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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 HONOR
AND CONTINUE CERTAIN CUSTOMER PROGRAMS AND CUSTOMER
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS, AND (II)
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC
TRANSFER REQUESTS RELATED THERETO**

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.



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

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

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

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

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan's home page. The meeting code is 479

393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

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

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of an interim order and a final order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (respectively, the "Interim Order" and "Final Order"): (i) authorizing the Debtors to honor certain prepetition obligations to Customers (defined below) and to otherwise continue the Customer Programs (defined below) in the ordinary course of business; (ii) authorizing the Debtors' banks to honor and process checks and electronic transfer requests related to the foregoing; and (iii) granting related relief, including scheduling a final hearing to consider approval of the motion on a final basis.

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.

Jurisdiction and Venue

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

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

4. The bases for the relief requested herein are sections 105(a), 363, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, rule 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”), and the Procedures for Complex Cases in the Northern District of Texas.

Background

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

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

The Debtors' Customer Programs

7. The Debtors develop and commercialize their flagship drug—Zokinvy—in the United States and abroad. The Debtors principally sell their products to specialty distributors and specialty pharmacy providers through a third-party logistics distribution agent, which subsequently sell the products to patients and health-care providers. The Debtors also have arrangements with certain payors and other third parties that provide for government-mandated and/or privately negotiated rebates, chargebacks, and discounts. Collectively, these specialty distributors, specialty pharmacies, and other direct buyers represent the Debtors' customers (each, a "Customer" and collectively, the "Customers"). In the ordinary course of their business, the Debtors engage in a number of practices to develop, support, and sustain a positive reputation with their Customers and in the marketplace generally, remain competitive on pricing in the marketplace, and, in certain instances, comply with applicable law relating to the sale of products to certain governmental customers or in connection with certain governmental programs (collectively, the "Customer Programs"). Because the Customer Programs are an essential component of the Debtors' ongoing operations and Customer-retention strategy, continuing to honor the Customer Programs described below—including certain prepetition obligations arising thereunder—is necessary to maximize the value of the Debtors' estates and benefit all creditors and stakeholders in these chapter 11 cases.

8. Each Customer Program varies somewhat by Customer, based on the payment frequency, form, discount amount, and other terms negotiated with the applicable customer. The Customer Programs include, but are not limited to, the following: (a) Distribution Fees; (b) Government Rebates; (c) Medicaid Rebates; and (d) Co-Pay Programs; (e) Patient Assistance Programs; (f) Prompt Pay Discounts; and (g) Product Return Program (each as defined below).

9. As further described below, the Debtors estimate that the aggregate value of accrued prepetition payment obligations, discount amounts, processing fees, and other obligations under the Customer Programs is approximately \$3,205,000, which is comprised of:

Customer Program	Approximate Accrued Prepetition Customer Program Obligations
Distribution Fees	\$15,000
Government Rebates	\$1,570,000
Medicaid Rebates	\$1,460,000
Co-Pay Programs	\$50,000
Patient Assistance Programs	\$50,000
Prompt Pay Discounts	\$60,000
Product Return Program	\$0
Total	\$3,205,000

10. A significant majority of the obligations described above require cash payment, including the Government Rebates, the Medicaid Rebates, the Co-Pay Programs, and the Patient Assistance Programs. The obligations relating to the Distribution Fees do not require any cash payments by the Debtors. Instead, such obligations are typically satisfied by deductions by Customers from payments against outstanding accounts receivable, or credited to future purchases, which the Debtors then review and honor through setoffs within the Debtors' accounting system

I. Distribution Fees

11. The Debtors' Customers, in particular the specialty pharmacies and specialty distributors abroad, provide various services to the Debtors, including managing inventory, distributing the Debtors' product, and managing industry-specific data. The Debtors compensate these specialty pharmacies and specialty distributors by offering a fee for these services (the "Distribution Fees"). Such fees are discounts directly off an invoice for such distribution services.

12. The Debtors estimate that the aggregate amount of Distribution Fees accrued as of the Petition Date is \$15,000.

II. Government Rebates

13. The Debtors participate in multiple government rebate programs including TriCare rebates (a Department of Defense program), Medicare Part D Coverage Gap rebates, Contracted Medicare Part D rebates, and the Veterans Affairs (VA) Industrial Funding Fee (together, the “US Government Rebates”). The Debtors rebate programs are based upon contractual agreements or legal requirements with public sector benefit providers. The US Government Rebates. The Debtors pay these rebates via a third-party logistics provider Integrichain, which are paid quarterly, except for the Medicare Part D rebates, which are billed monthly.

