

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

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

*Proposed Attorneys for the Debtors
and Debtors in Possession*

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

In re:

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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

Related Docket Nos. 13 and 25

**DECLARATION OF DAVID APELIAN
IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I)(A) APPROVING THE BID PROCEDURES; (B) AUTHORIZING THE DEBTORS
TO SELECT SENTYNL THERAPEUTICS, INC. AS THE ZOKINVY STALKING
HORSE PURCHASER & APPROVING BID PROTECTIONS; (C) APPROVING THE
BID PROTECTIONS RELATING TO THE REMAINING ASSETS STALKING
HORSE PURCHASER(S), IF ANY; (D) ESTABLISHING BID DEADLINES,
AUCTION(S), AND SALE HEARING(S); (E) APPROVING THE FORM AND
MANNER OF SALE NOTICE; (F) APPROVING ASSIGNMENT AND ASSUMPTION
PROCEDURES; (G) APPROVING THE FORM AND MANNER OF POTENTIAL
ASSUMPTION AND ASSIGNMENT NOTICE; (II)(A) AUTHORIZING THE SALE
OF THE ASSETS FREE AND CLEAR; AND (B) APPROVING THE ASSUMPTION
AND ASSIGNMENT OF DESIGNATED CONTRACTS; AND (III) GRANTING
RELATED RELIEF**

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.



Pursuant to 28 U.S.C. § 1746, I, David Apelian, do hereby declare, under penalty of perjury, the following to the best of my information, knowledge, and belief:

1. I am the Chief Executive Officer at Debtor Eiger BioPharmaceuticals, Inc. (“Eiger”), that has its principal office at 2155 Park Boulevard, Palo Alto, California 94036. I served as Interim CEO from December 2022 to June 2023, have served as CEO since June 2023, and I worked at Eiger for approximately five (5) years prior to my appointment as Interim CEO, and have served as a member of the Board of Directors of Eiger since June 2017.

2. I am authorized to submit this declaration (the “Declaration”) on the Debtors’ behalf in support of the relief requested in the *Debtors’ Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* (the “Motion”).

3. Although I receive compensation as an employee of Eiger, I am not being compensated separately for this Declaration or any related testimony. Unless otherwise indicated herein, the statements in this Declaration are based on my personal knowledge or my opinion based on my experience, on information that I received from the Debtors’ employees and advisors, information that I have received from my colleagues at Eiger working directly with me or under

my supervision, direction, or control, or on my review of relevant documents. If I were called to testify, I could and would testify competently as set forth below.

Professional Background and Qualifications

4. I joined Eiger in June 2017. I am based in Eiger’s principal office, located at 2155 Park Boulevard, Palo Alto, California 94036 and have over 25 years of clinical development and regulatory experience relating to pharmaceutical products, serving in numerous leadership roles throughout this time for various companies. Prior to rejoining Eiger as Interim CEO in December 2022, I was CEO at BlueSphere Bio.

5. Through my almost seven years at Eiger, I have developed intimate knowledge about the Debtors’ business and financial affairs.

6. I have a BA from Rutgers University–New Brunswick, a PhD in Biochemistry and Molecular Biology from Rutgers University–New Brunswick, an M.D. from the University of Medicine and Dentistry of New Jersey–New Jersey Medical School, and an MBA from Quinnipiac University–School of Business. I am authorized to execute this declaration on behalf of Eiger.

The Debtors’ Prepetition Sale and Marketing Efforts

7. As set forth more fully in the First Day Declaration, Eiger is 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.

8. In late 2023, the Debtors received indications of interest regarding a purchase of the Zokinvy assets (the “Zokinvy Assets”) from numerous interested parties, one of which was Sentynl Therapeutics, Inc (“Sentynl”). The Debtors ultimately determined to move forward with Sentynl as a potential purchaser for the Zokinvy Assets because Sentynl provided the best value

for the Zokinvy Assets in light of the proposed purchase price and certainty of closing. The Debtors began negotiating a purchase agreement to consummate the sale transaction for the Zokinvy Assets (the “Zokinvy Sale Transaction”) in October 2023.

