all operational expenses, including, but not limited to, employee wages, taxes, insurance, vendors or other general unsecured creditors creditor costs, repair costs, and other capital expenditure costs, and failure to pay these obligations could affect the ability of the Debtors to continue doing business. Rundell Dec. ¶ 5. Thus, absent authority to immediately use Cash Collateral, the Debtors could be forced to undertake drastic measures, such as shuttering operations, which would result in the loss of virtually all of the Debtors' income and cause irreparable harm to the Debtors' estates. Rundell Dec. ¶ 5. The Debtors estimate that they have approximately \$9.9 million in cash on hand as of the Petition Date. Rundell Dec. ¶ 6. Without access to these funds, the Debtors will not have sufficient liquidity to pay the costs highlighted above or pay the administrative expenses of these chapter 11 cases.

Rundell Dec. ¶ 6. All of the foregoing expenditures are necessary to preserve the value of the Debtors' estates as a going concern. Rundell Dec. ¶ 6.

29. As set forth in the Budget, the Debtors expect that they will need approximately \$3.1 million during the interim period and approximately \$12.2 million through the course of these cases. Rundell Dec. ¶ 7. The Budget assumes only the most essential payments are made to ensure the continued delivery of vital drugs, to preserve the value of the Debtors' assets and to conduct a value maximizing sale process. Rundell Dec. ¶ 7. Prior the Petition Date, the Debtors made the determination to reduce their workforce to a skeletal staff to further limit costs during the pendency of these chapter 11 cases. Rundell Dec. ¶ 7. Each disbursement was analyzed to ensure it was value accretive to the Debtors' assets as a whole and/or necessary to ensure operational stability during the pendency of these cases. Rundell Dec. ¶ 7. In addition, after consulting with Prepetition Term Loan Agent on a draft budget, the Debtors reduced the essential payments reflected in the budget by \$1.7 million. Rundell Dec. ¶ 7.

30. Here, the Debtors and their estates will suffer immediate and irreparable harm if the interim relief requested herein is not granted promptly. The Debtors have an immediate need for continued access to cash collateral, and any disruption in the use of cash collateral would cause a severe decrease in the value of the Debtors' estates by preventing the Debtors from making necessary disbursements necessary and otherwise operating in the ordinary course. Accordingly, for the reasons set forth above, prompt entry of the Interim Order is necessary to avoid the value destruction that would otherwise result in immediate and irreparable harm to the Debtors' estates.

Emergency Consideration

31. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable

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

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

32. 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

33. 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

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

[Remainder of page intentionally left blank.]

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

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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*Proposed 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

**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 (I) AUTHORIZING THE
DEBTORS TO USE CASH COLLATERAL; (II) GRANTING
ADEQUATE PROTECTION TO PREPETITION TERM LOAN
SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND
(IV) SCHEDULING A FINAL HEARING**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (this “Order”),

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.

pursuant to sections 105, 361, 362, 363, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Rules 2002-1, 4001-1 and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Northern District of Texas (the “Local Rules”), and the Procedures for Complex Chapter 11 Cases in the Northern District of Texas seeking, among other things:

- (a) authorization for the Debtors, pursuant to sections 105, 361, 362, 363, 503 and 507 of the Bankruptcy Code, to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, in accordance with the terms of this interim order (together with all annexes and exhibits hereto, this “Interim Order”) and (ii) grant adequate protection to the Prepetition Term Loan Secured Parties (as defined below) as set forth herein;
- (b) modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;
- (c) subject to entry of a Final Order (as defined below), the waiver of all rights to surcharge any Prepetition Collateral or Collateral (each as defined herein) under section 506(c) of the Bankruptcy Code;
- (d) subject to entry of a Final Order, for the “equities of the case” exception under section 552(b) of the Bankruptcy Code to not apply to any of the Prepetition Term Loan Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law;
- (e) that this Court schedule a final hearing (the “Final Hearing”) within thirty-five (35) calendar days after the Petition Date to consider entry of a final order granting the relief requested in the Motion on a final basis (the “Final Order”);
- (f) waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- (g) granting related relief;

and a hearing (the “Interim Hearing”) having been held by the Court on April 3, 2024, to consider the relief requested in the Motion; pursuant to Bankruptcy Rule 4001 and Local Rule 2002-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in

the Motion; and the Court having considered the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), the Rundell Declaration, the initial Approved Budget (as defined herein) attached hereto as **Exhibit 1** (the “Initial Approved Budget”), the 13-week budget attached hereto as **Exhibit 2**, offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing; and the Court having considered the relief requested in the Motion, and it appearing to the Court that granting the interim relief sought in the Motion on the terms and conditions herein contained is necessary and essential to avoid irreparable harm to the Debtors and their estates and that authorizing the Debtors to use Cash Collateral as contemplated herein will enable the Debtors to preserve the value of the Debtors’ business and assets and that such relief is fair and reasonable and that entry of this Interim Order is in the best interest of the Debtors and their estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. ***Petition Date.*** On April 1, 2024 (the “Petition Date”), the Debtors commenced these Chapter 11 Cases by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Court”).

B. ***Debtors in Possession.*** The Debtors have continued with the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

C. ***Jurisdiction and Venue.*** The Court has jurisdiction over the Motion, these Chapter 11 Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. Venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. § 1408. This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. ***Committee.*** As of the date hereof, no official committee of unsecured creditors has been appointed in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the “Committee”).

E. ***Debtors’ Stipulations.*** Subject only to the rights of parties in interest specifically set forth in paragraph 18 of this Interim Order (and subject to the limitations therein contained in such paragraph), the Debtors admit, stipulate and agree that (collectively, paragraphs E.1 through E.4 below are referred to herein as the “Debtors’ Stipulations”):

1. ***Prepetition Secured Debt.***

(a) ***Prepetition Term Loan Secured Indebtedness.*** Under that certain Loan and Security Agreement, dated as of June 1, 2022 (as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Credit Agreement” and, together with all other documentation executed in connection therewith, including without limitation, the Loan Documents (as defined in the Prepetition Term Loan Credit Agreement) executed in connection therewith, as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Documents”), among Eiger BioPharmaceuticals, Inc. (“Eiger”), EB Pharma, LLC (“EB Pharma”), and EBPI Merger, Inc. (“EBPI Merger”, and, together with Eiger and EB Pharma, the “Borrower”), Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors

thereto, the “Prepetition Term Loan Agent”), the subsidiary guarantors from time to time party thereto (the “Prepetition Term Loan Guarantors”), and the lenders from time to time party thereto (such lenders, the “Prepetition Term Loan Lenders” and, together with the Prepetition Term Loan Agent, the “Prepetition Term Loan Secured Parties”), the Borrower borrowed, and was liable to, and the Prepetition Term Loan Guarantors, as applicable, unconditionally and irrevocably guaranteed for the benefit of, the Prepetition Term Loan Secured Parties pursuant to the Prepetition Term Loan Documents, without offset, contest, objection, recovery, recoupment, reduction, defense, counterclaim, subordination, recharacterization, disgorgement, disallowance, avoidance, challenge, or any other claim or Cause of Action⁴ of any kind, (x) an aggregate principal amount of not less than \$41,685,030.30 of Term A Loans (as defined in the Prepetition Term Loan Credit Agreement) (the “Prepetition Term Loans”), subject to the relative rights, rankings, and priorities set forth in the Prepetition Term Loan Credit Agreement, plus (y) all accrued and unpaid interest (including capitalized interest) with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accounts’, consultants’, appraisers’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Term Loan Credit Agreement) owing under or in connection with the Prepetition Term

⁴ As used in this Interim Order, “Causes of Action” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, or offset of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the entry of this Interim Order, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law.

Loan Documents (clauses (x) and (y), collectively, the “Prepetition Term Loan Secured Indebtedness”).

