

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

(Jointly Administered)

Related Docket Nos. 13, 24, 94

**SUPPLEMENTAL DECLARATION OF J. SCOTT
VICTOR IN SUPPORT OF THE DEBTORS' MOTION FOR
THE SALE OF THE ZOKINVY ASSETS AND MOTION FOR ENTRY
OF THE FINAL ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH
COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION
TERM LOAN SECURED PARTIES; AND (III) MODIFYING THE AUTOMATIC STAY**

Pursuant to 28 U.S.C. § 1746, I, J. Scott Victor, hereby declare under penalty of perjury that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a Managing Director at SSG Advisors, LLC ("SSG"), an investment banking firm that maintains offices at Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West

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 2100 Ross Avenue, Dallas TX 75201.



Conshohocken, PA 19428, and I am duly authorized to make this declaration on behalf of SSG. I have over 40 years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies' balance sheets both in court and out of court. SSG was engaged by the Debtors in March 2024 to aid in the effectuation of a marketing and sale process.

2. On April 1, 2024, I submitted a declaration [Docket No. 24] (the "Initial Declaration")² in support of 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 "Bid Procedures Motion") [Docket No. 13]. On April 5, 2024, the Court entered an order approving the Bid Procedures Motion (the "Bid Procedures Order") [Docket No. 94].

3. I submit this supplemental declaration (this "Supplemental Declaration") in support of the entry of the Debtors' proposed order approving the Zokinvy Sale Transaction (the "Proposed Zokinvy Sale Order") and in further support of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting*

² Capitalized terms used but not defined herein shall have the meanings given to them in the Initial Declaration, Bid Procedures Order, and Proposed Zokinvy Sale Order or Cash Collateral Motion.

*Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying the Automatic Stay; and (IV) Scheduling a Final Hearing (the “Cash Collateral Motion”).*³

4. I am authorized to execute this Supplemental Declaration on the Debtors’ behalf in support of the relief requested in the Proposed Zokinvy Sale Order and the Cash Collateral Motion. Except as otherwise indicated, all facts set forth in this Supplemental Declaration are based upon my personal knowledge or opinion, information learned from my review of relevant documents, and information I received from the Debtors representatives and professionals. If I were called to testify, I could and would testify to the facts set forth herein.

Zokinvy Sale Transaction

5. As set forth in the Initial Declaration, based on SSG’s diligence and conversations with the Debtors and their advisors, I believe that the prepetition engagement with other interested parties appropriately identified potential bidders for the Zokinvy Assets and that given the limited number of potential purchases, entry into the purchase agreement with Sentyln Therapeutics, Inc. (the “Zokinvy Stalking Horse Purchaser”) as the stalking horse bidder for the Zokinvy Assets (the “Zokinvy Stalking Horse Bid”) was the best means to achieve the best available value of the Debtors’ estates for all stakeholders.

6. Following entry into the Zokinvy Stalking Horse APA, SSG continued to interface with potential bidders for the Zokinvy Assets during the postpetition period to solicit higher or otherwise better proposals from third parties and to facilitate an auction for the Zokinvy Assets, as necessary. During this postpetition period, SSG continued to progress discussions with parties that were actively involved in the prepetition marketing process and also successfully solicited interest from additional potential parties that did not exhibit interest during the prepetition outreach

³ Capitalized terms used but not defined herein have the meanings given to such terms in the Motion.

process. This process enabled the Debtors to secure a Qualified Bid from a third party and conduct the Zokinvy Auction.

