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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)

(Jointly Administered)

Related to Docket Nos. 16, 93, and 136

**DEBTORS' REPLY IN SUPPORT OF 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**

The debtors and debtors in possession (collectively, the "Debtors")² in the above-captioned chapter 11 cases, hereby submit this reply (this "Reply") in further support of the *Debtors'* *Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash*

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.

² Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Cash Collateral Motion and First Day Declaration.



*Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; and (IV) Scheduling a Final Hearing [Docket No. 16] (the “Cash Collateral Motion”) and in response to the *Notice of Consent to Debtors’ Use of Cash Collateral [Docket No. 136] (the “Notice”) filed by the Innovatus Life Sciences Lending Fund I LP (“Innovatus”), the Debtors’ Prepetition Term Loan Agent. In support of this Reply, the Debtors rely on the *Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings [Docket No. 19] (the “First Day Declaration”), the Declaration of Paul Rundell, Managing Director of Alvarez & Marsel North America, LLC, in Support of the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; and (IV) Scheduling a Final Hearing [Docket No. 20] (the “Rundell Declaration”), the Declaration of Douglas Staut, Proposed Chief Restructuring Officer of Eiger Biopharmaceuticals, Inc., in Support of the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; and (IV) Scheduling a Final Hearing [Docket No. 138] (the “Staut Declaration”), and the Supplemental Declaration of J. Scott Victor in Support of 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 [Docket No. 141] (the “Supplemental Victor Declaration”).* The Debtors respectfully represent as follows:**

REPLY

1. These chapter 11 cases should not have been required. The Debtors were pursuing a path to an equity investment or sale of their assets in an orderly fashion but were thwarted at every step by a secured creditor who inexplicably blocked sales that would have paid down their debt, while at the same time manufacturing defaults in attempt to exert greater control over the Debtors. Having previously objected to the Debtors' use of cash collateral, the Prepetition Term Loan Lenders now seek to usurp the Debtors' control of these cases by filing a bizarre, and unprecedented, "*Notice of Consent to Debtors' Use of Cash Collateral*", which attempts to unilaterally bind the Debtors to the terms of this Court's interim order (the "Interim Order") on a final basis. In a transparent attempt to avoid this Court's scrutiny of their conduct, Innovatus seeks to incorporate the releases granted on an interim basis into the Final Order. The Court should reject Innovatus' gamesmanship and approve the Debtors' proposed order, attached hereto as **Exhibit 2**.³

2. Less than three weeks into these bankruptcy cases, the Debtors completed an successful auction of Zokinvy (the "Zokinvy Auction") at a purchase price of \$46.1 million,⁴ approximately \$20 million more than the initial Zokinvy Stalking Horse Bid (before it was raised to \$30 million at the First Day Hearing). Accordingly, the net amount to the Debtors from the Zokinvy Sale Transaction, together with the anticipated cash on hand as of the week ending April 26 under the Debtors' proposed cash collateral budget (the "Budget"), currently exceeds the asserted Innovatus claim amount (which the Debtors believe is overstated). In addition, the

³ For the benefit of the Court, the Debtors have attached a redline of the proposed Final Order against the Interim Order as **Exhibit 3** to this Reply.

⁴ The Base Price is in the amount of \$46,100,000, less a credit in the amount of \$900,000 for the Termination Fee resulting in a net Base Price in the amount of \$45,200,000 (assuming a Closing on April 24, 2024).

Debtors have generated significant interest in their Remaining Assets and are hopeful that these sales will generate additional recoveries. Accordingly, at this time, the Debtors are properly considering the interests of their remaining stakeholders—unsecured creditors and their public equityholders.

3. Apparently, in light of the Notice filed by Innovatus, Innovatus no longer objects to the Debtors' Budget but rather seeks to force the Debtors to agree on a final basis to stipulations and releases, which were not to be granted unless and until a Final Order provided for such relief. The Debtors' fiduciary duties do not permit the Debtors to acquiesce to Innovatus' demands at this time.

4. It is at best disingenuous for Innovatus to seek to rely on the Stipulations in the Interim Order. As in every case, at the time the Interim Order was submitted, the Debtors anticipated that an Official Committee of Unsecured Creditors ("Committee") would be appointed. That Committee would typically have seventy-five (75) days and a budget to investigate before being bound by the stipulations and releases. The Interim Order preserves such rights to a Committee, if appointed. *See* Interim Order, ¶ 19. Typically, these rights would be asserted by a committee at the Final Hearing. However, it now is clear that no such committee will be formed at the time of the Final Hearing. Thus, if the Debtors do not reserve their rights in the Final Order, there will be no estate fiduciary to assert potential claims on behalf of the Debtors' estates.

5. The Debtors do, however, propose the following adequate protection package to the Prepetition Term Loan Lenders in an effort to reach a consensual resolution on the usage of cash collateral:

- An interim paydown of \$15 million following the closing of the Zokinvy Sale Transaction without prejudice to any parties' rights (the "Paydown");

- Payment of the Prepetition Term Loan Lenders’ professional fees on an ongoing basis;
- Replacement liens; and
- Typical budgetary controls.

6. In light of this significant adequate protection package the Debtors request that the Court disregard the Notice, which is otherwise a cloaked objection, and enter the Debtors’ proposed form of Final Order.

I. The Notice Improperly Attempts to Bind the Debtors to the Interim Relief on a Final Basis so as to Estop the Debtors from Further Investigating Bad Faith, Prepetition Conduct.

7. The Notice improperly attempts to usurp the Court’s authority and bind the Debtors to the terms of the Interim Order. Specifically, the Notice requests entry of the Final Order “in substantially the same form as the Interim Order, other than customary edits to make the Interim Order the Final Order.” *See* Notice at ¶ 10. This request is purposeful and transparent. In reality, Innovatus proposes “consent” to the Final Order as a smokescreen to actually bind the Debtors to a release of any potential claims held by the Debtors against the Prepetition Term Loan Secured Parties and their related parties arising from or related to the Prepetition Term Loan Indebtedness. *See id.* at ¶ 4, 10. This is improper. **First**, the Interim Order itself, by its very language, only releases Innovatus “[s]ubject to . . . entry of the Final Order.” Docket No. 93 at ¶ 15. The proposed terms of the Final Order have changed, and rightfully so. **Second**, the Debtors made no promise to adhere to the strict terms of the Interim Order on a final basis, nor should they in light of the lack of a Committee and the need for further investigation into of Innovatus. **Third**, it would be inequitable to reward the Prepetition Term Loan Lenders’ conduct both before and during these chapter 11 cases, further described below, by providing them a release, at this stage in the case, in exchange for consent to the use of cash collateral.