14. As of the Petition Date, the Debtors estimate they have \$1,000,000 in accrued and unpaid US Government Rebates as of the Petition Date. The Debtors respectfully request authorization to continue making US Government Rebate payments in the ordinary course of business during these chapter 11 cases with respect to both prepetition and postpetition sales of their products.

15. The Debtor also participate in two German rebate programs including the Germany Pricing Reserve and the Germany Pharmacy Reserve rebate programs (the “Germany Rebates”), via a third-party logistics providers through the German government. The Germany Pricing Reserve rebate is based on the price adjustment between the price the Debtor sell their products in German against the price the German government sets the price of such product. As of the Petition Date, the Debtors estimate they owe \$480,000 on account of accrued and unpaid Germany Pricing Reserve rebates. The Germany Pharmacy Reserve rebate is a government imposed 12% pharmacy fee for all sales of the Debtors’ products. As of the Petition Date, the

Debtors estimate they owe \$90,000 on account of accrued and unpaid Germany Pharmacy Reserve rebates. The Debtors respectfully request authorization to continue making Germany Rebates payments in the ordinary course of business during these chapter 11 cases with respect to both prepetition and postpetition sales of their products.

III. Medicaid Rebates

16. Medicaid is a health program managed by states that assists low-income individuals and families in obtaining healthcare. Medicaid Drug Rebate Program (MDRP) is a program that includes Centers for Medicare & Medicaid Services (CMS), state Medicaid agencies, and participating drug manufacturers that helps to offset the Federal and state costs of most outpatient prescription drugs dispensed to Medicaid patients. Under these programs, the Debtors use a third-party to support the invoicing and payment to states for rebates (the “Medicaid Rebates”), which are calculated based on a statutory formula or, for supplemental rebates, on the contractual formula. These rebates are invoiced quarterly.

17. The Debtors’ ability to fulfill their Medicaid obligations, including the payment of the Medicaid Rebates as they become due, is critical to keeping the Debtors listed in good standing with state and federal governments and avoiding the risk of penalties, fines, and exclusion from Medicaid programs. The Debtors cannot afford to risk the substantial harm that would arise from the failure to pay the Medicaid Rebates, including the denial of coverage and irreparable damage to the Debtors’ relationships with their Customers. Accordingly, the Debtors respectfully request authorization to continue making Medicaid Rebate payments in the ordinary course of business during these chapter 11 cases with respect to postpetition sales of their products.

18. The Debtors estimate that, as of the Petition Date, approximately \$1,460,000 has accrued and not yet been paid on account of Medicaid Rebates.

IV. Co-Pay Programs

19. The Debtors provide certain patients with co-pay assistance to offset their out-of-pocket costs (the “Co-Pay Program”). The Co-Pay Program, administered through AllCare, is offered to commercially insured patients to help offset the cost of co-payments set by health insurers for prescription medication. Eiger pays the difference between each patient out-of-pocket cost and the insurance co-pay amount. The Debtors are invoiced for such reimbursement payments semi-monthly.

20. The annual cost of the Co-Pay Program to the Debtors is approximately \$50,000. The Debtors estimate that, as of the Petition Date, the aggregate amount accrued and not yet paid under the Co-Pay Program is \$50,000.

V. Patient Assistance Programs

21. The Debtors provide patients with specialized care delivered via third-party vendors who manage individual relationships with patients via the Eiger OneCareTM program. This program is staffed with experts in progeria and processing-deficient progeroid laminopathies (PDPL), offering a dedicated, specialized team focused on each patient’s care. This program provides access to healthcare providers, nurses, pharmacists, reimbursement specialists, appeals specialists, alternate funding, co-pay assistance, and educational materials.

22. The Debtors estimate that, as of the Petition Date, the aggregate amount accrued under Patient Assistance Programs that is due is \$50,000.