(b) *Prepetition Term Loan Secured Indebtedness Liens and Security.*

Pursuant to the applicable Prepetition Term Loan Documents, the Prepetition Term Loan Secured Indebtedness is secured, in favor of the Prepetition Term Loan Secured Parties, by valid, binding, properly perfected, continuing and enforceable security interests in and liens on all “Collateral” as defined in the Prepetition Term Loan Credit Agreement (as amended or modified, such security interests and liens, the “Prepetition Term Loan Liens” and such collateral, the “Prepetition Collateral”), subject to the relative rights, rankings, and priorities of the Term A Loan set forth in the Prepetition Term Loan Credit Agreement.

(c) *Validity, Perfection, and Priority of Prepetition Term Loan Liens and Prepetition Term Loan Secured Indebtedness.* The Debtors acknowledge and agree that, in each case as of the Petition Date: (i) the Prepetition Term Loan Liens encumber all of the Prepetition Collateral, as the same existed on the Petition Date; (ii) the Prepetition Term Loan Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral; (iii) the Prepetition Term Loan Liens were granted to or for the benefit of the Prepetition Term Loan Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; (iv) the Prepetition Term Loan Secured Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors and is enforceable in accordance with the terms of the Prepetition Term Loan Documents; (v) the Prepetition Term Loan Liens are subject

and subordinate only to Permitted Prior Liens;⁵ (vi) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Loan Liens or Prepetition Term Loan Secured Indebtedness exist, and no portion of the Prepetition Term Loan Liens or Prepetition Term Loan Secured Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law or regulation, including in any Successor Cases (as defined below); and (vii) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Term Loan Secured Parties or any of their affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees in such capacity arising out of, based upon, or related to the Prepetition Term Loan Documents, the Prepetition Term Loan Secured Indebtedness, or the Prepetition Term Loan Liens.

(d) *No Control.* None of the Prepetition Term Loan Secured Parties

(i) control the Debtors or their properties or operations, have authority to determine the manner in

⁵ As used herein, “Permitted Prior Liens” shall mean any legal, valid, binding, perfected, enforceable liens on or security interests in the Prepetition Collateral in existence as of the Petition Date, or which are perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, in each case which have priority over the Prepetition Term Loan Liens and that are not subject to avoidance, recharacterization, offset, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law or other challenge.

which any Debtors' operations are conducted, or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from this Interim Order or the Prepetition Term Loan Documents, (ii) owe any fiduciary duty to the Debtors, their creditors, or estates or (iii) are deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any similar federal or state statute).

2. **Cash Collateral.** All of the Debtors' cash constitutes cash collateral of the Prepetition Term Loan Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral"), including amounts generated by the collection of Prepetition Collateral, including but not limited to accounts receivable, all other cash proceeds of the Prepetition Collateral and amounts now or hereafter held in any of the Debtors' banking, checking, or other deposit accounts as of the Petition Date or amounts deposited or transferred into the Debtors' banking, checking, or deposit accounts after the Petition Date.

3. **Bank Accounts.** The Debtors acknowledge and agree that, as of the Petition Date, the Debtors do not maintain any bank accounts other than those accounts covered by any motion or order authorizing the Debtors to continue to use the Debtors' existing cash management system.

F. **Adequate Protection.** Pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, the Prepetition Term Loan Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any diminution in value of their interests in the Prepetition Collateral resulting from, among other things, the Carve Out, the use of Cash Collateral, the use, sale or lease of any of the Prepetition

Collateral, the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and/or for any other reason for which adequate protection may be granted under the Bankruptcy Code (“Diminution in Value”). The foregoing shall not, nor shall any provision of this Interim Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Collateral (including Cash Collateral) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration, the Rundell Declaration, and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral, including Cash Collateral, are fair and reasonable and reflect the Debtors’ prudent business judgment.

G. ***Need to Use Cash Collateral.*** The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and have an immediate and critical need to obtain use of the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget (as defined below) and this Interim Order) in order to, among other things, (A) pay certain adequate protection payments; (B) pay the costs of administration of their estates, including the payment of professional fees and expenses; and (C) to satisfy other working capital and general corporate needs of the Debtors. Access to liquidity through the use of the Cash Collateral, consistent with the Approved Budget and this Interim Order through the date of entry of the Final Order, is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this Interim Order, the Debtors’ estates and reorganization efforts will be immediately and irreparably harmed.

H. ***Notice.*** In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and Local Rule 2002-1, adequate notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors to the necessary notice parties. Under the

circumstances, the notice given by the Debtors of (and as described in) the Motion, the relief requested herein, and the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and Local Rule 2002-1.

I. ***Relief Essential; Best Interest.*** The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The relief requested in the Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued operation of the Debtors' businesses, the administration of these Chapter 11 Cases, and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein. The terms of the Order and the use of Cash Collateral are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with the Debtors' fiduciary duties.

J. ***Arm's Length, Good Faith Negotiations.*** The terms of this Interim Order were negotiated in good faith and at arm's length between the Debtors and the Prepetition Term Loan Secured Parties. The Prepetition Term Loan Secured Parties have acted without negligence, in good faith and not in violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral on the terms set forth herein, including in respect of the granting of adequate protection as provided for herein and all documents and transactions related thereto.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. ***Motion Granted.*** The Motion is granted on an interim basis as set forth herein, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2. ***Objections Overruled.*** Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled and all reservations of rights included therein, are hereby denied and overruled in all respects.

3. ***Authorization to Use Cash Collateral; Budget.***

(a) ***Authorization.*** Subject to the terms and conditions of this Interim Order, the Court hereby authorizes the Debtors' use of Cash Collateral during the period beginning with the Petition Date and ending on a Termination Date (as defined below), in each case, solely and exclusively in a manner consistent with and not in violation of this Interim Order and the Approved Budget and for no other purposes. Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 8(a) and the Carve Out, the Debtors' right to use Cash Collateral shall terminate on the Termination Date.

(b) ***Approved Budget; Budget Period.*** As used in this Interim Order: (i) "Approved Budget" means the budget attached hereto as **Exhibit 1**, as such Approved Budget may be amended, replaced, supplemented, or otherwise modified or extended from time to time by the Debtors with the prior written consent of the Prepetition Term Loan Agent as set forth in this paragraph; and (ii) "Budget Period" means the first four full weeks and on a four-week (4-week) trailing period thereafter set forth in the Approved Budget in effect at such time.

(c) ***Budget Testing.*** Except as otherwise provided herein, the Debtors may use Cash Collateral in accordance with the Approved Budget, subject to Permitted Variances (as defined below). Permitted Variances for each Approved Budget shall be tested by no later than

the fifth Friday following the Petition Date and each fourth Friday thereafter (each such date, a “Testing Date”). On or before 5:00 p.m. (prevailing Central time) on each Testing Date, the Debtors shall prepare and deliver to the Prepetition Term Loan Agent and its advisors, in form and substance reasonably acceptable to the Prepetition Term Loan Agent, a variance report (the “Variance Report”) setting forth for the prior four-week period the Debtors’ actual disbursements on an aggregate basis (the “Actual Disbursements”).

(d) *Professional Fee Reserve Account.* Upon entry of this Interim Order, the Debtors are authorized and directed to fund a segregated account of the Debtors designated by the Debtors for such purpose for the sole purpose of reserving for and paying unpaid Allowed Professional Fees (as defined in paragraph 5(a) hereof) (the “Professional Fee Reserve Account”). The Professional Fee Reserve Account shall be held for the benefit of Estate Professionals (defined below) and shall not be property of the Debtors’ estates. On a weekly basis and solely up to the amounts set forth for Estate Professionals for each such week in the Approved Budget, the Debtors shall fund the Professional Fee Reserve Account (such amounts, the “Reserve Amounts”), and such Reserve Amounts may be applied from time to time to pay the Allowed Professional Fees prior to any and all other claims. If, after payment in full of all Reserve Amounts on account of Allowed Professional Fees, the Professional Fee Reserve Account has not been reduced to zero, all remaining funds shall be returned to the Debtors for distribution in accordance with a further order of this Court. For the avoidance of doubt, the Debtors’ obligation to pay Allowed Professional Fees shall not be limited or deemed limited to funds held in the Professional Fee Reserve Account.