8. It is vital that the Debtors maintain and preserve any causes of action through the Final Order. The Debtors believe there may be potential causes of action which may be raised regarding certain prepetition actions by the Prepetition Term Loan Lenders, including, among other things: (i) the Prepetition Term Loan Lenders' use of confidential information to undermine a potential capital raise and attempt to force the sale of the Debtors' assets to a preferred purchaser, and (ii) the legitimacy of the Event of Default declared by Innovatus and its effect on the financial stability of the Debtors, which prompted the filing of these cases. The Debtors would not have filed for the protections of the Bankruptcy Code but for the significant bad faith conduct of Innovatus. The Debtors' goal has always been to provide life-saving drugs to children, but that purpose has been continually disrupted by the bad faith conduct of its secured creditor.

9. For example, in June 2023, the Debtors entered into a non-binding term sheet to sell its Lambda assets ("Lambda"), a well-tolerated interferon that stimulates immune responses critical for the development of host protection during viral infections, to a public biotechnology company. The LSA required Innovatus's consent with respect to the sale transaction and the prospective buyer wanted Innovatus to release its security interests in Lambda as a condition of the sale. Instead of cooperating, Innovatus used the consent requirement as leverage to demand the Debtors agree to substantial loan pre-payments with respect to proceeds from Lambda and future asset sales, termination of additional loan tranches, the issuance of warrants to purchase shares of the Debtors' common stock, and an amended management rights letter with Board observer rights in favor of Innovatus. These requests were a far cry from the arms-length terms negotiated in the LSA, and they represented nothing more than Innovatus taking advantage of its consent rights and the Debtors' economic situation to demand more than either party had bargained for in the LSA.

10. This was not the only time that Innovatus's selfish actions put the Debtors' continued operations in jeopardy. In 2023, Propel, one of the Debtors' institutional shareholders and largest supporters, entered into negotiations with the Debtors regarding a potential private investment in public equity ("PIPE"). The Debtors and Propel negotiated the terms of the PIPE investment for several months and had advanced to an agreed term sheet and extensive due diligence and drafting of definitive documentation. At the same time, the Debtors had begun exploring the potential for an asset sale, specifically an asset sale of its valuable Zokinvy assets. Though the Debtors were pursuing this asset sale, their strong preference was to consummate the PIPE investment, raising sufficient funds by an equity raise to not need to sell Zokinvy.

11. The Debtors ultimately engaged with Sentnyl Therapeutics ("Sentnyl") regarding a sale of Zokinvy in parallel to its PIPE financing efforts. On October 4, 2023, the Company entered a non-binding term sheet to out-license Zokinvy to Sentnyl for \$37.5 million. The LSA required Innovatus's consent for such an out-license, and thus the Debtors discussed with Innovatus the terms of the proposed transaction. A mere five days after these conversations with Innovatus, the Debtors received an offer from Eton Pharmaceuticals ("Eton") to acquire Zokinvy for \$40 million, a slight increase from Sentnyl's offer. This was no coincidence. The Debtors now believe that Innovatus was speaking to its own preferred purchaser, Eton, potentially sharing confidential information without the Debtors' knowledge or consent. The Debtors nonetheless explored a potential sale to Eton. However, Eton refused to meet with PRF, a critical partner for Zokinvy and its support for the treatment for the hundreds of children worldwide who suffer from progeria and desperately need uninterrupted access to Zokinvy. Because this refusal, the Debtors focused their efforts back to Sentnyl, which made itself available to PRF.

12. Innovatus, frustrated by its inability to force the Debtors to sell Zokinvy to Eton, the Debtors' ongoing pursuit of equity financing that might not be used to prepay the loan in an amount sufficient to its satisfaction, and a lack of *bona fide* accelerating events, chose to manufacture a "default" to increase pressure on the Debtors. On January 15, 2024, soon after the Company declined to move forward with Eton, and just a few days after the Company had provided Innovatus with a signed term sheet for the PIPE investment, Innovatus threatened that the Company would be receiving a notice of default from Innovatus that would require an unidentified "material disclosure." Innovatus told the Company it had no interest in hearing anything further about the PIPE transaction. Innovatus refused to explain the basis for any purported notice of default.

13. Two days later, on January 17, 2024, Innovatus followed through on its threat by sending the Notice of Default in which it purported to claim a violation of the MAC clause in the LSA. Innovatus claimed a MAC had been triggered entirely by (i) a statement contained in the Company's September 30, 2023 Form 10-Q that there was "substantial doubt regarding the Company's ability to continue as a going concern beyond twelve months after" the date of the filing; and (ii) what Innovatus characterized as a "dramatic decline in [the Company's] stock price and market capitalization." However, neither the drop in stock price nor the going concern disclosure caused a failure of any condition or covenant in the applicable loan documents. Neither had any impact on the Company's ability to pay Innovatus, and the Company was in compliance with all other obligations under the LSA. Simply, the MAC was meritless and a tactic by Innovatus to force a paydown of its secured debt and forcibly extricate itself from the Debtors.

14. Unfortunately, Innovatus's scheme worked. Innovatus's manufactured and baseless Notice of Default caused the Company to lose the opportunity to obtain PIPE financing.

When Propel learned of the Notice of Default, it demanded that any PIPE investment would require Innovatus to agree to amend the terms of the LSA to protect the equity investment.

15. As a result, and in light of the Debtors' dire need for capital, the Debtors focused its efforts on a potential sale of Zokinvy. Innovatus initially refused, however, to consent to a sale of the Zokinvy assets to Sentnyl – the potential buyer with whom the PRF was comfortable proceeding. In fact, even when the Debtors offered to provide all of the sale proceeds to Innovatus, Innovatus only agreed to consent to a sale under highly restrictive terms, inclusive of a loan prepayment and a complex scheme to attempt to convey the value of the Debtors' net operating loss tax attributes and certain other assets to Innovatus through an entity reorganization and Chapter 11 filing.

16. In sum, Innovatus forced the Debtors into a position where their only option for a capital raise was a sale of valuable assets, tried to coerce the Debtors to selling to a buyer Innovatus had backchanneled with using the Debtors' confidential information, and destabilized any prospects for an out-of-court sale. It appears that Innovatus recognizes the existence of potentially valid claims and is trying to prevent them from ever being heard by the Court through their attempt to have interim releases become final. Simply, this is not a case where releases and waivers should be granted as part of the Final Order. The Debtors request that the Court enter the proposed Final Order, which properly preserves the Debtors' rights to pursue any and all remedies stemming from Innovatus's prepetition bad faith conduct.

II. The Budget Was Developed on a Vendor-by-Vendor Basis, with a Focus on Only Those Critical Payments Necessary to Retain Value.

17. To the extent any objection to the Budget remains, which based upon the Notice it appears to not, such objection should be overruled in light of the necessity and propriety of the payments detailed therein. The Debtors' management, in coordination with its Chief Restructuring

Officer and advisors at Alvarez & Marsal North America, LLC (“A&M”), developed the Budget, attached hereto at Exhibit 1, individually reviewing each vendor and determining whether the vendor or such payments were necessary to retain value attributable the Debtors’ assets. Further, in reviewing the vendor and the payments, and after determining such vendors was critical to preservation of value, the Debtors and A&M discussed whether each vendor’s scope of work and/or fees would change during the bankruptcy and sale process. Based off this iterative review, the Debtors created a Budget that reflects only the Debtors’ most critical needs on an ongoing basis.