VI. Prompt Pay Discounts

23. The Debtors offer cash discounts to Customers who pay outstanding invoices within certain time periods (the “Prompt Pay Discounts”). Customers are eligible for a 1% Prompt Pay Discount if they pay outstanding invoices within 30 days. The Prompt Pay Discount

is deducted from the Customer's payment. The Debtors' satisfaction of such obligations does not require the expenditure of cash.

24. The Debtors estimate that the aggregate amount of yet-to-be-applied Prompt Pay Discounts on account of prepetition sales is \$60,000.

VII. Product Return Program

25. In the ordinary course of business, the Debtors' Customers may be unable to sell the products they purchase because the product expires, the product is damaged, there is a drop in demand, or for some other reason. When the Debtors sell a product, they provide the Customers with a right of return (the "Product Return Program") in exchange for a credit. The Product Return Program is customary in the pharmaceutical industry.

26. The Debtors have historically had no requests for return under the Product Return Program. Accordingly, as of the Petition Date, no amounts remain outstanding under the Product Return Program. The Debtors respectfully request authorization to continue the Product Return Program in the ordinary course of business.

Basis For Relief Requested

I. The Court Should Authorize the Debtors to Honor Prepetition Obligations Under the Customer Programs and Continue the Customer Programs in the Ordinary Course of Business

27. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824 (D. Del. 1999) (recognizing that courts may "authorize the payment of pre-petition claims if such payment [is] essential to the continued operation of the debtors"); *see also In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989);

Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.), 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

28. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to the debtor); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near Herculean task”).

29. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code

codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's business. *See Just for Feet*, 242 B.R. at 825–26.

30. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See In re Lehigh & New England Railway, Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *Just for Feet*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment of prepetition claims" under the doctrine of necessity). The "doctrine of necessity" functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein.

31. Failure to satisfy the Debtors' prepetition obligations under the Customer Programs will adversely impact the Debtors' goodwill and going-concern value. *See In re CoServ*, 273 B.R. at 497. Further, the Debtors have determined, in the sound exercise of their business judgment, that maintaining the Customer Programs, including payment of any amounts due thereunder in the ordinary course of business is critical to the success of these chapter 11 cases. Continuing the Customer Programs and payment of amounts due thereunder, the importance of which cannot be overstated, without interruption will help preserve the Debtors' valuable Customer relationships and goodwill, which will inure to the benefit of all of the Debtors' creditors and stakeholders.

32. As noted above, the Customer Programs constitute an important part of the Debtors' business and strategy. Given the competitive nature of the Debtors' industry, the Debtors' success and the realization of maximized value depends on the quality and strength of their Customer relationships, their ability to attract new Customers during these chapter 11 cases, and the maintenance and sustainment of their current business relationships. Any failure to honor their Customer Programs may disrupt the Debtors' ability to make similar sales postpetition, and, as a result, could curb the Debtors' profitability and negatively impact the Debtors' chapter 11 sales efforts.

33. Further, the Debtors' ability to attract new Customers and maintain their existing Customer relationships during these chapter 11 cases is critical to maximizing estate value. The commencement of these chapter 11 cases, and the circumstances surrounding them, will undoubtedly create apprehension on the part of Customers or potential Customers regarding their willingness to purchase products from the Debtors. As previously discussed, the damage that would result if the Debtors fail to honor their prepetition Customer Programs significantly outweighs any arguable harm to the Debtors' estates if such obligations are honored.

34. Courts in this district and others have granted similar relief in large chapter 11 cases. *See, e.g., In re Impel Pharmaceuticals Inc.*, Case No. 80016 (SGJ) (Bankr. N.D. Tex. Dec. 21, 2023) [Docket No. 139] (authorizing satisfaction of obligations under customer programs of a debtor in possession); *In re Tuesday Morning Corp.*, Case No. 23-90001 (ELM) (Bankr. N.D. Tex. Feb. 17, 2023) [Docket No. 162] (same); *In re Buffets, LLC*, Case No. 16-50557 (RBK) (Bankr. W.D. Tex. Mar. 8, 2016) [Docket No. 60] (same); *In re TPP Acquisition, Inc.*, Case No. 16-33437 (HDH) (Bankr. N.D. Tex. Sept. 8, 2016) [Docket No. 80] (same); *In re*

Alco Stores, Inc., Case No. 14-34941 (SGJ) (Bankr. N.D. Tex. Oct. 16, 2014) [Docket No. 65] (same). The present circumstances warrant similar relief.