(e) *Permitted Variances.* The Debtors shall not permit, during any Budget Period, the Debtors’ Actual Disbursements on an aggregate basis for such four-week

period to be more than 120% of the projected disbursements in the aggregate as set forth in the Approved Budget over such time (such deviations, the “Permitted Variances”); *provided* that, any positive Permitted Variances may be carried over to a subsequent Budget Period to offset any negative Permitted Variance for such Budget Period. For the avoidance of doubt, the cash disbursements considered for determining compliance with the Permitted Variances shall exclude the Debtors’ disbursements in respect of (x) the restructuring professional fees of the Debtors, any Committee, and the Prepetition Term Loan Secured Parties on account of professional fees under paragraph 4(d) of this Interim Order and (y) the fees of the Office of the United States Trustee (the “U.S. Trustee”); *provided* that the aggregate payments on account of such restructuring professional fees and U.S. Trustee fees shall not exceed the aggregate amounts for such fees provided in the Approved Budget through the applicable budget period.

(f) *Update of Budget.* By no later than 5:00 p.m. (prevailing Central Time) on the Friday following each Budget Period (or as otherwise consented to by the Prepetition Term Loan Agent), the Debtors shall deliver to the Prepetition Term Loan Advisors (as defined below) an updated budget, consistent with the form and level of detail set forth in the Initial Budget (each, a “Proposed Budget”), and each Proposed Budget shall constitute the “Budget” for purposes of this Interim Order upon written approval delivered by the Prepetition Term Loan Advisors or the Prepetition Term Loan Agent (email being sufficient); *provided*, however, that, following the consummation of any sale of the Debtors’ assets in accordance with the Bid Procedures, the Budget Period shall reset and a new Proposed Budget shall be delivered to the Prepetition Term Loan Advisors in accordance with this paragraph. In the absence of such approval, the prior Approved Budget shall remain in full force and effect; *provided, however*, in the event the Prepetition Term Loan Agent does not approve a Proposed Budget within fifteen (15) business days of its delivery,

the Debtors may request an emergency hearing with the Court (but on not less than five (5) business days' written notice to the Prepetition Term Loan Agent) to seek Court approval of the Proposed Budget for purposes of this Interim Order. When required under the terms of this Interim Order, the consent or approval of the Prepetition Term Loan Agent may be communicated via email to the Debtors or their professionals by the Prepetition Term Loan Advisors.

4. *Adequate Protection for the Prepetition Term Loan Secured Parties.*

Subject only to the Carve Out and the terms of this Interim Order, pursuant to sections 361, 362, and 363(e) of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of the interests of the Prepetition Term Loan Secured Parties in the Prepetition Collateral (including Cash Collateral), in each case solely to the extent of any Diminution in Value of such interests, the Prepetition Term Loan Agent, for the benefit of itself and the other Prepetition Term Loan Secured Parties, are hereby granted the following:

(a) *Adequate Protection Liens.* Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control by the Prepetition Term Loan Agent or any other party, the Debtors are authorized to grant, and hereby are deemed to have granted, to the Prepetition Term Loan Agent, for the benefit of itself and the other Prepetition Term Loan Secured Parties, valid, binding, continuing, enforceable, fully-perfected, nonavoidable, first-priority senior (except as otherwise provided in this paragraph below with respect to the Permitted Prior Liens (as defined below) and the Carve Out), additional and replacement security interests in and liens on (all such liens and security interests, the "Adequate

Protection Liens”) (i) the Prepetition Collateral and (ii) all of the Debtors’ now-owned and hereafter-acquired real and personal property, assets and rights, including all prepetition property and post-petition property of the Debtors of any kind or nature, wherever located, whether encumbered or unencumbered, including, without limitation, a 100% equity pledge of any first-tier foreign subsidiaries and any unencumbered assets of the Debtors, if any, and all prepetition property and post-petition property of the Debtors’ estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all equipment, goods, accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date), insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements, all owned real estate, real property leaseholds, fixtures, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, all commercial tort claims, and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from the Debtors to a non-Debtor affiliate incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing (all property identified in this paragraph being collectively referred to as the “Collateral”), subject only to the Permitted Prior Liens and the Carve Out, in which case the Adequate Protection Liens shall be immediately junior in priority to such Permitted Prior Liens and to the Carve Out; notwithstanding the foregoing, the Collateral shall exclude the Professional Fee Reserve Account (other than with respect to the residual interest therein provided in this Interim Order) and all

claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code (other than claims and causes of action arising under section 549 of the Bankruptcy Code) (the “Avoidance Actions”), but, subject to entry of a Final Order, shall include any and all proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Action (“Avoidance Proceeds”).

(b) *Adequate Protection Superpriority Claims.* As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Secured Parties, allowed superpriority administrative expense claims in these Chapter 11 Cases ahead of and senior to any and all other administrative expense claims in these Chapter 11 Cases to the extent of any Diminution in Value (the “Adequate Protection Superpriority Claims”), junior only to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims shall not be junior or *pari passu* to any other administrative claims against the Debtors and shall have priority over all now or hereinafter incurred administrative expense claims against the Debtors, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code; *provided* that any recovery against Avoidance Proceeds shall be subject to entry of a Final Order.

(c) *Reporting Requirements.* As additional adequate protection to the Prepetition Term Loan Secured Parties, the Debtors shall use reasonable best efforts to comply with those reporting requirements set forth in the Prepetition Term Loan Credit Agreement in a manner consistent with prior practices (other than the reporting requirements pursuant to

Section 6.2(a)(ii), (v) of the Prepetition Term Loan Credit Agreement) and shall further provide, subject to any applicable limitations set forth below, to (i) the Prepetition Term Loan Agent and (ii) the Prepetition Term Loan Advisors:

- (i) weekly (or with such other frequency as may be agreed to between the Debtors and the Prepetition Term Loan Agent) calls with the Prepetition Term Loan Agent and the Prepetition Term Loan Advisors with respect to (a) business updates, (b) the Debtors' discussions with any potential financing party, strategic partner, or acquirer, and (c) the status of any material litigation, litigation claims, and other claims, and (d) any other updates in form and scope reasonably agreed by the Debtors and the Prepetition Term Loan Agent;
 - (ii) at the times specified in paragraph 3(c) hereof, the Variance Report required by paragraph 3(c) hereof;
 - (iii) timely delivery of each Proposed Budget as set forth in this Interim Order;
 - (iv) promptly, all written demands or claims related to or asserting any liens in respect of property or assets of the Debtors (including liens imposed by law, such as landlord's, vendors', suppliers', carriers', warehousemen's, repairmen's, construction contractors', workers' and mechanics' liens and other similar liens) if the amount demanded or claimed exceeds \$50,000 individually or \$500,000 in the aggregate;
 - (v) promptly upon request after the end of each prior month (a) net receivables/payables due to third parties, (b) account payables and payments, and (c) accounts payable aging; and
 - (vi) as soon as reasonably practicable after written request from the Prepetition Term Loan Advisors, the Debtors will provide the Prepetition Term Loan Agent and the Prepetition Term Loan Advisors with reasonable access to any consultant, turnaround management, broker or financial advisory firm retained by the Debtors in these Chapter 11 Cases.
- (d) *Other Covenants.* The Debtors shall maintain their cash management arrangements in a manner consistent with this Court's order(s) granting the Debtors' cash management motion unless otherwise consented to by the Prepetition Term Loan Lenders.

The Debtors shall continue ordinary course practices to maintain good standing under the jurisdiction in which each Debtor and each of its subsidiaries is incorporated or organized and continue to operate the business in the ordinary course of business customary in the normal course of ordinary operations consistent with past practice taking into account these Chapter 11 Cases and the funding available under the Approved Budget unless otherwise consented to by the Prepetition Term Loan Lenders. The Debtors shall continue to comply in all respects with those covenants contained in the Prepetition Term Loan Credit Agreement, in each case as in effect on the Petition Date, solely with respect to the preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights, in each case, that are material to the conduct of the business and the maintenance of properties and insurance. The Debtors shall cooperate in good faith and coordinate with the Prepetition Term Loan Secured Parties with respect to any transactions to be taken in these Chapter 11 Cases.