18. These vendors are essential to maximize the value of the asset sales. The Debtors neither own nor operate manufacturing facilities for the production of its products and therefore rely heavily on third parties for the commercial manufacturing of all of its clinical product candidates. Additionally, the largest component of Debtors’ operating expenses historically has been investment in clinical trials, a critical component to maintaining value of the Debtors’ core programs. *See* First Day Declaration ¶ 34. In fact, bidders have contacted the Debtors, through their investment bankers at SSG Capital Advisors, LLC, to inquire (and confirm) the Debtors’ intent to continue these investments. The R&D / Post-Marketing Disbursements reflected in the Budget are critical expenses necessary to maintain value in the Debtors’ assets.

19. Further, as of the Petition Date, the Company employed only nine full-time employees across the United States and Europe, down from a former total of twenty-five employees at the end of 2023. *See id.* at ¶ 14. Each of these employees is necessary to support the Debtors’ ongoing sale process, satisfy the post-close obligations to the Zokinvy purchaser, and operate the business during these cases. In the Debtors’ business judgment, these nine employees

represent the absolute minimum number of employees needed to safely and appropriately manage ongoing operations and the sale process.

20. Innovatus continues to attempt to implement their own business judgment for that of the Debtors—an action that is completely inappropriate. Further, the Debtors have demonstrated time and again that their decision-making related to, and in, these cases is focused on, and maximizing value for, *all stakeholders*. The Prepetition Term Loan Lenders have nonetheless turned the Debtors’ Cash Collateral Motion, and the relief requested therein, into an attempt to subvert these cases into a process by which the Prepetition Term Loan Lenders can receive the fastest paydown of their claims (including an inappropriate payment of both a prepayment and “final” fee), and a release of the colorable claims against them, to the detriment of all other stakeholders.

CONCLUSION

21. The Notice is nothing more than a disguised objection to the Debtors’ ongoing investigation into Innovatus’s bad faith prepetition conduct. For the reasons set forth in this Reply, the Debtors respectfully request entry of the Final Order as attached hereto and for the Court to grant such other relief as is just and proper.

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Dated: April 22, 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 22, 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 1

Budget

Cash Collateral Budget

(\$ in '000s)

Week Ending

| | 19-Apr | 26-Apr | 3-May | 10-May | 17-May | 24-May | 31-May | 7-Jun | 14-Jun | 21-Jun | 28-Jun | 5-Jul | 12-Jul | 19-Jul | 26-Jul | Total |
|--|------------------|-------------------|--------------------|------------------|------------------|------------------|-------------------|------------------|------------------|------------------|-------------------|------------------|------------------|-------------------|-------------------|-------------------|
| Receipts | | | | | | | | | | | | | | | | |
| Product Revenue - Zokinvy Product Sales | \$ 370 | \$ 325 | \$ 260 | \$ 260 | \$ 260 | \$ 260 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 1,734 |
| Other Receipts (Milestone payments, deposit returns) | - | - | 1,440 | - | - | 360 | - | - | - | - | - | - | - | - | - | 1,800 |
| Net Proceeds from Sale of Zokinvy | - | 37,184 | - | - | - | - | - | - | - | - | - | - | - | - | - | 37,184 |
| Total Receipts | \$ 370 | \$ 37,509 | \$ 1,700 | \$ 260 | \$ 260 | \$ 620 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 40,718 |
| Operating Disbursements | | | | | | | | | | | | | | | | |
| Zokinvy Commercialization Disbursements | \$ (35) | \$ (176) | \$ (262) | \$ (118) | \$ (118) | \$ (103) | \$ (83) | \$ (83) | \$ (83) | \$ (83) | \$ - | \$ - | \$ - | \$ - | \$ - | \$ (1,142) |
| R&D / Post-Marketing Disbursements | - | (137) | (246) | (55) | (55) | (55) | (55) | (55) | (55) | (55) | (55) | (20) | (20) | (20) | (20) | (902) |
| Payroll | - | (168) | - | (106) | - | (106) | - | (106) | - | - | (106) | - | (106) | - | (106) | (805) |
| Interest Expense | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Eiger Overhead | - | (105) | (161) | (53) | (53) | (53) | (53) | (66) | (66) | (66) | (62) | (62) | (62) | (62) | (62) | (984) |
| Medicaid Claims | - | (1,063) | - | - | - | - | - | - | - | - | - | - | - | (1,063) | - | (2,127) |
| Other | (39) | (10) | (61) | (51) | (51) | (51) | (51) | (64) | (64) | (64) | (64) | (26) | (26) | (26) | (26) | (673) |
| Contingency | (100) | (100) | (73) | (38) | (28) | (37) | (24) | (37) | (27) | (27) | (29) | (11) | (21) | (117) | (21) | (690) |
| Total Operating Disbursements | \$ (175) | \$ (1,760) | \$ (803) | \$ (420) | \$ (304) | \$ (405) | \$ (265) | \$ (410) | \$ (294) | \$ (294) | \$ (316) | \$ (119) | \$ (236) | \$ (1,289) | \$ (236) | \$ (7,322) |
| Restructuring Expenses | | | | | | | | | | | | | | | | |
| Professional Fees | \$ - | \$ (125) | \$ - | \$ (147) | \$ (21) | \$ (242) | \$ (1,106) | \$ - | \$ (21) | \$ - | \$ (860) | \$ - | \$ (112) | \$ - | \$ (3,008) | \$ (5,643) |
| Accounts Payable and Deposits | - | - | - | (10) | - | - | - | - | - | - | - | - | - | - | 10 | - |
| Total Restructuring Expenses | \$ - | \$ (125) | \$ - | \$ (157) | \$ (21) | \$ (242) | \$ (1,106) | \$ - | \$ (21) | \$ - | \$ (860) | \$ - | \$ (112) | \$ - | \$ (2,998) | \$ (5,643) |
| Total Net Cash Flow | \$ 195 | \$ 35,624 | \$ 897 | \$ (318) | \$ (65) | \$ (27) | \$ (1,371) | \$ (410) | \$ (315) | \$ (294) | \$ (1,176) | \$ (119) | \$ (348) | \$ (1,289) | \$ (3,233) | \$ 27,753 |
| Debt Repayment | \$ - | \$ - | \$ (15,000) | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ (15,000) |
| Net Cash Flow After Debt Repayment | \$ 195 | \$ 35,624 | \$ (14,103) | \$ (318) | \$ (65) | \$ (27) | \$ (1,371) | \$ (410) | \$ (315) | \$ (294) | \$ (1,176) | \$ (119) | \$ (348) | \$ (1,289) | \$ (3,233) | \$ 12,753 |
| Starting Cash | \$ 12,258 | \$ 12,454 | \$ 48,078 | \$ 33,975 | \$ 33,657 | \$ 33,592 | \$ 33,565 | \$ 32,194 | \$ 31,784 | \$ 31,469 | \$ 31,176 | \$ 30,000 | \$ 29,881 | \$ 29,534 | \$ 28,245 | \$ 12,258 |
| Change in Cash | 195 | 35,624 | (14,103) | (318) | (65) | (27) | (1,371) | (410) | (315) | (294) | (1,176) | (119) | (348) | (1,289) | (3,233) | 12,753 |
| Ending Cash | \$ 12,454 | \$ 48,078 | \$ 33,975 | \$ 33,657 | \$ 33,592 | \$ 33,565 | \$ 32,194 | \$ 31,784 | \$ 31,469 | \$ 31,176 | \$ 30,000 | \$ 29,881 | \$ 29,534 | \$ 28,245 | \$ 25,012 | \$ 25,012 |
| Starting Debt | \$ 41,685 | \$ 41,685 | \$ 41,685 | \$ 27,188 | \$ 27,188 | \$ 27,188 | \$ 27,188 | \$ 27,693 | \$ 27,693 | \$ 27,693 | \$ 27,693 | \$ 28,203 | \$ 28,203 | \$ 28,203 | \$ 28,203 | \$ 41,685 |
| Debt Repayment | - | - | (15,000) | - | - | - | - | - | - | - | - | - | - | - | - | (15,000) |
| Cash Interest Accrued | - | - | 425 | - | - | - | 426 | - | - | - | 431 | - | - | - | 436 | 1,717 |
| PIK Interest Accrued | - | - | 78 | - | - | - | 79 | - | - | - | 80 | - | - | - | 81 | 318 |
| Ending Debt | \$ 41,685 | \$ 41,685 | \$ 27,188 | \$ 27,188 | \$ 27,188 | \$ 27,188 | \$ 27,693 | \$ 27,693 | \$ 27,693 | \$ 27,693 | \$ 28,203 | \$ 28,203 | \$ 28,203 | \$ 28,203 | \$ 28,720 | \$ 28,720 |
| Accrued but unpaid professional fees | \$ 1,092 | \$ 1,384 | \$ 1,607 | \$ 1,669 | \$ 1,858 | \$ 1,883 | \$ 1,149 | \$ 1,302 | \$ 1,434 | \$ 1,587 | \$ 964 | \$ 1,117 | \$ 1,344 | \$ 1,686 | \$ - | \$ - |