7. In accordance with the Bid Procedures Order, on April 17, 2024 the Debtors conducted an auction for the sale of the Zokinvy Assets. Following the conclusion of the Zokinvy Auction, as set forth in the *Revised Notice of Selection of Winning Bid* [Docket No. 133], the Debtors selected the Sentyln Therapeutics, Inc. as the Winning Bidder with a Purchase Price of \$46,100,000 less a credit in the amount of \$900,000 for the Termination Fee resulting in a net Purchase Price in the amount of \$45,200,000 (assuming a Closing on April 24, 2024) (the “Winning Bid”). I believe that the Zokinvy Stalking Horse Purchaser is willing and able to consummate the transaction contemplated by the Zokinvy Stalking Horse APA on the terms set forth therein and the Debtors intend to consummate this value-maximizing transaction therein (the “Zokinvy Sale Transaction”).

8. I believe that the Debtors, with the assistance of their advisors, conducted the marketing, sale process, and auction for the Zokinvy Assets in a manner that was thorough, fair, designed to achieve the best available value for the Debtors’ estates for all stakeholders and in compliance with the Bid Procedures Order and the Bid Procedures in all material respects.

9. All parties that expressed a potential interest in the Zokinvy Assets were afforded a full and equal opportunity to conduct diligence and submit offers for the Zokinvy Assets and to object or otherwise be heard with respect to the sale process. I believe that at all times, the Debtors’ negotiations and discussions with the potential bidders for the Zokinvy Assets were conducted in good faith and at arm’s length and by parties who were (or had the opportunity to be) represented by their own counsel and advisors.

10. I believe that the Zokinvy Stalking Horse Purchaser, SSG, the Debtors, and the Debtors' other professionals acted in good faith throughout the sale process. I am not aware of any communications between the Zokinvy Stalking Horse Purchaser and any other potential bidders for the Zokinvy Assets.

11. Additionally, I believe that the sale of the Zokinvy Assets to the Zokinvy Stalking Horse Purchaser pursuant to the terms of the Zokinvy Stalking Horse APA, is in the best interest of the Debtors, their estates, and their creditors because the Winning Bid is the highest or otherwise best offer available for the Zokinvy Assets and will result in the best available recoveries for the Debtors' creditors. I believe that the Backup Bid, submitted by Eton Pharmaceuticals, Inc., is the second highest and best offer available.

12. In light of the Debtors' comprehensive sale and marketing process pre- and postpetition, I do not believe that further marketing of the Zokinvy Assets or an extension of the Zokinvy Bid Deadline would have resulted in higher or otherwise better offers for the Zokinvy Assets, and I believe that the Zokinvy Assets were properly exposed to the market. Based on the foregoing, I believe that the Debtors have a sound business justification for entering into the Zokinvy Stalking Horse APA and consummating the sale of the Zokinvy Assets to the Zokinvy Stalking Horse Purchaser.

Remaining Assets Sale Transaction

13. I believe the continued use of Cash Collateral to market, auction, and sell the Remaining Assets, will enable to Debtors to optimize the value for their estates and creditors. Since SSG began marketing the Remaining Assets approximately five (5) weeks ago, SSG has received interest, and diligence is being done by several parties on the Debtors' Remaining Assets.

14. The continued use of Cash Collateral will allow the Debtors and SSG to engage with potential bidders and provide potential bidders additional time to perform due diligence and acquire information on the Remaining Assets. I believe the processes through which potential buyers will perform due diligence on the Remaining Assets, and submit bids, will increase the likelihood that the Debtors will obtain the best available value for the Remaining Assets.

15. Without access to the cash collateral, it is my belief that the Debtors' marketing and sale process for the Remaining Assets would be harmed as (1) the Debtors would no longer have access to the expertise of the Debtors' management and employees, which is crucial to marketing the Remaining Assets and maximizing value for the Debtors' estates, and (2) the Debtors would be unable to make necessary ordinary course payments required to keep the Remaining Assets in good standing. Accordingly, loss of access to cash collateral could lead to a significant decrease in the value of the Remaining Assets.

16. Any delay in the Debtors' ability to access cash collateral would irreparably harm the Debtors and their estates.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct to the best of my knowledge, information and belief.

Date: April 21, 2024

/s/ J. Scott Victor
J. Scott Victor
Managing Director