(e) *Miscellaneous.*

- (i) Except for (i) the Carve Out and (ii) as otherwise provided in paragraph 4, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties pursuant to paragraph 4 of this Interim Order shall not be subject, junior, or *pari passu*, to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim

under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise in these Chapter 11 Cases or any Successor Case.

- (ii) The Adequate Protection Liens are deemed automatically perfected as of the Petition Date without the necessity of recording same and without further notice or order. The Prepetition Term Loan Agent shall not be required to file any UCC financing statements or other instruments (or to take any other action) to perfect such Adequate Protection Liens.
- (iii) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified to the extent necessary to permit the Prepetition Term Loan Agent to perform any act authorized or permitted under or by virtue of this Interim Order including, without limitation, to take any act to create, validate, evidence, attach or perfect any of the Adequate Protection Liens and to receive any payments expressly authorized by this Interim Order with respect to the Prepetition Term Loan Secured Indebtedness or adequate protection.

(f) *Right to Seek Additional Adequate Protection.* This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Term Loan Secured Parties to request further or alternative forms of

adequate protection at any time or the rights of the Debtors or any other party to contest such request. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Term Loan Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during these Chapter 11 Cases or any Successor Case. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Term Loan Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Term Loan Secured Parties against any Diminution in Value of their interests in the Prepetition Collateral (including the Cash Collateral).

5. ***Carve Out.***

(a) Notwithstanding anything to the contrary herein, the Debtors' obligations to the Prepetition Term Loan Secured Parties, and the liens, security interests and superpriority claims granted by this Interim Order or under the Prepetition Term Loan Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (a) the payment of unpaid fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (c) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals"), and any official Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Estate Professionals") at any time before the delivery by the Prepetition Term Loan Agent of a Carve-Out Trigger Notice (defined

below) and without regard to whether such fees and expenses are provided for in any Approved Budget or were invoiced after the Carve-Out Trigger Notice Date (the amounts set forth in this clause (c) being the “Pre Carve-Out Trigger Notice Cap”); and (d) the Allowed Professional Fees of Debtor Professionals in an aggregate amount not to exceed \$500,000, less the amount of any retainer held by such Estate Professional and not previously returned or applied to fees and expenses, incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, (the amount set forth in this clause (d) being the “Debtor Post Carve-Out Trigger Notice Cap”); (e) Allowed Professional Fees of Committee Professionals in an aggregate amount not to exceed \$75,000 incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court (the amount set forth in this clause (e) being the “Committee Post Carve-Out Trigger Notice Cap” and together with the Debtor Post Carve-Out Trigger Notice Cap, such amount, the “Post Carve-Out Trigger Notice Cap” and the Pre Carve-Out Trigger Notice Cap together with the Post Carve-Out Trigger Notice Cap and the amounts set forth in clauses (a) and (b), the “Carve-Out Cap”) (the foregoing clauses (a) through (e), collectively, the “Carve-Out”). The term “Carve-Out Trigger Notice” shall mean a written notice stating that the Post-Carve-Out Trigger Notice Cap has been invoked, delivered by hard copy or email by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to lead bankruptcy counsel for the Debtors, the U.S. Trustee, Prepetition Term Loan Secured Parties, and counsel to the Committee, if any, which notice may be delivered following the occurrence and during the continued existence of a Termination Event (as defined herein) under

the terms of this Interim Order. The term “Carve-Out Trigger Notice Date” shall mean the day on which a Carve-Out Trigger Notice is delivered by the Prepetition Term Loan Agent or Prepetition Term Loan Advisors, as applicable. On the Carve-Out Trigger Notice Date, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to transfer cash in an amount equal to the Carve-Out Cap (which shall be determined by the applicable Estate Professional in its reasonable discretion based on the amount of then-unpaid Allowed Professional Fees plus a reasonable estimate of fees and expenses not yet allowed) less any amount then held in the Professional Fee Reserve Account to the Professional Fee Reserve Account.

(b) Immediately following receipt of a Carve-Out Trigger Notice, and prior to the payment of any Prepetition Term Loan Secured Indebtedness or Adequate Protection Superpriority Claims, Bid Protections, or Adequate Protection Payments, the Debtors shall be required to deposit into the Professional Fee Reserve Account cash in an amount equal to the difference between the Carve-Out Cap and the balance held in the Professional Fee Reserve Account as of the Carve-out Trigger Notice Date. Notwithstanding anything to the contrary herein or in the Prepetition Term Loan Documents, following delivery of a Carve-Out Trigger Notice, the Prepetition Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Professional Fee Reserve Account has been fully funded as permitted above in an amount equal to all applicable obligations benefitting from the Carve-Out. Any payment or reimbursement made to any Estate Professional in respect of any Allowed Professional Fees prior to the delivery of the Carve-Out Trigger Notice shall not reduce the Carve-Out.

(c) The Debtors shall use funds held in the Professional Fee Reserve Account to pay Estate Professional fees as they become allowed and payable pursuant to interim

or final orders from the Court; provided, that the Debtors' obligations to pay the allowed fees and expenses of the Estate Professionals shall not be limited or deemed limited to funds held in the Professional Fee Reserve Account. The amounts in the Professional Fee Reserve Account shall be available only to satisfy Allowed Professional Fees and other amounts included in the Carve-Out until such amounts are paid in full. Notwithstanding anything to the contrary herein, (i) the failure of the Professional Fee Reserve Account to satisfy in full the amount set forth in the Carve-Out shall not affect the priority of the Carve-Out and (ii) in no way shall the Carve-Out, the Professional Fee Reserve Account, or any Approved Budget be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (whether by interim order, final order, or otherwise). All funds in the Professional Fee Reserve Account shall be used first to pay all obligations benefitting from the Pre Carve-Out Trigger Notice Cap, until paid in full, and then the obligations benefitting from the Post Carve-Out Trigger Notice Cap. The amount in the Professional Fee Reserve Account shall be reduced on a dollar-for-dollar basis for Allowed Professional Fees that are paid after the delivery of the Carve-Out Trigger Notice, and the Professional Fee Reserve Account shall not be replenished for such amounts so paid.

(d) Payments from the Carve-Out shall be subject to any terms and conditions of the engagement agreements and appurtenant orders for the employment of each Estate Professional. The Debtors shall be permitted to pay compensation and reimbursement of expenses incurred prior to a Termination Declaration Date to the extent allowed and payable under sections 330 and 331 of the Bankruptcy Code.

(e) Until such time as the Prepetition Term Loan Secured Indebtedness shall have been indefeasibly paid and satisfied in full in accordance with the Prepetition Term

Loan Documents, any remaining unapplied retainer funds at the conclusion of an Estate Professional's engagement shall be immediately returned to the Prepetition Term Loan Agent. If, after paying all amounts set forth in the definition of Carve-Out, the Professional Fee Reserve Account has not been reduced to zero, all remaining funds in the Professional Fee Reserve Account shall be distributed to the Prepetition Term Loan Agent on account of the Prepetition Term Loans, unless the Prepetition Term Loans have been indefeasibly paid in full in cash.

(f) The Prepetition Term Loan Secured Parties reserve the right to object to the allowance of any fees and expenses, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Except for permitting the funding of the Carve-out as provided herein, the Prepetition Term Loan Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or expenses of any Estate Professionals incurred in connection with the Chapter 11 Cases or any successor case(s) under any chapter of the Bankruptcy Code (a "Successor Case") under any chapter of the Bankruptcy Code, regardless of whether payment of such fees or disbursement has been allowed by the Court. Nothing in this Interim Order or otherwise shall be construed to obligate any of the Prepetition Term Loan Secured Parties in any way to pay compensation to or reimburse expenses of any Estate Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or expense reimbursement.