Exhibit 2

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)

(Jointly Administered)

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

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 2100 Ross Avenue, Dallas, Texas 75201.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

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

- (a) authorization for the Debtors, pursuant to sections 105, 361, 362, 363, 503 and 507 of the Bankruptcy Code, and subject to and in accordance with the terms and conditions set forth in this final order (together with all annexes and exhibits hereto, this “Final Order”), to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, in accordance with the terms of this Final Order and (ii) grant adequate protection to the Prepetition Term Loan Secured Parties (as defined below) on account of the Diminution in Value (as defined herein) of the Prepetition Collateral (as defined herein) as a consequence of the Debtors’ use, sale, or lease of the Prepetition Collateral;
- (b) modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Final Order;
- (c) the waiver of all rights to surcharge any Prepetition Collateral or Collateral (each as defined herein) under section 506(c) of the Bankruptcy Code;
- (d) for the “equities of the case” exception under section 552(b) of the Bankruptcy Code to not apply to any of the Prepetition Term Loan Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law;
- (e) waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and
- (f) granting related relief;

and a hearing (the “Interim Hearing”) having been held by the Court on April 3, 2024, and the Court having entered an order, dated April 5, 2024, granting the relief requested in the Motion on an interim basis [Docket No. 93] (the “Interim Order”); and a final hearing having been held by this Court on April 23, 2024 (the “Final Hearing”) to consider the relief requested in the Motion;

pursuant to Bankruptcy Rule 4001 and Local Rule 2002-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in the Motion and the interim Order; and the Court having considered the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), the Rundell Declaration, the Approved Budget (as defined herein) attached hereto as **Exhibit 1**, offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing and the Final Hearing; and the Court having considered the relief requested in the Motion; and it appearing to the Court that granting the final relief as sought in the Motion is necessary and essential to avoid irreparable harm to the Debtors and their estates and that authorizing the Debtors to use Cash Collateral as contemplated in the Motion and this Final Order will enable the Debtors to preserve the value of the Debtors’ business and assets and that such relief is fair and reasonable and that entry of this Final Order is in the best interest of the Debtors and their estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion on a final basis;

IT IS HEREBY FOUND AND DETERMINED THAT:³

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

B. ***Debtors in Possession.*** The Debtors have continued with the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and

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

1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

C. ***Jurisdiction and Venue.*** The Court has jurisdiction over the Motion, these Chapter 11 Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. It appears to the Court that venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. § 1408.⁴ This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

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

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

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

(a) ***Prepetition Term Loan Secured Indebtedness.*** Under that certain Loan and Security Agreement, dated as of June 1, 2022 (as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Credit Agreement” and, together with all other documentation executed in connection therewith, including without limitation, the Loan Documents (as defined in the Prepetition Term Loan Credit Agreement) executed in connection therewith, as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Documents”), among Eiger BioPharmaceuticals, Inc. (“Eiger”), EB Pharma, LLC (“EB

⁴ Nothing in this Final Order shall preclude any later order of the Court approving a motion to transfer venue.

Pharma”), and EBPI Merger, Inc. (“EBPI Merger”, and, together with Eiger and EB Pharma, the “Borrower”), Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto, the “Prepetition Term Loan Agent”), the subsidiary guarantors from time to time party thereto (the “Prepetition Term Loan Guarantors”), and the lenders from time to time party thereto (such lenders, the “Prepetition Term Loan Lenders” and, together with the Prepetition Term Loan Agent, the “Prepetition Term Loan Secured Parties”), the Borrower borrowed, and was liable unconditionally and irrevocably to, and the Prepetition Term Loan Guarantors, as applicable, guaranteed for the benefit of, the Prepetition Term Loan Secured Parties pursuant to the Prepetition Term Loan Documents, without offset, contest, objection, recovery, recoupment, reduction, defense, counterclaim, subordination, recharacterization, disgorgement, disallowance, avoidance, challenge, or any other claim or Cause of Action⁵ of any kind, (x) an aggregate principal amount of not less than \$41,685,030.30 of Term A Loans (as defined in the Prepetition Term Loan Credit Agreement) (the “Prepetition Term Loans”), subject to the relative rights, rankings, and priorities set forth in the Prepetition Term Loan Credit Agreement, plus (y) all accrued and unpaid interest (including capitalized interest) with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accounts’, consultants’, appraisers’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether

⁵ As used in this Final Order, “Causes of Action” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, or offset of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the entry of this Interim Order, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law.

or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Term Loan Credit Agreement) owing under or in connection with the Prepetition Term Loan Documents (clauses (x) and (y), collectively, the “Prepetition Term Loan Secured Indebtedness”).