9. Initially, the Zokinvy Sale Transaction was intended to be consummated outside of Court, but, as the Debtors’ circumstances evolved, including the fact that on March 22, 2024 Merck notified Eiger that it was unwilling to provide consent to the Zokinvy Sale Transaction in advance of a bankruptcy filing, the Company worked with Sentynl to pivot the existing documentation to an in-court transaction. After discussions with other potential purchasers and engaging with their key stakeholders and advisors, the Debtors, in an exercise of their business judgment, named Sentynl as stalking horse bidder for the Zokinvy Assets (the “Zokinvy Stalking Horse Purchaser”), on the terms and subject to the conditions more fully described under the Zokinvy Stalking Horse APA attached to the Motion as Exhibit 2 (the “Zokinvy Stalking Horse Bid”). The Zokinvy Stalking Horse Bid includes a purchase price of \$26 million if the Zokinvy Sale Transaction closes (the “Closing”) no later than April 24, 2024. The purchase price will decrease by a *per diem* amount equal to \$214,285.71 for every day after April 24, 2024 that Closing does not occur. Through negotiations with Sentynl, the Zokinvy Stalking Horse Bid encompasses a minimum purchase price of \$20 million, provided that the Zokinvy Sale Transaction closes no later than May 31, 2024. A purchase price deduction is related to the Zokinvy Asset’s revenue generating capability and exclusivities and, as time passes, that is revenue the ultimate purchaser would not recoup through the Zokinvy Sale Transaction. The Zokinvy Stalking Horse Bid is subject to higher and better offers through the proposed bid procedures, discussed below.

10. The Debtors have engaged SSG Advisors, LLC (“SSG”), as investment banker, to assist in marketing the Debtors’ assets and soliciting potential purchasers. SSG will also assist to

identify any additional potential purchasers for the Zokinvy Assets to ensure the Zokinvy Stalking Horse Bid maximizes the value available for all stakeholders.

11. I believe that the prepetition engagement with other interested parties appropriately identified potential bidders for the Zokinvy Assets and that, at this juncture, entry into the Zokinvy Stalking Horse Bid presents the best means to achieve the best available value of the Debtors' estates for all stakeholders. Further, SSG continues to engage with additional potential bidders related to the Zokinvy Assets, and will continue to do so until the Zokinvy Sale Transaction is approved by this Court.

The Bid Procedures and Sale Transactions Timelines

12. I have reviewed the Bid Procedures (defined below) and I believe that the Bid Procedures, if approved, will facilitate an orderly, competitive, and efficient bidding and auction process in a fair and transparent manner for the Zokinvy Assets and for all the Debtors' remaining assets (the "Remaining Assets"). The proposed Bid Procedures contemplate an open auction process for the Zokinvy Assets (the "Zokinvy Auction") and for the Remaining Assets (the "Remaining Assets Auction(s)") with appropriate requirements to submit a qualified bid and provide potential bidders with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

13. Although the Zokinvy Auction is set for sixteen (16) days following the Petition Date, the Debtors were engaged with potential bidders well in advance of these chapter 11 cases, with potential bidders completing various levels of diligence. I have been informed by SSG that the universe of potential bidders is small for the Zokinvy Assets and that the timeline proposed appropriately balances maximizing aggregate value for the Zokinvy Assets and minimizing the length of time before the Zokinvy Sale Transaction may close.

14. The Remaining Assets Auction(s), on the other hand, provides potential bidders additional time to perform due diligence and acquire information as there was not a prepetition marketing process related to those Remaining Assets. The additional time contemplated for the Remaining Assets Auction(s) is an acknowledgment of the distinct prepetition marketing and diligence processes undertaken related to the Remaining Assets versus the Zokinvy Assets.

15. I believe the processes through which potential buyers will perform due diligence on all of the Debtors' assets, including the Zokinvy Assets and the Remaining Assets, and submit bids, will increase the likelihood that the Debtors will obtain the best available value for the Debtors' Zokinvy Assets at the Zokinvy Auction, and for the Remaining Assets at the Remaining Assets Auction(s).

16. As set forth in the Motion, the Debtors are seeking approval of the Bid Procedures to run two separate sale processes on two separate timelines, to ensure a clear and transparent process for the solicitation, receipt, and evaluation of bids, including bids for the sale of the Zokinvy Assets and bids for the sale of the Remaining Assets, on court-approved timelines, that allow the Debtors to timely consummate a sale of the Zokinvy Assets and a sale or sale(s) of the Remaining Assets.