6. ***Access and Information.*** Upon reasonable prior written notice (as applicable, including via acknowledged email) during normal business hours, the Debtors shall provide the Prepetition Term Loan Secured Parties and the Prepetition Term Loan Advisors with (a) reasonable access to the Debtors' books and records, including all non-privileged records and files of the Debtors pertaining to the Prepetition Collateral and the Collateral and other available

information (including historical information) regarding the Debtors, their property, operations or finances that they shall reasonably request, (b) reasonable access to the Debtors' properties and (c) reasonable access to the Debtors' officers, counsel and financial advisors to discuss the Debtors' affairs, finances, and condition; it being understood that nothing in this paragraph shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

7. **Termination.** Subject to the Remedies Notice Period (as defined below) and paragraphs 5 and 8 of this Interim Order, including if ordered by the Court in accordance with paragraph 8, the Debtors' right to use Cash Collateral pursuant to this Interim Order shall automatically cease without further court proceedings on the Termination Date (as defined herein). As used herein, "Termination Event" means any of the events set forth below, in each case, unless waived or modified with the consent of the Prepetition Term Loan Agent:

(a) The violation of any material term of this Interim Order by the Debtors that is not cured within ten (10) business days of receipt by the Debtors of notice from the Prepetition Term Loan Agent of such default, violation, or breach (which may be provided to the Debtors by email);

(b) Entry of any order modifying, reversing, revoking, staying, rescinding, vacating, or amending this Interim Order without the express written consent of the Prepetition Term Loan Agent;

(c) These Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or the Debtors file any motion, pleading or proceedings (or supports any such motion, pleading or proceeding filed by a third party) seeking or consenting to

the granting of any of the foregoing relief, or any order is entered granting any of the foregoing relief;

(d) Other than with respect to the Bid Protections, and except in connection with a motion for debtor in possession financing or any order entered in connection therewith, in each case, on terms acceptable to the Prepetition Term Loan Agent, the Debtors file any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, any lien or other interest *pari passu* with or senior to any of the Prepetition Term Loan Liens, Adequate Protection Liens or Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties under this Interim Order, or any order of the Court is entered reversing, staying for a period in excess of ten (10) business days, vacating or otherwise amending, supplementing, or modifying this Interim Order in a manner adverse to the Prepetition Term Loan Secured Parties, in each case without the written consent of the Prepetition Term Loan Agent;

(e) The Debtors file any motion, pleading, or proceeding (or support any motion, pleading or proceeding filed by a third party) seeking or consenting to, or an order is entered granting, (i) the invalidation, subordination, or other challenge to the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims or (ii) any relief under sections 506(c) or 552 of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against any of the Prepetition Term Loan Secured Parties, in each case without the written consent of the Prepetition Term Loan Agent;

(f) Other than as expressly permitted hereunder, the Debtors file any motion, pleading or proceeding (or support any motion, pleading or proceeding filed by a third party) seeking or consenting to the granting of, or an order is entered granting, relief which could reasonably be expected to result in a material impairment of the rights or interests of the Prepetition Term Loan Secured Parties (except any motion or other pleading otherwise expressly permitted by this Interim Order) and such motion, pleading, proceeding or order is not withdrawn or vacated within three (3) business days after notice thereof is delivered to the Debtors; and

(g) The failure of the Debtors to meet any of the deadlines (or such later dates as may be approved by the Prepetition Term Loan Agent) set forth on **Exhibit 3** (collectively, the “Milestones”).

8. ***Remedies After a Termination Date.***

(a) Notwithstanding anything contained herein, the Debtors’ authorization to use Cash Collateral hereunder shall automatically terminate on such date (the “Termination Date”) that is, unless otherwise extended with the express written consent of the Prepetition Term Loan Agent, the earliest of (i) the effective date of any chapter 11 plan with respect to the Debtors that is confirmed by the Court and (ii) unless otherwise ordered by the Court, ten (10) business days from date (the “Termination Declaration Date”) on which written notice of the occurrence of any Termination Event is given (which notice may be given by electronic mail or other electronic means) by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to the Debtors’ counsel, counsel to a Committee (if appointed), any other holders of liens on the Collateral, and the U.S. Trustee (the “Termination Declaration” and such period commencing on the Termination Declaration Date and ending ten (10) business days later, which period shall be automatically extended if the Debtors, the Committee (if appointed), or the

U.S. Trustee seeks an emergency hearing as provided in clause (b) below prior to the expiration of such period to enable the Court to rule thereon, the “Remedies Notice Period”); *provided* that until the expiration of the Remedies Notice Period, the Debtors may (a) continue to use Cash Collateral to make payments in respect of expenses reasonably necessary to keep the business of the Debtors operating in accordance with the Approved Budget, (b) contest or cure any alleged Termination Event, (c) to pay professional fees and fund the Professional Fee Reserve Account and (d) seek other relief as provided for in this paragraph 8. For the avoidance of doubt, the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors may provide a Termination Declaration, notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion or notice to, hearing before, or order from the Court.

(b) If a Termination Declaration is delivered as provided above, the Debtors, the Committee (if appointed), and the Prepetition Term Loan Agent hereby consent to an emergency hearing being held before the Court on an expedited basis (if sought by a party in interest) and related motions (if applicable) shall be filed with the Court on at least ten (10) business days’ notice (subject to the Court’s availability) for the purpose (unless the Court orders otherwise) of considering (a) whether a Termination Event has occurred or is continuing and (b) any appropriate relief (including, without limitation, the Debtors’ non-consensual use of Cash Collateral). Unless the Court has determined that a Termination Event has not occurred and/or is not continuing or the Court orders otherwise, the automatic stay, as to all of the Prepetition Term Loan Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the Prepetition Term Loan Agent and the other Prepetition Term Loan Secured Parties shall be permitted to exercise all remedies set forth herein and in the Prepetition Term Loan

Documents and as otherwise available at law or in equity without further order of or application or motion to this Court.

(c) Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing on any request by the Debtors or other party in interest to re-impose or continue the automatic stay under Bankruptcy Code section 362(a), use Cash Collateral, or to obtain any other injunctive relief. Unless otherwise expressly provided, any delay or failure of the Prepetition Term Loan Agent and/or the other Prepetition Term Loan Secured Parties to exercise rights under the Prepetition Term Loan Documents and/or this Interim Order shall not constitute a waiver of their rights hereunder, thereunder, or otherwise. The occurrence of the Termination Date or a Termination Event shall not affect the validity, priority, or enforceability of any and all rights, remedies, benefits, and protections provided to any of the Prepetition Term Loan Secured Parties under this Interim Order, which rights, remedies, benefits, and protections shall survive the Termination Date or the delivery of Termination Declaration.

9. ***Payments Free and Clear.*** Subject in all respects to paragraph 18 of this Interim Order, any and all payments or proceeds remitted to the Prepetition Term Loan Agent, for the benefit of the Prepetition Term Loan Secured Parties pursuant to the provisions of this Interim Order, shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, subject to entry of a Final Order, any such claim or charge arising out of or based on, directly or indirectly, (a) section 506(c) (whether asserted or assessed by, through or on behalf of the Debtors) or (b) section 552(b) of the Bankruptcy Code.

10. ***Limitation on Charging Expenses Against Collateral.*** Except to the extent of the Carve Out, subject to entry of the Final Order, all rights to surcharge the interests of the

Prepetition Term Loan Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in these Chapter 11 Cases.

11. ***Reservation of Rights of the Prepetition Term Loan Secured Parties.*** This Interim Order and the transactions contemplated hereby shall be without prejudice to (a) the rights of any of the Prepetition Term Loan Secured Parties to seek additional or different adequate protection, move to vacate the automatic stay, move for the appointment of a trustee or examiner, move to dismiss or convert these Chapter 11 Cases, or to take any other action in these Chapter 11 Cases and to appear and be heard in any matter raised in these Chapter 11 Cases, or the right of any party in interest from contesting any of the foregoing, and (b) any and all rights, remedies, claims and causes of action which the Prepetition Term Loan Secured Parties may have against any non-Debtor party. For adequate protection purposes, each of the Prepetition Term Loan Secured Parties shall be deemed to have requested relief from the automatic stay and for adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

12. ***Modification of Automatic Stay.*** The Debtors are authorized and directed to perform all acts and to make, execute, and deliver any and all instruments as may be necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Interim Order.