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

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

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

obligations of the Debtors and is enforceable in accordance with the terms of the Prepetition Term Loan Documents; and (v) the Prepetition Term Loan Liens are subject and subordinate only to Permitted Prior Liens.⁶

(d) *No Further Commitment to Extend Loans.* As a result of the Debtors filing their voluntary petitions for bankruptcy, none of the Prepetition Term Loan Secured Parties have any commitment or obligation of any kind to extend any loan or other extensions of credit or financial accommodations to the Debtors.

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

2. *Cash Collateral.* All of the Debtors' cash constitutes cash collateral of the Prepetition Term Loan Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral"), including amounts generated by the collection of Prepetition Collateral, including but not limited to accounts receivable, all other cash proceeds, products, offspring, or

⁶ As used herein, "Permitted Prior Liens" shall mean any legal, valid, binding, perfected, enforceable liens on or security interests in the Prepetition Collateral in existence as of the Petition Date, or which are perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, in each case which have priority over the Prepetition Term Loan Liens and that are not subject to avoidance, recharacterization, offset, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law or other challenge.

profits of the Prepetition Collateral and amounts now or hereafter held in any of the Debtors' banking, checking, or other deposit accounts as of the Petition Date or amounts deposited or transferred into the Debtors' banking, checking, or deposit accounts after the Petition Date.

3. **Bank Accounts.** The Debtors acknowledge and agree that, as of the Petition Date, the Debtors do not maintain any bank accounts other than those accounts covered by any motion or order authorizing the Debtors to continue to use the Debtors' existing cash management system and all cash in such accounts constitute Cash Collateral of the Prepetition Term Loan Secured Parties.

F. **Adequate Protection.** Pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, the Prepetition Term Loan Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to any aggregate diminution in value of their interests in the Prepetition Collateral (including any Cash Collateral) resulting from, among other things, the subordination of the Prepetition Term Loan Liens to the Carve Out, the Debtors' use of Cash Collateral, the use, sale or lease of any of the Prepetition Collateral, the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and/or for any other reason for which adequate protection may be granted under the Bankruptcy Code ("Diminution in Value"). The foregoing shall not, nor shall any provision of the Interim Order or this Final Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Collateral (including Cash Collateral) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration, the Rundell Declaration, and the record presented to the Court at the Interim Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements and

the use of the Prepetition Collateral, including Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

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

H. ***Notice.*** In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and Local Rule 2002-1, adequate notice of the Final Hearing and the relief requested in the Motion on a final basis has been provided by the Debtors to the necessary notice parties. Under the circumstances, the notice given by the Debtors of (and as described in) the Motion, the relief requested herein, and the Final Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and Local Rule 2002-1.

I. ***Relief Essential; Best Interest.*** The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2). The relief requested in the Motion (and as provided in this Final Order) is necessary, essential, and appropriate for the continued operation of the Debtors' businesses, the administration of these Chapter 11 Cases, and the management and preservation of

the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein. The terms of the Order and the use of Cash Collateral are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with the Debtors' fiduciary duties.

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

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

IT IS HEREBY ORDERED THAT:

1. ***Motion Granted.*** The Motion is granted on a final basis as set forth herein, and the use of Cash Collateral on a final basis is authorized, subject to the terms of this Final Order.
2. ***Objections Overruled.*** Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled and all reservations of rights included therein, are hereby denied and overruled in all respects.
3. ***Authorization to Use Cash Collateral; Budget.***

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

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

(c) *Budget Testing.* Except as otherwise provided herein, the Debtors may use Cash Collateral in accordance with the Approved Budget, subject to Permitted Variances (as defined below) and in accordance with this Final Order. Permitted Variances for each Approved Budget shall be tested by no later than the fifth Friday following the Petition Date and each fourth Friday thereafter (each such date, a "Testing Date"). On or before 5:00 p.m. (prevailing Central time) on each Testing Date, the Debtors shall prepare and deliver to the Prepetition Term Loan Agent and its advisors, in form and substance reasonably acceptable to the Prepetition Term Loan Agent, a variance report (the "Variance Report") setting forth for the prior four-week period the Debtors' actual disbursements on an aggregate basis (the "Actual Disbursements").

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

(e) *Permitted Variances.* The Debtors shall not permit, during any Budget Period, the Debtors’ Actual Disbursements on an aggregate basis for such four-week period to be more than 120% of the projected disbursements in the aggregate as set forth in the Approved Budget over such time (such deviations, the “Permitted Variances”); *provided* that, any positive Permitted Variances (*i.e.*, the Debtors’ Actual Disbursements are *less than* the projected disbursements in the aggregate as set forth in the Approved Budget over such time) may be carried over to a subsequent Budget Period to offset any negative Permitted Variance (*i.e.*, the Debtors’ Actual Disbursements are more than the projected disbursements in the aggregate as set forth in the Approved Budget over such time) for such Budget Period. For the avoidance of doubt, the

cash disbursements considered for determining compliance with the Permitted Variances shall exclude the Debtors' disbursements in respect of (x) the restructuring professional fees of the Debtors, any Committee, and the Prepetition Term Loan Secured Parties on account of professional fees under paragraph 4(d) of this Final Order and (y) the fees of the Office of the United States Trustee (the "U.S. Trustee"); *provided* that the aggregate payments on account of such restructuring professional fees and U.S. Trustee fees shall not exceed the aggregate amounts for such fees provided in the Approved Budget through the applicable budget period.

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

communicated via email to the Debtors or their professionals by the Prepetition Term Loan Advisors. For the avoidance of doubt, the Prepetition Term Loan Agent's approval of any Proposed Budget for any period of time shall not be deemed consent or approval for any further period of time.

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

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

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

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

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

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

(c) *Fees and Expenses.* As additional adequate protection, the Debtors shall, and are authorized and directed to, pay in full in cash and in immediately available funds: (i) within ten (10) business days after the Debtors’ receipt of invoices therefor, the professional fees, expenses and disbursements (including, but not limited to, the professional fees, expenses and disbursements of counsel and other third-party consultants and/or experts, including financial

advisors, and all other Lenders' Expenses (as defined in the Prepetition Term Loan Documents)) incurred prior to the Petition Date by the Prepetition Term Loan Agent (including, without limitation, reasonable fees, expenses and disbursements incurred by Bradley Arant Boult Cummings, LLP, as counsel, collectively, the "Prepetition Term Loan Advisors"), and (ii) subject to the notice provisions in paragraph 26 hereof, the reasonable fees and expenses incurred on and after the Petition Date by the Prepetition Term Loan Agent, including the fees and expenses of the Prepetition Term Loan Advisors (including without limitation, professional fees, expenses, and disbursements of counsel, and all other Lenders' Expenses (as defined in the Prepetition Term Loan Documents)). None of the foregoing fees, expenses and disbursements shall be subject to separate approval by this Court or require compliance with the U.S. Trustee guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

(d) *Partial Payment from Proceeds of Zokinvy Assets; Segregation of Proceeds of Zokinvy Assets.* As further adequate protection, the Prepetition Term Loan Agent, on behalf of itself and the other Prepetition Term Loan Secured Parties, shall receive at closing of the sale of the Zokinvy Assets (as defined in the Court's bid procedures order [Docket No. 94] (the "Bid Procedures Order")), the amount of \$15 million from the net sale proceeds from the sale of the Zokinvy Assets (the "Zokinvy Adequate Protection Payment" and, such payment together with the payment of the fees and expenses as provided in paragraph 4(c), collectively, the "Adequate Protection Payments"). Additionally, as further adequate protection, the Debtors shall deposit the net proceeds from the sale of the Zokinvy Assets (*less* the Zokinvy Adequate Protection Payment) into a segregated bank account which account shall be subject to the liens in favor of the Prepetition Term Loan Secured Parties subject to further Order of this Court.