Emergency Consideration

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

Processing of Checks and Electronic Fund Transfers

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

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

37. 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

38. 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

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

[Remainder of page intentionally left blank.]

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

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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*Proposed Attorneys for the Debtors and Debtors
in Possession*

Certificate of Service

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

/s/ Thomas R. Califano
Thomas R. Califano

Exhibit A

Proposed Interim Order

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO
HONOR AND CONTINUE CERTAIN CUSTOMER PROGRAMS AND CUSTOMER
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS AND (II)
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC
TRANSFER REQUESTS RELATED THERETO**

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 “Interim Order”) (a) authorizing the Debtors, in their sole discretion, to honor certain prepetition obligations incurred in connection with the Customer Programs and to otherwise continue certain

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.

prepetition Customer Programs in the ordinary course of business, (b) authorizing the Banks to honor and process checks and electronic transfer requests related to the Customer Programs, and (c) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Debtors are authorized to continue the Customer Programs and pay, setoff, and/or recoup prepetition amounts incurred in connection with the Customer Programs in the ordinary course of their business.
2. The Debtors are authorized to honor the Customer Programs and the Debtors and their Customers are authorized, in the ordinary course of business, to set off undisputed prepetition debts arising under the Customer Programs against both pre- and post-petition obligations to the Debtors in the ordinary course of business of the Debtors and such Customer.
3. The Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify and/or terminate their Customer Programs, in the

ordinary course of business and consistent with the Debtors' prepetition practices, without further application to the Court.

4. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024 at [•] (prevailing Central Time) in the United States Bankruptcy Court for the Northern District of Texas, Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496. Any objections or responses to entry of a final order on the Motion shall be filed on or before _____, 2024, at 5:00 p.m. (prevailing Central Time) and served on the following parties: (i) (a) the Debtors; (b) proposed attorneys for the Debtors, Sidley Austin LLP, 787 Seventh Avenue New York, NY 10019, Attn: Thomas R. Califano (tom.califano@sidley.com), William E. Curtin (wcurtin@sidley.com), Anne Wallace (anne.wallace@sidley.com), and Charles M. Persons (cpersons@sidley.com); (c) the Office of the United States Trustee, Northern District of Texas, Region 6, 1100 Commerce Street, Room 976, Dallas, Texas 75242, Attn: Elizabeth A. Young (elizabeth.a.young@usdoj.gov); (d) counsel to Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders; and (e) counsel to any official committee appointed in these chapter 11 cases (collectively, the "Notice Parties"). In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

5. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed (a) an admission as to the amount of, basis for, 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 Interim Order or any other order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) an approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this Interim Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

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

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

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

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

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

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

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*Proposed Attorneys for the Debtors and
Debtors in Possession*

Exhibit B

Proposed Final Order

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
HONOR AND CONTINUE CERTAIN CUSTOMER PROGRAMS AND CUSTOMER
OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS AND(II)
AUTHORIZING BANKS TO HONOR AND PROCESS CHECKS AND ELECTRONIC
TRANSFER REQUESTS RELATED THERETO**

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 “Final Order”)

(a) authorizing the Debtors, in their sole discretion, to honor certain prepetition obligations

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.

incurred in connection with the Customer Programs and to otherwise continue certain prepetition Customer Programs in the ordinary course of business, (b) authorizing the Banks to honor and process checks and electronic transfer requests related to the Customer Programs, and (c) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Debtors are authorized to continue the Customer Programs and pay, setoff, and/or recoup prepetition amounts incurred in connection with the Customer Programs in the ordinary course of their business.

2. The Debtors are authorized to honor the Customer Programs and the Debtors and their Customers are authorized, in the ordinary course of business, to set off undisputed prepetition debts arising under the Customer Programs against both pre- and post-petition obligations to the Debtors in the ordinary course of business of the Debtors and such Customer.

3. The Debtors, in their business judgment, are authorized, but not directed, to continue, renew, replace, implement, modify and/or terminate their Customer Programs, in the

ordinary course of business and consistent with the Debtors' prepetition practices, without further application to the Court.

4. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this Final Order or any other order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) an approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this Final Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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

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

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

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

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

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

END OF ORDER

Submitted By:

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