13. ***Survival of Interim Order.*** The provisions of this Interim Order shall be binding upon any trustee appointed during these Chapter 11 Cases or upon a conversion to cases

under chapter 7 of the Bankruptcy Code, and in any Successor Case, and any actions taken in reliance hereof shall survive entry of any order which may be entered converting these Chapter 11 Cases to chapter 7 cases, dismissing these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Collateral or Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this Interim Order, as well as the priorities in payments, liens, and security interests granted pursuant to this Interim Order, shall continue notwithstanding any conversion of these Chapter 11 Cases to chapter 7 cases under the Bankruptcy Code, dismissal of these Chapter 11 Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise. Subject to the provisions and limitations described in paragraph 19 of this Interim Order, the Adequate Protection Payments made pursuant to this Interim Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in these Chapter 11 Cases or any Successor Case.

14. ***No Third-Party Rights.*** Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

15. ***Release.*** Subject to the rights, provisions and limitations set forth in paragraph 19 of this Interim Order and entry of a Final Order, the Debtors shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Term Loan Secured Parties (each in their roles as such), and each of their affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal

advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, agents, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Prepetition Term Loans, the Prepetition Term Loan Liens, the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Documents, or this Interim Order, as applicable, and/or the transactions contemplated hereunder or thereunder, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Term Loan Secured Parties; *provided, however*, that no such parties will be released to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' gross negligence, fraud, or willful misconduct.

16. ***Binding Effect.*** The terms of this Interim Order shall be valid and binding upon the Debtors, all creditors of the Debtors and all other parties in interest from and after the entry of this Interim Order by this Court.

17. ***Reversal, Stay, Modification or Vacatur.*** In the event the provisions of this Interim Order are hereinafter reversed, stayed, modified, or vacated, such reversal, modification,

stay or vacatur shall not affect the rights and priorities of the Prepetition Term Loan Secured Parties granted and in effect pursuant to this Interim Order immediately prior thereto. In other words, notwithstanding any such reversal, stay, modification or vacatur, any indebtedness, obligation or liability incurred by the Debtors pursuant to this Interim Order arising prior to the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Interim Order, including any payments made hereunder or security interests and liens granted herein.

18. ***Reservation of Certain Third-Party Rights and Bar of Challenge and Claims.***

(a) The stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, waivers and releases contained in this Interim Order, including, the Debtors' Stipulations and the release in paragraph 15 (the "Release"), shall be binding upon the Debtors' estates (and all successors of the Debtors) and all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, including a chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases or any Successor Case, responsible party, examiner or other estate representative, except to the extent (a) a party in interest other than any Committee and, for purposes of such exception, solely to the extent such party in interest obtains proper standing and has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules (i) asserting a Challenge (as defined below) on or before the date that is seventy-five (75) calendar days after the entry of this Interim Order or (b) any Committee, and, for purposes

of such exception, solely to the extent such Committee obtains proper standing and has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules asserting a Challenge on or before the date that is sixty (60) days from the date of appointment of such Committee, if appointed within (30) days of the Petition Date, and in any event not more than ninety (90) days of the Petition Date; *provided, however*, that if, prior to the Challenge Period Termination Date, either these Chapter 11 Cases convert to chapter 7 or chapter 11 trustee is appointed in these Chapter 11 Cases or any Successor Cases, then in such case the Challenge Period Termination Date shall be extended solely with respect to the chapter 7 or chapter 11 trustee until the later of the then Challenge Period Termination Date and the date that is thirty (30) days following such conversion or appointment; (ii) seeking to avoid, object to, or otherwise challenge the Debtors' Stipulations or the Release regarding: (A) the validity, enforceability, extent, priority, or perfection of Prepetition Term Loan Liens, including any mortgages or security interests in the Prepetition Collateral; or (B) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Term Loan Secured Indebtedness (any such claim, a "Challenge"); and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter.

(b) Upon the occurrence of the Challenge Period Termination Date without the filing of a Challenge (or if any Challenge is filed and overruled): (i) any and all Challenges by any party (whether on behalf of the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases (as defined below)) shall be deemed to be forever barred; (ii) the Prepetition Term Loan Secured Indebtedness shall constitute allowed secured claims, not subject to counterclaim,

setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in these Chapter 11 Cases and any Successor Cases; (iii) the Prepetition Term Loan Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected liens on the Prepetition Collateral, not subject to recharacterization, subordination, or avoidance; and (iv) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Term Loan Secured Parties' claims, liens, and interests contained in this Interim Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any Successor Cases.

(c) If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other party-in-interest except to the extent that such stipulations and admissions were successfully and expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in these Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any challenges (including a Challenge) with respect to the Prepetition Term Loan Documents, the Prepetition Term Loan Liens, and the Prepetition Term Loan Secured Indebtedness, and a separate order of the Court conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest.

19. ***Limitation on Use of Collateral and Cash Collateral.*** Notwithstanding anything to the contrary set forth in this Interim Order, none of the Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds of any of the foregoing may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (excluding any proceedings contemplated by paragraph 8 hereof but solely to the extent provided in this paragraph 19) (i) against any of the Prepetition Term Loan Secured Parties (in their capacities as such) or any of their affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors in such capacity, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called “lender liability” claims and causes of action, or seeking relief against any of the Prepetition Term Loan Secured Parties or that that would otherwise impair the rights and remedies of the Prepetition Term Loan Secured Parties hereunder, under the Prepetition Term Loan Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed (if any) in these Chapter 11 Cases in connection with the assertion of or joinder in any such claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the Prepetition Term Loan Secured Parties to recover on the Prepetition Collateral or the Collateral or seeking affirmative relief against any of the Prepetition

Term Loan Secured Parties related to the Prepetition Term Loan Secured Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Prepetition Term Loan Secured Indebtedness or the Prepetition Term Loan Liens or security interests in the Prepetition Collateral or the Collateral; or (iii) for monetary, injunctive, or other affirmative relief against any of the Prepetition Term Loan Secured Parties, or with respect to the Prepetition Term Loan Secured Parties' liens on or security interests in the Prepetition Collateral or the Collateral that would impair the ability of any of the Prepetition Term Loan Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Prepetition Term Loan Secured Indebtedness, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including, without limitation, the Prepetition Term Loan Liens) held by or on behalf of each of the Prepetition Term Loan Secured Parties related to the Prepetition Term Loan Secured Indebtedness; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to or in connection with the Prepetition Term Loan Secured Indebtedness or the Prepetition Term Loan Liens, including any cause of action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens or Adequate Protection Liens; (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Term Loan Liens or any other rights or interests of any of the Prepetition Term Loan Secured Parties related to the Prepetition Term Loan Secured Indebtedness or the Prepetition Term Loan Liens; or (e) for monetary, injunctive, or other affirmative relief against any of the Prepetition Term Loan Secured Parties relating in any way to the Prepetition Term Loan Secured

Indebtedness; *provided* that no more than \$25,000 of the proceeds of the Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used solely by any Committee appointed (if any) in these Chapter 11 Cases, if any, solely to investigate (and for no other purpose), prior to the Challenge Period Termination Date, any potential Challenge, including claims, causes of action, adversary proceedings, or other litigation against the Prepetition Term Loan Secured Parties solely concerning the legality, validity, priority, perfection, enforceability or extent of the Prepetition Term Loan Secured Indebtedness and/or the Prepetition Term Loan Liens.

20. ***Enforceability; Waiver of Any Applicable Stay.*** This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062 or 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

21. ***No Waiver for Failure to Seek Relief.*** The failure or delay of the Prepetition Term Loan Secured Parties to seek relief or otherwise exercise any of its rights and remedies under this Order, the Prepetition Term Loan Documents or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the Prepetition Term Loan Secured Parties.