(e) *Reporting Requirements.* As additional adequate protection to the Prepetition Term Loan Secured Parties, the Debtors shall use reasonable best efforts to comply with those reporting requirements set forth in the Prepetition Term Loan Credit Agreement in a manner consistent with prior practices and shall further provide, subject to any applicable limitations set forth below, to (i) the Prepetition Term Loan Agent and (ii) the Prepetition Term Loan Advisors:

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

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

(g) *Miscellaneous.*

- (i) Except for (i) the Carve Out and (ii) as otherwise provided in paragraph 4, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties pursuant to paragraph 4 of this Final Order shall not be subject, junior, or *pari passu*, to any lien or security interest that is avoided and preserved for the

benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise in these Chapter 11 Cases or any Successor Case.

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

respect to the Prepetition Term Loan Secured Indebtedness or adequate protection.

(h) *Right to Seek Additional Adequate Protection.* This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Term Loan Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Term Loan Secured Parties is insufficient to compensate for any Diminution in Value of their interests in the Prepetition Collateral during these Chapter 11 Cases or any Successor Case. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Term Loan Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Term Loan Secured Parties against any Diminution in Value of their interests in the Prepetition Collateral (including the Cash Collateral).

5. *Carve Out.*

(a) Notwithstanding anything to the contrary herein, the Debtors' obligations to the Prepetition Term Loan Secured Parties, and the liens, security interests and superpriority claims granted by this Final Order or under the Prepetition Term Loan Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (a) the payment of unpaid fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (c) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but

subject to final allowance by the Court, all unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”), and any official Committee (the “Committee Professionals” and, together with the Debtor Professionals, the “Estate Professionals”) at any time before the delivery by the Prepetition Term Loan Agent of a Carve-Out Trigger Notice (defined below) and without regard to whether such fees and expenses are provided for in any Approved Budget or were invoiced after the Carve-Out Trigger Notice Date (the amounts set forth in this clause (c) being the “Pre Carve-Out Trigger Notice Cap”); and (d) the Allowed Professional Fees of Debtor Professionals in an aggregate amount not to exceed \$500,000, less the amount of any retainer held by such Estate Professional and not previously returned or applied to fees and expenses, incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, (the amount set forth in this clause (d) being the “Debtor Post Carve-Out Trigger Notice Cap”); (e) Allowed Professional Fees of Committee Professionals in an aggregate amount not to exceed \$75,000 incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court (the amount set forth in this clause (e) being the “Committee Post Carve-Out Trigger Notice Cap” and together with the Debtor Post Carve-Out Trigger Notice Cap, such amount, the “Post Carve-Out Trigger Notice Cap” and the Pre Carve-Out Trigger Notice Cap together with the Post Carve-Out Trigger Notice Cap and the amounts set forth in clauses (a) and (b), the “Carve-Out Cap”) (the foregoing clauses (a) through (e), collectively, the “Carve-Out”). The term “Carve-Out Trigger Notice” shall mean

a written notice stating that the Post-Carve-Out Trigger Notice Cap has been invoked, delivered by hard copy or email by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to lead bankruptcy counsel for the Debtors, the U.S. Trustee, and counsel to the Committee, if any, which notice may be delivered following the occurrence and during the continued existence of a Termination Event (as defined herein) under the terms of this Final Order. The term “Carve-Out Trigger Notice Date” shall mean the day on which a Carve-Out Trigger Notice is delivered by the Prepetition Term Loan Agent or Prepetition Term Loan Advisors, as applicable. On the Carve-Out Trigger Notice Date, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to transfer cash in an amount equal to the Carve-Out Cap (which shall be determined by the applicable Estate Professional in its reasonable discretion based on the amount of then-unpaid Allowed Professional Fees plus a reasonable estimate of fees and expenses not yet allowed) less any amount then held in the Professional Fee Reserve Account to the Professional Fee Reserve Account.

(b) Immediately following receipt of a Carve-Out Trigger Notice, and prior to the payment of any Prepetition Term Loan Secured Indebtedness or Adequate Protection Superpriority Claims, bid protections previously approved in accordance with the Bid Procedures Order, or Adequate Protection Payments, the Debtors shall be required to deposit into the Professional Fee Reserve Account cash in an amount equal to the difference between the Carve-Out Cap and the balance held in the Professional Fee Reserve Account as of the Carve-out Trigger Notice Date. Notwithstanding anything to the contrary herein or in the Prepetition Term Loan Documents, following delivery of a Carve-Out Trigger Notice, the Prepetition Term Loan Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Professional Fee Reserve Account has been fully

funded as permitted above in an amount equal to all applicable obligations benefitting from the Carve-Out. Any payment or reimbursement made to any Estate Professional in respect of any Allowed Professional Fees prior to the delivery of the Carve-Out Trigger Notice shall not reduce the Carve-Out.

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

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

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

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

any way to pay compensation to or reimburse expenses of any Estate Professional, or to guarantee that the Debtors have sufficient funds to pay such compensation or expense reimbursement.

6. ***Access and Information.*** Upon reasonable prior written notice (as applicable, including via acknowledged email) during normal business hours, the Debtors shall provide the Prepetition Term Loan Secured Parties and the Prepetition Term Loan Advisors with (a) reasonable access to the Debtors' books and records, including all non-privileged records and files of the Debtors pertaining to the Prepetition Collateral and the Collateral and other available information (including historical information) regarding the Debtors, their property, operations or finances that they shall reasonably request, (b) reasonable access to the Debtors' properties and (c) reasonable access to the Debtors' officers, counsel and financial advisors to discuss the Debtors' affairs, finances, and condition; it being understood that nothing in this paragraph shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

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

(a) the effective date of any confirmed chapter 11 plan in any of the Chapter 11 Cases;

(b) The violation of any material term of this Final Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors of notice from the Prepetition Term Loan Agent of such default, violation, or breach (which may be provided to the Debtors by email), and which shall be delivered by copy to the U.S. Trustee and Committee (if any));

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

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

(e) Other than with respect to the bid protections previously approved in the Bid Procedures Order, and except in connection with a motion for debtor in possession financing or any order entered in connection therewith, in each case, on terms acceptable to the Prepetition Term Loan Agent, the Debtors file any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, any lien or other interest *pari passu* with or senior to any of the Prepetition Term Loan Liens, Adequate Protection Liens or Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties under this Final Order, or any order of the Court is entered reversing, staying for a period in excess of five (5) business days, vacating or otherwise amending, supplementing, or modifying this Final Order

in a manner adverse to the Prepetition Term Loan Secured Parties, in each case without the written consent of the Prepetition Term Loan Agent;

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

(g) the Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest or lien to permit foreclosure (or the granting of deed in lieu of foreclosure or the like) on any of the Debtor's assets (other than with respect to assets having a fair market value of less than \$50,000 that are not material to the Debtors' going concern operations).