17. I have reviewed the procedures contained within the Motion (the "Bid Procedures"). Generally speaking, the Bid Procedures establish, among other things:

- a. a robust due diligence process for potential bidders as it relates to the sale or sale(s) of Remaining Assets;
- b. the deadlines and requirements for both the sale of the Zokinvy Assets and the Remaining Assets for submitting Bids and the methods and criteria by which such Bids will be deemed to be Qualified Bids sufficient to trigger an auction, including the terms

- and conditions that must be satisfied and the deadlines that must be met by any bidder of either the Zokinvy Assets or the Remaining Assets to be considered a Qualified Bidder and to participate in the auction;
- c. the Debtors' authority to designate a Stalking Horse Purchaser solely for the Zokinvy Assets, and, subject to Court approval, to seek Zokinvy Bid Protections for the Zokinvy Stalking Horse Bid;
 - d. the manner in which Qualified Bids will be evaluated by the Debtors in both the sale of the Zokinvy Assets and sale or sale(s) of the Remaining Assets;
 - e. the conditions for holding each auction and procedures for each auction, if any; and
 - f. various other matters relating to the sales and marketing process generally, including the designation of one or more Backup Bids.

18. The Bid Procedures include a deadline for interested parties to formulate and submit a bid to purchase some or all of the Zokinvy Assets on April 15, 2024 (the "Zokinvy Bid Deadline"). Although the Zokinvy Bid Deadline is relatively short, I believe the fast sale process provides for an effective sale process for the Zokinvy Assets while also ensuring that the Debtors receive maximum value from the Zokinvy Stalking Horse Purchaser if it is the successful bidder, thereby providing the Debtors with the best opportunity to maximize profits from the Zokinvy Assets and to maximize recoveries for all of the Debtors' stakeholders.

19. Additionally, the Bid Procedures include a deadline for interested parties to formulate and submit a bid(s) to purchase some or all of the Remaining Assets (the "Remaining Assets Bid Deadline"). The proposed timeline for the Remaining Assets provides parties with approximately ten (10) weeks to review diligence, engage with the Debtors, and formulate their bid proposals. I feel this provides more than enough time to evaluate the Remaining Assets and

also allows the Debtors to move quickly and efficiently through the sale process. I therefore believe the proposed timeline for the sale of the Remaining Assets and other features of the Bid Procedures governing the sale, marketing, and auction process are fair, reasonable, appropriate, and in the best interest of the Debtors’ estates under these circumstances.

20. Specifically, the Bid Procedures propose the following key dates and deadlines for the sale of the Zokinvy Assets:

ZOKINVY SALE TRANSACTION MILESTONES	
EVENT OR DEADLINE	DATE AND TIME (ALL IN PREVAILING CENTRAL TIME)
Petition Date	P = 0 (April 1, 2024)
Bid Procedures Objection Deadline	Objections to the Bid Procedures may be made at the Bid Procedures Hearing
Bid Procedures Hearing	P + 2 (April 3, 2024) at 1:30 p.m. (prevailing Central Time)
Service and Publication of Sale Notice	1 business day after entry of the Bid Procedures Order or as soon as reasonably practicable thereafter
Initial Zokinvy Cure Notice Deadline	P + 11 (April 12, 2024) at 4:00 pm
Zokinvy Bid Deadline ²	P + 14 (April 15, 2024) at 4:00 pm
Zokinvy Sale Objection Deadline	P + 15 (April 16, 2024) at 4:00 pm
Zokinvy Cure Objection Deadline	P + 15 (April 16, 2024) at 4:00 pm
Determination of Zokinvy Qualified Bids	As soon as reasonably practicable following the Bid Deadline
Zokinvy Auction (if necessary)	P + 16 (April 17, 2024) at 9:00 am
Deadline to File Notice of Zokinvy Winning Bid	As soon as reasonably practicable following the Auction
Post-Zokinvy Auction Objection Deadline	P + 19 (April 20, 2024) at 4:00 pm
Zokinvy Sale Hearing	P + 21 (April 22, 2024) (subject to the Court’s availability)
Anticipated Zokinvy Closing Date	P + 23 (April 24, 2024)

21. Additionally, the Debtors have proposed a more elongated schedule for the sale or sale(s) of the Remaining Assets as such assets have not been subject to the same level of interest

² The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

and marketing prepetition as the Zokinvy Assets. Accordingly, the below timeline sets out the proposed Bid Procedures, and marketing and bid process for the Remaining Assets:

REMAINING ASSETS SALE TRANSACTION(S) MILESTONES	
EVENT OR DEADLINE	DATE AND TIME (ALL IN PREVAILING CENTRAL TIME)
Petition Date	P = 0 (April 1, 2024)
Bid Procedures Objection Deadline	Objections to the Bid Procedures may be made at the Bid Procedures Hearing
Bid Procedures Hearing	P + 2 (April 3, 2024) at 1:30 p.m. (prevailing Central Time)
Service and Publication of Sale Notice	1 business day after entry of the Bid Procedures Order or as soon as reasonably practicable thereafter
Remaining Sale Transaction(s) Cure Notice Deadline	P + 64 (June 4, 2024) at 4:00 p.m.
Remaining Sale Transaction(s) Bid Deadline ³	P + 70 (June 10, 2024) at 4:00 pm
Remaining Sale Transaction(s) Objection Deadline	P + 72 (June 12, 2024) at 4:00 pm
Remaining Sale Transaction(s) Cure Objection Deadline	P + 72 (June 12, 2024) at 4:00 pm
Determination of Remaining Sale Transaction(s) Qualified Bids	As soon as reasonably practicable following the Bid Deadline
Remaining Sale Transaction(s) Auction (if necessary)	P + 74 (June 14, 2024) at 9:00 am
Deadline to File Notice of Remaining Sale Transaction(s) Winning Bid	As soon as reasonably practicable following the Auction
Post-Remaining Sale Transaction(s) Auction Objection Deadline	P + 78 (June 18, 2024) at 4:00 pm
Remaining Sale Transaction(s) Hearing	P + 80 (June 20, 2024) (subject to the Court's availability)
Anticipated Remaining Sale Transaction(s) Closing Date	P + 91 (July 1, 2024)

22. I believe that the Bid Procedures, including both the Zokinvy Sale Transaction and the Remaining Asset Sale Transaction(s) timelines described above, are designed to facilitate a transparent, robust, and efficient sales and marketing processes. As described in the Motion, the proposed Zokinvy Bid Deadline is April 15, 2024 and the Remaining Assets Bid Deadline is June

³ The Debtors reserve their right, in their own discretion, to move the deadline for the submission of qualified bids.

10, 2024. The expedited postpetition marketing and bid process for the Zokinvy Assets takes into account the fact that the Debtors have received offers for the Zokinvy Assets prior to these chapter 11 cases and that the Debtors entered into the Zokinvy Stalking Horse APA with the Zokinvy Stalking Horse Purchaser to establish a floor for the purchase price of the Zokinvy Assets. In contrast, the more fulsome postpetition marketing process to be ran for the Remaining Assets will allow any and all potential interested parties to evaluate the Remaining Assets and submit a bid on a more extended timeline.

23. Given the process conducted to date for the Zokinvy Assets and the fulsome marketing process that will take place for the Remaining Assets during these chapter 11 cases by SSG, the potential publicity surrounding these chapter 11 cases, and the two timelines proposed by the Debtors, it is my view, based on my experience over the last six months, and in light of the circumstances, that the Bid Procedures are reasonable and appropriate under the circumstances for each separate process. The Bid Procedures seek to balance the Debtors' interests in consummating the Sale Transaction for the Zokinvy Assets on an expedited timeline, while running a more robust and fulsome sale process for the Remaining Assets, all while seeking to attract the best available offers in an effort to facilitate value maximizing transactions.

The Zokinvy Stalking Horse Bid

24. The Debtors, in an exercise of their business judgment, determined that the Zokinvy Stalking Horse Bid, as more fully described in the Zokinvy Stalking Horse APA, provided substantial value to the estates and that the Zokinvy Stalking Horse Purchaser was prepared to expeditiously execute definitive documentation to consummate the Zokinvy Sale Transaction, subject to higher or otherwise better offers at the Zokinvy Auction. Specifically, Debtors previously engaged with Progeria Research Foundation (“PRF”), a patient advocacy group with

consent rights over any sublicense, sale or transfer of the Zokinvy Assets, to negotiate terms for PRF's potential consent to Sentynl's purchase of the Zokinvy Assets. These discussions, which included meetings between PRF and Sentynl, took considerable time and effort. PRF advised Eiger that Sentynl would be a suitable buyer of the Zokinvy Assets, subject to the negotiation of definitive agreements. Further, I understand from Eiger's advisors that the Zokinvy Stalking Horse Purchaser is in a stronger financial position and ability to fund and close the Zokinvy Sale Transaction compared to other interested parties at this time.

25. Negotiations in connection with the Zokinvy Stalking Horse APA and the restructuring transactions more broadly have included extensive arms'-length negotiations between the Zokinvy Stalking Horse Purchaser and the Debtors and their advisors on economic and legal terms. Following arms'-length and good faith negotiations, the Debtors and the Zokinvy Stalking Horse Purchaser have agreed in principal on the Zokinvy Stalking Horse APA for the purchase of the Zokinvy Assets. The Zokinvy Stalking Horse APA establishing a baseline bid in connection with the Bid Procedures. Entry into the Zokinvy Stalking Horse APA is designed to incentivize potential bidders and thereby elicit the best available bid of these assets for the benefit of the Debtors' estates and their various stakeholders.