22. ***Proofs of Claim.*** Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, the Prepetition Term Loan Secured Parties shall not be required to file any proof of claim or request for payment of administrative expenses with respect

to any of the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition Term Loan Documents, the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims or prejudice or otherwise adversely affect the Prepetition Term Loan Secured Parties' rights, remedies, powers, or privileges under any of the Prepetition Term Loan Documents, this Interim Order, or applicable law. The Stipulations shall be deemed to constitute a timely filed proof of claim on behalf of each of the Prepetition Term Loan Secured Parties with respect to the Prepetition Term Loan Secured Indebtedness and all related obligations in these Chapter 11 Cases or any Successor Case (as defined herein). Notwithstanding the foregoing, the Prepetition Term Loan Agent, on behalf of itself and the Prepetition Term Loan Secured Parties, is authorized and entitled, but not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or master proof of claim for any claim described herein or otherwise related to any Prepetition Term Loan Secured Indebtedness. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

23. ***Section 552(b) of the Bankruptcy Code.*** Subject to entry of the Final Order, (i) the Prepetition Term Loan Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Term Loan

Secured Parties with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral or the Collateral.

24. ***No Marshaling.*** Subject to entry of the Final Order granting such relief, the Prepetition Term Loan Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral.

25. ***Expense Invoices; Disputes; Indemnification.***

(a) The Debtors’ obligation to pay the professional fees and expenses of the Prepetition Term Loan Agent as provided in paragraph 4(c) of this Interim Order shall not require further Court approval, except as otherwise provided for below.

(b) The professional fees and expenses covered by paragraph 4 of this Interim Order shall be payable without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines; *provided* that copies of invoices for such professional fees, expenses, and disbursements (the “Invoiced Fees”) shall be served by email on counsel to the Debtors (Sidley Austin LLP, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallice (anne.wallice@sidley.com)), the U.S. Trustee, Attn: Elizabeth A. Young (Elizabeth.A.Young@usdoj.gov), and counsel to any Committee (if appointed), who shall have ten (10) calendar days (the “Review Period”) to review and assert any objections thereto. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of these Chapter 11 Cases and shall include (i) summary of the work performed during the relevant compensation period, (ii) the name of, hourly rate (if applicable) of, and number of hours worked by each professional and paraprofessional who worked on the matter during the relevant compensation period, and (iii)

the total fee amount being requested, and such invoice summary shall not be required to contain time entries, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, the Debtors, any Committee, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees. If the parties are unable to reach resolution with respect to the Disputed Invoiced Fees, then the Court may resolve any such issues upon at least ten (10) business days’ prior notice and a hearing. For avoidance of doubt, following the Review Period, the Debtors shall pay in full all Invoiced Fees other than the Disputed Invoiced Fees within 5 days of the date on which the submitting party informs the Debtors by email of the non-Disputed Invoiced Fees.

26. ***Credit Bidding and Sale Provisions.*** Subject to paragraph 18 hereof and entry of the Final Order, and the provisions of section 363(k) of the Bankruptcy Code, the Prepetition Term Loan Agent shall have the right to credit bid (either directly or through one or more acquisition vehicles) up to the full amount of the Prepetition Term Loan Secured Indebtedness, in any sale or sales of all or any portion of the Prepetition Collateral or the Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan; *provided* that any credit bid made by the Prepetition Term Loan Agent must be of higher or better value than the stalking horse bid, if applicable, and any bid protections approved by the Court. Subject to paragraph 18 hereof, no Debtor or Debtors’ affiliate shall object to or support the Prepetition Term Loan Agent or Prepetition Term Loan Secured

Parties' right to credit bid up to the full amount of Prepetition Term Loan Secured Indebtedness, in each case including, without limitation, any accrued interest and expenses, in any sale, as applicable, whether such sale is effectuated through Bankruptcy Code section 363, in a chapter 11 or chapter 7 proceeding, under Bankruptcy Code section 1129, by a chapter 7 or chapter 11 trustee, or otherwise, subject to applicable law.

27. **No Control.** None of the Prepetition Term Loan Secured Parties (i) control the Debtors or their property or operations, have authority to determine the manner in which any Debtors' operations are conducted, or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from this Interim Order or the Prepetition Term Loan Documents, (ii) owe any fiduciary duty to the Debtors, their respective creditors, or estates or (iii) are deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 or any similar federal or state statute).

28. **Headings.** The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

29. **Retention of Jurisdiction.** The Court has and will retain jurisdiction to enforce this Interim Order and with respect to all matters arising from or related to the implementation of this Interim Order.

30. **Notice.** Subject to paragraph 31 below, to the extent notice is required to be given, or documents are required to be delivered, pursuant to this Interim Order, such notice or documents shall be provided as follows: (i) if to the Debtors, to (a) Eiger BioPharmaceuticals, Inc., 2155 Park Boulevard, Palo Alto, California 94036, Attn: James Vollins (jvollins@eigerbio.com);

(b) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallice (anne.wallice@sidley.com); (ii) if to the Prepetition Term Loan Agent or Prepetition Term Loan Secured Parties, to Innovatus Life Sciences Lending Fund I, LP, 777 Third Avenue, 25th Floor, New York New York, Claes Eckstrom (ceckstrom@innovatuscp.com); (iii) if to the Prepetition Term Loan Advisors, to Bradley Arant Boult Cummings LLP, 1221 Broadway, Suite 2400, Nashville, Tennessee 37203, Attn: Roger G. Jones (rjones@bradley.com).

31. ***Final Hearing.*** A Final Hearing to consider the relief requested in the Motion on a final basis shall be held on [●] at [●] (prevailing Central time). Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, notice of the Final Hearing, along with a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order, by first class mail, electronic transmission or other appropriate method of service on (a) the parties who received notice of the Motion, (b) counsel to any Committee and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. Any responses or objections to approval of the Motion on a final basis shall be made in writing, conform to the applicable Bankruptcy Rules, be filed with this Court and served so as to be actually received no later than [●], at 5:00 p.m. (prevailing Central time) by the following parties: (a) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallice (anne.wallice@sidley.com); (b) the Office of the United States Trustee for the Northern District of Texas; (c) counsel to Innovatus Life Sciences Lending Fund I LP, as the Prepetition Term Loan Agent, and (d) proposed counsel to any statutory

committee appointed in these Chapter 11 Cases. If no objections are filed to the Motion, this Court may enter a Final Order without further notice or hearing.

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (*pro hac vice* pending)
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*Proposed Counsel to the Debtors and Debtors
in Possession*

Exhibit 1

Initial Approved Budget

Cash Collateral Budget (Interim)

(\$ in '000s)

Week Ending

	5-Apr	12-Apr	19-Apr	26-Apr	Total
Receipts					
Product Revenue - Zokinvy Product Sales	\$ 500	\$ 2,311	\$ 370	\$ 325	\$ 3,505
Other Receipts (Milestone payments, deposit returns)	-	-	1,440	-	1,440
Total Receipts	\$ 500	\$ 2,311	\$ 1,810	\$ 325	\$ 4,945
Operating Disbursements					
Zokinvy Commercialization Disbursements	\$ -	\$ (133)	\$ (35)	\$ (176)	\$ (345)
R&D / Post-Marketing Disbursements	-	(551)	-	(137)	(688)
Payroll	-	(166)	-	(168)	(334)
Interest Expense	-	-	-	-	-
Eiger Overhead	-	(108)	-	(105)	(213)
Other	-	(1,074)	(39)	(10)	(1,122)
Contingency	(100)	(100)	(100)	(100)	(400)
Total Operating Disbursements	\$ (100)	\$ (2,132)	\$ (175)	\$ (696)	\$ (3,103)
Restructuring Expenses					
Professional Fees	\$ -	\$ -	\$ -	\$ -	\$ -
Accounts Payable and Deposits	-	-	-	-	-
Total Restructuring Expenses	\$ -	\$ -	\$ -	\$ -	\$ -
Total Net Cash Flow	\$ 400	\$ 179	\$ 1,635	\$ (371)	\$ 1,843
Debt Repayment	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash Flow After Debt Repayment	\$ 400	\$ 179	\$ 1,635	\$ (371)	\$ 1,843
Starting Cash	\$ 9,900	\$ 10,300	\$ 10,479	\$ 12,114	\$ 9,900
Change in Cash	400	179	1,635	(371)	1,843
Ending Cash	\$ 10,300	\$ 10,479	\$ 12,114	\$ 11,743	\$ 11,743
Starting Debt	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,685	
Debt Repayment	-	-	-	-	
PIK Interest Accrued	-	-	-	-	
Ending Debt	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,685	