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

(a) Notwithstanding anything contained herein, the Debtors' authorization to use Cash Collateral hereunder shall automatically terminate on such date (the "Termination Date") that is, unless otherwise extended with the express written consent of the Prepetition Term Loan Agent, the earliest of (i) the effective date of any chapter 11 plan with respect to the Debtors that is confirmed by the Court and (ii) unless otherwise ordered by the Court, five (5) business days from date (the "Termination Declaration Date") on which written

notice of the occurrence of any Termination Event is given (which notice may be given by electronic mail or other electronic means) by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to the Debtors' counsel, counsel to a Committee (if appointed), any other holders of liens on the Collateral, and the U.S. Trustee (the "Termination Declaration" and such period commencing on the Termination Declaration Date and ending five (5) business days later, which period shall be automatically extended if the Debtors, the Committee (if appointed), or the U.S. Trustee seeks an emergency hearing as provided in clause (b) below prior to the expiration of such period to enable the Court to rule thereon, the "Remedies Notice Period"); *provided* that until the expiration of the Remedies Notice Period, the Debtors may (a) continue to use Cash Collateral to make payments in respect of expenses reasonably necessary to keep the business of the Debtors operating in accordance with the Approved Budget, (b) contest or cure any alleged Termination Event, (c) to pay professional fees and fund the Professional Fee Reserve Account and (d) seek other relief as provided for in this paragraph 8. For the avoidance of doubt, the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors may provide a Termination Declaration, notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion or notice to, hearing before, or order from the Court.

(b) If a Termination Declaration is delivered as provided above, the Debtors, the Committee (if appointed), and the Prepetition Term Loan Agent hereby consent to an emergency hearing being held before the Court on an expedited basis (if sought by a party in interest) and related motions (if applicable) shall be filed with the Court on at least five (5) business days' notice (subject to the Court's availability) for the purpose (unless the Court orders otherwise) of considering (a) whether a Termination Event has occurred or is continuing and (b) any appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash

Collateral and the adequate protection of the Prepetition Term Loan Secured Parties necessary for such non-consensual use of Cash Collateral). Unless the Court has determined that a Termination Event has not occurred and/or is not continuing or the Court orders otherwise, the automatic stay, as to all of the Prepetition Term Loan Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the Prepetition Term Loan Agent and the other Prepetition Term Loan Secured Parties shall be permitted to exercise all remedies set forth herein and in the Prepetition Term Loan Documents and as otherwise available at law or in equity without further order of or application or motion to this Court including without limitation, (a) setting off and applying immediately any and all amounts in accounts maintained by the Debtors against the Prepetition Term Loan Secured Indebtedness and the Debtors' adequate protection obligations hereunder and otherwise enforce rights against the Collateral for application against all such obligations, (b) taking any and all actions necessary to take control of the Prepetition Collateral and/or the Collateral, including any Cash Collateral, and (c) taking any other actions or exercising any other rights or remedies permitted under this Interim Order, the Prepetition Term Loan Documents, and applicable non-bankruptcy law to effect the payment of Prepetition Term Loan Secured Indebtedness and the Debtors' adequate protection obligations hereunder. The rights and remedies of the Prepetition Term Loan Agent and the Prepetition Term Loan Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that they may otherwise have.

(c) Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing on any request by the Debtors or other party in interest to re-impose or continue the automatic stay under Bankruptcy Code section 362(a), use Cash Collateral, or to obtain any other injunctive relief. Unless otherwise

expressly provided, any delay or failure of the Prepetition Term Loan Agent and/or the other Prepetition Term Loan Secured Parties to exercise rights under the Prepetition Term Loan Documents and/or this Final Order shall not constitute a waiver of their rights hereunder, thereunder, or otherwise. The occurrence of the Termination Date or a Termination Event shall not affect the validity, priority, or enforceability of any and all rights, remedies, benefits, and protections provided to any of the Prepetition Term Loan Secured Parties under this Final Order, which rights, remedies, benefits, and protections shall survive the Termination Date or the delivery of Termination Declaration.

9. ***Limitation on Charging Expenses Against Collateral.*** Except to the extent of the Carve Out, all rights to surcharge the interests of the Prepetition Term Loan Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in these Chapter 11 Cases, and any trustee appointed during these Chapter 11 Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and in any Successor Case.

10. ***Reservation of Rights of the Prepetition Term Loan Secured Parties.*** This Final Order and the transactions contemplated hereby shall be without prejudice to (a) the rights of any of the Prepetition Term Loan Secured Parties to seek additional or different adequate protection, move to vacate the automatic stay and to recover Prepetition Collateral or Collateral, move for the appointment of a trustee or examiner, move to dismiss or convert these Chapter 11 Cases, or to take any other action in these Chapter 11 Cases and to appear and be heard in any matter raised in these Chapter 11 Cases, or the right of any party in interest from contesting any of the foregoing, and (b) any and all rights, remedies, claims and causes of action which the

Prepetition Term Loan Secured Parties may have against any non-Debtor party. For adequate protection purposes, each of the Prepetition Term Loan Secured Parties shall be deemed to have requested relief from the automatic stay and for adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Final Order.

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

12. ***Survival of Final Order.*** The provisions of this Final Order shall be binding upon any trustee appointed during these Chapter 11 Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and in any Successor Case, and any actions taken in reliance hereof shall survive entry of any order which may be entered converting these Chapter 11 Cases to chapter 7 cases, dismissing these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Collateral or Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this Final Order, as well as the priorities in payments, liens, and security interests granted pursuant to this Final Order, shall continue notwithstanding any conversion of these Chapter 11 Cases to chapter 7 cases under the Bankruptcy Code, dismissal of these Chapter 11 Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise. Subject to the provisions and limitations described in

paragraph 19 of this Final Order, the Adequate Protection Payments made pursuant to this Final Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in these Chapter 11 Cases or any Successor Case.

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

14. ***Binding Effect and Controlling Effect of Final Order.*** The terms of this Final Order shall be valid and binding upon the Debtors, all creditors of the Debtors and all other parties in interest from and after the entry of this Final Order by this Court, and none of the terms and provisions of this Final Order shall be abrogated or superseded by the conflicting provisions of any other order entered by this Court (unless otherwise contemplated hereunder). To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion or the Interim Order, the provisions of this Final Order shall control.