26. In accordance with the Bid Procedures, and in advance of any applicable Zokinvy Auction, the Debtors, with the assistance of SSG, will continue to solicit higher or otherwise better proposals from third parties. The Zokinvy Stalking Horse Bid sets the "floor" price for the Zokinvy Assets, which sell seek promote active bidding from other seriously interested parties and to elicit the best offers available for such assets.

Material Terms of the Zokinvy Stalking Horse APA

27. Based on my review of the negotiations and proposals received to date, the purchase price for the Zokinvy Assets in the Zokinvy Stalking Horse APA is the result of extensive, good-faith, arm's-length negotiations, and is currently the best available proposal. I believe that entering into the Zokinvy Stalking Horse APA is in the best interest of the Debtors' estates. I further believe that the terms of the Zokinvy Stalking Horse APA establish a baseline bid for the Zokinvy Assets that, along with the Bid Procedures, enables the Debtors to drive the best available purchase price for the Zokinvy Assets.

The Zokinvy Bid Protections

28. As set forth above, the Zokinvy Stalking Horse APA contemplates bid protections (the "Zokinvy Bid Protections") including (a) a provision for expense reimbursement (the "Expense Reimbursement") not to exceed \$600,000 following the termination of the Zokinvy Stalking Horse APA under certain circumstances, and (ii) a break-up fee (the "Break-Up Fee") which equals \$780,000 (calculated as three percent (3.0%) of the initially proposed Purchase Price of \$26,000,000), payable in the event that the Zokinvy Stalking Horse APA is terminated under certain circumstances and the Debtors consummate an alternative transaction. The Break-Up Fee and Expense Reimbursement are necessary to successfully pursue the sale of the Zokinvy Assets and will not chill bidding. The Zokinvy Stalking Horse Bid sets a floor for the value of such assets, encouraging potential buyers to meet or exceed such floor price for the assets and potentially increasing the realizable value of the assets to the benefit of all parties in interest.

29. The payment of the Zokinvy Bid Protections will not diminish the Debtors' estates to the extent they become payable because any competing bid must exceed the Zokinvy Stalking Horse Bid by an amount in excess of the Break-Up Fee and the Expense Reimbursement. I believe that, absent the Debtors' commitment to the Break-Up Fee and the Expense Reimbursement, the

Debtors could lose the opportunity to obtain the best available offer for the Zokinvy Assets and would lose all downside protections offered by the existence of the Zokinvy Stalking Horse Bid. Based on the prepetition marketing process and the arms'-length negotiations between the Debtors and the Zokinvy Stalking Horse Purchaser, the Debtors have determined that Zokinvy Bid Protections are necessary to retain the Zokinvy Stalking Horse Purchaser's commitment to the consummation of the Sale Transaction. I believe that the Zokinvy Bid Protections, as a whole, are comparable to the bid protections often provided to the bidders in bankruptcy cases.

30. Executing the Zokinvy Stalking Horse APA has put the Debtors in a position to solicit competing bids that may be materially higher or may provide otherwise better value to the Debtors' estates than the Zokinvy Stalking Horse Bid. Accordingly, I believe that the benefits of the Zokinvy Stalking Horse APA outweigh the costs associated with the Zokinvy Bid Protections.

31. In light of the circumstances and in the context of the proposed Zokinvy Sale Transaction, I believe that the selection of the Zokinvy Stalking Horse Bid may result in the submission of additional offers for the Zokinvy Assets at higher values than would be received without the Zokinvy Stalking Horse Purchaser, and consequently, is the likely the best method to increase the available value of the Zokinvy Assets and produce a value maximizing sale transaction.

Conclusion

32. Accordingly, for all the foregoing reasons, I believe that the Bid Procedures, both the sale timeline for the Zokinvy Assets and the sale timeline for the Remaining Assets set forth herein, the approval of the Zokinvy Stalking Horse Bid and the Zokinvy Bid Protections: (a) are consistent with sales and marketing timelines for businesses of similar size and complexity; (b) will allow for an efficient sale of the Zokinvy Assets and a fulsome marketing process of the

Remaining Assets; (c) are reasonable and appropriate under the circumstances; and (d) will result in a value maximizing outcome for the Debtors.

[Remainder of page intentionally left blank.]

I declare under penalty of perjury that, after reasonable inquiry, the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated this 1st day of April, 2024

/s/ David Apelian
By: David Apelian
Chief Executive Officer