Exhibit 2

Proposed Final Budget

Cash Collateral Budget

	Week Ending																	Total
	5-Apr	12-Apr	19-Apr	26-Apr	3-May	10-May	17-May	24-May	31-May	7-Jun	14-Jun	21-Jun	28-Jun	5-Jul	12-Jul	19-Jul	26-Jul	
Receipts																		
Product Revenue - Zokinvy Product Sales	\$ 500	\$ 2,311	\$ 370	\$ 325	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 325	\$ 325	\$ 325	\$ 325	\$ -	\$ -	\$ -	\$ -	\$ 6,104
Other Receipts (Milestone payments, deposit returns)	-	-	1,440	-	-	360	-	-	-	-	-	-	-	-	-	-	-	1,800
Total Receipts	\$ 500	\$ 2,311	\$ 1,810	\$ 325	\$ 260	\$ 620	\$ 260	\$ 260	\$ 260	\$ 325	\$ 325	\$ 325	\$ 325	\$ -	\$ -	\$ -	\$ -	\$ 7,904
Operating Disbursements																		
Zokinvy Commercialization Disbursements	\$ -	\$ (133)	\$ (35)	\$ (176)	\$ (159)	\$ (118)	\$ (118)	\$ (103)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (103)	\$ (103)	\$ (103)	\$ (103)	\$ (1,667)
R&D / Post-Marketing Disbursements	-	(551)	-	(137)	(116)	(116)	(116)	(116)	(116)	(116)	(116)	(116)	(116)	(20)	(20)	(20)	(20)	(1,816)
Payroll	-	(166)	-	(168)	-	(156)	-	(156)	-	(156)	-	-	(156)	-	(91)	-	(91)	(1,141)
Interest Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Eiger Overhead	-	(108)	-	(105)	(45)	(45)	(45)	(45)	(45)	(57)	(57)	(57)	(53)	(53)	(53)	(53)	(53)	(874)
Other	-	(1,074)	(39)	(10)	(51)	(51)	(51)	(51)	(51)	(64)	(64)	(64)	(64)	(26)	(26)	(26)	(26)	(1,736)
Contingency	(100)	(100)	(100)	(100)	-	-	-	-	-	-	-	-	-	-	-	-	-	(400)
Total Operating Disbursements	\$ (100)	\$ (2,132)	\$ (175)	\$ (696)	\$ (372)	\$ (486)	\$ (330)	\$ (472)	\$ (295)	\$ (476)	\$ (319)	\$ (319)	\$ (472)	\$ (202)	\$ (293)	\$ (202)	\$ (293)	\$ (7,634)
Restructuring Expenses																		
Professional Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (91)	\$ (147)	\$ (159)	\$ (701)	\$ -	\$ (153)	\$ -	\$ (754)	\$ -	\$ (250)	\$ -	\$ (2,337)	\$ (4,591)
Accounts Payable and Deposits	-	-	-	-	-	(10)	-	-	-	-	-	-	-	-	-	-	10	-
Total Restructuring Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (101)	\$ (147)	\$ (159)	\$ (701)	\$ -	\$ (153)	\$ -	\$ (754)	\$ -	\$ (250)	\$ -	\$ (2,327)	\$ (4,591)
Total Net Cash Flow	\$ 400	\$ 179	\$ 1,635	\$ (371)	\$ (112)	\$ 32	\$ (217)	\$ (372)	\$ (736)	\$ (151)	\$ (147)	\$ 5	\$ (901)	\$ (202)	\$ (543)	\$ (202)	\$ (2,619)	\$ (4,322)
Debt Repayment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash Flow After Debt Repayment	\$ 400	\$ 179	\$ 1,635	\$ (371)	\$ (112)	\$ 32	\$ (217)	\$ (372)	\$ (736)	\$ (151)	\$ (147)	\$ 5	\$ (901)	\$ (202)	\$ (543)	\$ (202)	\$ (2,619)	\$ (4,322)
Starting Cash	\$ 9,900	\$ 10,300	\$ 10,479	\$ 12,114	\$ 11,743	\$ 11,631	\$ 11,663	\$ 11,446	\$ 11,074	\$ 10,338	\$ 10,187	\$ 10,040	\$ 10,046	\$ 9,145	\$ 8,943	\$ 8,400	\$ 8,198	\$ 9,900
Change in Cash	400	179	1,635	(371)	(112)	32	(217)	(372)	(736)	(151)	(147)	5	(901)	(202)	(543)	(202)	(2,619)	(4,322)
Ending Cash	\$ 10,300	\$ 10,479	\$ 12,114	\$ 11,743	\$ 11,631	\$ 11,663	\$ 11,446	\$ 11,074	\$ 10,338	\$ 10,187	\$ 10,040	\$ 10,046	\$ 9,145	\$ 8,943	\$ 8,400	\$ 8,198	\$ 5,578	\$ 5,578
Starting Debt	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,763	\$ 41,763	\$ 41,763	\$ 41,763	\$ 41,841	\$ 41,841	\$ 41,841	\$ 41,841	\$ 41,920	\$ 41,920	\$ 41,920	\$ 41,920	
Debt Repayment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
PIK Interest Accrued	-	-	-	-	78	-	-	-	78	-	-	-	78	-	-	-	79	
Ending Debt	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,685	\$ 41,763	\$ 41,763	\$ 41,763	\$ 41,763	\$ 41,841	\$ 41,841	\$ 41,841	\$ 41,841	\$ 41,920	\$ 41,920	\$ 41,920	\$ 41,920	\$ 41,999	
Accrued but unpaid professional fees	\$ 13	\$ 357	\$ 609	\$ 918	\$ 1,134	\$ 1,308	\$ 1,374	\$ 1,486	\$ 1,158	\$ 1,316	\$ 1,320	\$ 1,478	\$ 966	\$ 1,123	\$ 1,216	\$ 1,562	\$ -	

Exhibit 3

Milestones

Milestones

(a) No later than three (3) calendar days following the Petition Date, the Debtors shall have filed all first day motions, including a motion seeking entry of this Interim Order, in each case which motions and all related documents shall be in form and substance reasonably acceptable to the Prepetition Term Loan Lenders.

(b) No later than five (5) calendar days following the Petition Date (subject to extension to the extent necessary to accommodate the Court's availability), the Court shall have entered this Interim Order.

(c) No later than thirty-five (35) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court's availability), the Court shall have entered an order approving the Bidding Procedures, which order shall be in form and substance reasonably acceptable to the Prepetition Term Loan Lenders.

(d) No later than eighty-five (85) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court's availability), the Court shall have entered an order(s) approving the sale(s) under the Sale Motion (the "Sale Order(s)"), which order(s) shall be in form and substance reasonably acceptable to the Prepetition Term Loan Lenders.

(e) If applicable, no later than one hundred (100) calendar days after the Petition Date, the Debtors shall have consummated the sale(s) approved pursuant to the Sales Motion.

(f) No later than one hundred fifteen (115) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court's availability), the Debtors shall have obtained conditional approval of a disclosure statement (the "Disclosure Statement") in

accordance with a chapter 11 plan reasonably acceptable to the Prepetition Term Loan Lenders (the "Plan").

(g) No later than one hundred and fifty-five (155) calendar days after the Petition Date (subject to extension to the extent necessary to accommodate the Court's availability), the Court shall have entered an order granting final approval of both the Disclosure Statement and the Plan.

(h) No later than one hundred and eighty (180) calendar days after the Petition Date, the effective date of the Plan shall have occurred.