



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed April 5, 2024

**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)

(Jointly Administered)

**ORDER (I) APPROVING THE DEBTORS'
PROPOSED ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY
COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,
AND (III) APPROVING THE DEBTORS' PROPOSED PROCEDURES FOR
RESOLVING ADDITIONAL ASSURANCE REQUESTS**

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.



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(a) approving the Debtors' Proposed Adequate Assurance of payment for future Utility Services; (b) prohibiting Utility Companies from altering, refusing, or discontinuing services; (c) approving the Adequate Assurance Procedures for resolving Additional Assurance Requests; and (d) 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 it appearing to the Court that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409;³ 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 shall cause a copy of the Motion and this Order to be served on each Utility Company listed on the Utility Services List no later than two (2) business days after the date this Order is entered.

2. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases, subject to the Adequate Assurance Procedures. No liens shall encumber the Adequate Assurance Deposit or account.

³ Nothing in this Order shall preclude any later order of the Court approving a motion to transfer venue.

3. The Debtors shall deposit funds in the Adequate Assurance Account in the amount set forth for each Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Services List attached as Exhibit B to the Motion.

4. The Adequate Assurance Deposit and the Adequate Assurance Procedures constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

5. If an amount relating to Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to: (a) the Debtors; (b) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York , New York 10019, Attn: William Curtin (wcurtin@sidley.com) and Anne Wallice (anne.wallice@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, Bradley Arant Boult Cummings LLP, Attn: Roger G. Jones (rjones@bradley.com); and (e) counsel to any official committee appointed in these chapter 11 cases (collectively, the “Notice Parties”). Should the Debtors receive such a request, they shall provide a copy of said notice to counsel to any official committee appointed in these chapter 11 cases within one (1) business day of receipt. The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Court. To the extent a Utility Company receives a

disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

6. The portion of the Adequate Assurance Deposit attributable to each Utility Company shall be returned to the Debtors on the earlier of (a) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Company and (b) the effective date of any chapter 11 plan confirmed in these chapter 11 cases. Additionally, if the Debtors terminate any of the Utility Services provided by a Utility Company, the Debtors may reduce the Adequate Assurance Deposit to reflect the termination of such Utility Services.

7. The following "Adequate Assurance Procedures" are hereby approved:

- (a) Subject to paragraphs (b)-(f), the Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$950 into the Adequate Assurance Account within 21 days after the Petition Date.
- (b) Any Utility Company desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve a request for additional assurance (an "Additional Assurance Request") on the Notice Parties. An Additional Assurance Request may be made at any time.
- (c) Any Additional Assurance Request must (i) be in writing, (ii) identify the Utility Services provided, (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits, and (iv) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (d) Upon the Debtors' receipt of any Additional Assurance Request, the Debtors shall promptly negotiate with such Utility Company to resolve such Utility Company's Additional Assurance Request.
- (e) The Debtors may, and without further order from the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Company, and the Debtors may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or

other forms of security if the Debtors believe that such adequate assurance is reasonable.

- (f) If the Debtors and the Utility Company are not able to reach an alternative resolution within 14 days of receipt of the Additional Assurance Request, the Debtors or the Utility Company may request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Company (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code. Pending resolution of any such Determination Hearing, the Utility Company filing such Additional Assurance Request shall be prohibited from altering, refusing, or discontinuing Utility Services to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.

8. The Utility Companies are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures. Nothing in this Order shall prejudice the right of a Utility Company to object to the Adequate Assurance Procedures or propose alternative procedures.

9. Subject to the Adequate Assurance Procedures, the Utility Companies shall be: (a) deemed to have received adequate assurance of payment “satisfactory” to each such Utility Company in compliance with section 366 of the Bankruptcy Code; and (b) forbidden from discontinuing, altering, or refusing services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

10. The Debtors are authorized, following the giving of two-weeks’ notice to the affected Utility Company and the Debtors having received no objection from any such Utility Company, to add or remove any Utility Company from the Utility Services List, and the Debtors shall add to or subtract from the Adequate Assurance Deposit an amount equal to one half of the Debtors’ average monthly cost for each subsequently added or removed Utility Company as soon as practicable. If an objection is received, the Debtors shall request a hearing before this

Court. The Debtors shall only deduct from the Adequate Assurance Deposit the amount set aside for any Utility Company that the Debtors seek to remove from the Utility Services List, if and when (a) the two-week notice period has passed and the Debtors have not received any objection to such removal from such Utility Company, or (b) any such objection has been resolved consensually or by order of the Court. For Utility Companies that are added to the Utility Services List, the Debtors will cause a copy of this Order, including the Adequate Assurance Procedures, to be served on such subsequently added Utility Company no later than five (5) business days after the Utility Company is added. Any Utility Company subsequently added to the Utility Services List shall be bound by the Adequate Assurance Procedures.

11. The Adequate Assurance Procedures set forth herein are for all Utility Companies providing Utility Services to the Debtors and are not limited to those parties or entities listed on the Utility Services List.

12. The Debtors' service of the Motion or this Order upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

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

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

15. 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.

16. Notwithstanding anything to the contrary herein, any payment to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court authorizing the Debtors' use of cash collateral and/or any budget in connection therewith.

17. 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 Local Rules are satisfied by such notice.

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

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

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

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

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