15. ***Reversal, Stay, Modification or Vacatur.*** In the event the provisions of this Final Order are hereinafter reversed, stayed, modified, or vacated, such reversal, modification, stay or vacatur shall not affect the rights and priorities of the Prepetition Term Loan Secured Parties granted and in effect pursuant to the Interim Order or this Final Order, as applicable, immediately prior thereto. In other words, notwithstanding any such reversal, stay, modification or vacatur, any indebtedness, obligation or liability incurred by the Debtors pursuant to the Interim Order or this Final Order, as applicable, arising prior to the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of the Interim Order or this Final Order, as applicable, including any payments made hereunder or security interests and liens granted herein.

16. ***Reservation of Certain Third-Party Rights and Bar of Challenge and Claims.*** The stipulations, admissions, waivers and releases contained in this Final Order, including, the Debtors' Stipulations in paragraph E, shall be binding upon the Debtors' estates (and all successors of the Debtors) and all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, including a chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases or any Successor Cases (a "Trustee"), unless and to the extent (a) the Committee (if any) or any other party in interest, in each case, after obtaining requisite standing, has duly filed an adversary proceeding challenging in whole or part the validity, enforceability, priority or extent of the Prepetition Term Loan Secured Indebtedness or the liens on the Prepetition Collateral securing the Prepetition Term Loan Secured Indebtedness held by or on behalf of the Prepetition Term Loan Secured Parties or otherwise asserting or prosecuting any Avoidance Actions, recharacterization, subordination, "lender liability", or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Challenges") against the Prepetition Term Loan Secured Parties in connection with any matter related to the Prepetition Term Loan Secured Indebtedness, the Prepetition Collateral, or the Prepetition Term Loan Liens by no later than the later of (i) in the case of any such adversary proceeding filed by a party in interest with requisite standing other than the Creditors' Committee, June 19, 2024 (i.e., seventy-five (75) days after the date of entry of the Interim Order), (ii) in the case of any such adversary proceeding filed by the Committee (if any), sixty (60) days after the appointment of the Committee (if any), and (iii) any such later date agreed to in writing by the Prepetition Term Loan Secured Parties in their sole and absolute discretion (the time period established by the later of the foregoing clauses (i), (ii) and (iii), the "Challenge Period"), and (b) an order is entered by a court of competent jurisdiction and becomes final and non-appealable in favor of the plaintiff sustaining

any such challenge or claim in any such duly filed adversary proceeding. If no such adversary proceeding is timely filed prior to the expiration of the Challenge Period by the Committee (if any) or a party in interest, in any case which has been granted the appropriate standing, without further order of this Court: (w) any and all Challenges by any party (whether on behalf of the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases (as defined below)) shall be deemed to be forever barred; (x) the Prepetition Term Loan Secured Indebtedness shall constitute allowed secured claims, not subject to counterclaim, setoff, recoupment, reduction, recharacterization, defense, or avoidance for all purposes in these Chapter 11 Cases and any Successor Cases; (y) the Prepetition Term Loan Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected liens on the Prepetition Collateral, not subject to recharacterization, subordination, or avoidance of any kind; and (z) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Term Loan Secured Parties' claims, liens, and interests contained in the Final Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any Successor Cases. If any such adversary proceeding is timely filed by a party in interest with appropriate standing prior to the expiration of the Challenge Period, the stipulations, and admissions, and any other stipulations contained in this Final Order, including in paragraph E hereof, shall nonetheless remain binding and preclusive (as provided in this paragraph) on any Committee and any other person or entity, including any Trustee, except as to any such findings and admissions that were expressly and

successfully challenged in such adversary proceeding. Nothing in this Final Order vests or confers on any person or entity, including a Committee (if any) or Trustee, standing or authority to pursue any cause of action belonging to the Debtors or their estates.

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

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

19. ***Proofs of Claim.*** Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, the Prepetition Term Loan Secured Parties shall not be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition Term Loan Documents, the Prepetition

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

20. ***Section 552(b) of the Bankruptcy Code.*** Pursuant to this Final Order, (i) the Prepetition Term Loan Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Term Loan Secured Parties with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral or the Collateral.

21. ***No Marshaling.*** Pursuant to this Final Order, the Prepetition Term Loan Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral.

22. *Expense Invoices; Disputes; Indemnification.*

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

(b) The professional fees and expenses covered by paragraph 4 of this Final Order shall be payable without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines; *provided* that copies of invoices for such professional fees, expenses, and disbursements (the "Invoiced Fees") shall be served by email on counsel to the Debtors (Sidley Austin LLP, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallice (anne.wallice@sidley.com)), the U.S. Trustee, Attn: Elizabeth A. Young (Elizabeth.A.Young@usdoj.gov), and counsel to any Committee (if appointed), who shall have ten (10) calendar days (the "Review Period") to review and assert any objections thereto. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of these Chapter 11 Cases and shall include (i) summary of the work performed during the relevant compensation period, (ii) the name of, hourly rate (if applicable) of, and number of hours worked by each professional and paraprofessional who worked on the matter during the relevant compensation period, and (iii) the total fee amount being requested, and such invoice summary shall not be required to contain time entries, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the "Disputed Invoiced Fees") if, within the Review Period, the Debtors, any

Committee, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees. If the parties are unable to reach resolution with respect to the Disputed Invoiced Fees, then the Court may resolve any such issues upon at least ten (10) business days' prior notice and a hearing. For avoidance of doubt, following the Review Period, the Debtors shall pay in full all Invoiced Fees other than the Disputed Invoiced Fees within 5 days of the date on which the submitting party informs the Debtors by email of the non-Disputed Invoiced Fees.

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

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

25. **Retention of Jurisdiction.** Unless the Court orders the transfer of venue of the Chapter 11 Cases, the Court has and will retain jurisdiction to enforce this Final Order and with respect to all matters arising from or related to the implementation of this Final Order.

26. **Notice.** To the extent notice is required to be given, or documents are required to be delivered, pursuant to this Final Order, such notice or documents shall be provided

as follows: (i) if to the Debtors, to (a) Eiger BioPharmaceuticals, Inc., 2155 Park Boulevard, Palo Alto, California 94036, Attn: James Vollins (jvollins@eigerbio.com); (b) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallice (anne.wallice@sidley.com); (ii) if to the Prepetition Term Loan Agent or Prepetition Term Loan Secured Parties, to Innovatus Life Sciences Lending Fund I, LP, 777 Third Avenue, 25th Floor, New York New York, Claes Eckstrom (ceckstrom@innovatuscp.com); (iii) if to the Prepetition Term Loan Advisors, to Bradley Arant Boult Cummings LLP, 1221 Broadway, Suite 2400, Nashville, Tennessee 37203, Attn: Roger G. Jones (rjones@bradley.com) and Jay Bender (jbender@bradley.com).

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

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*Proposed Counsel to the Debtors and Debtors
in Possession*

Exhibit 1

Approved Budget

Exhibit 2

Milestones

Milestones

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

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

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

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

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

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

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

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

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

Exhibit 3

Redline

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)

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

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

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~~ 2100 Ross Avenue, Dallas, Texas 75201.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

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

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

and a hearing (the “Interim Hearing”) having been held by the Court on April 3, 2024, and the Court having entered an order, dated April 5, 2024, granting the relief requested in the Motion on an interim basis [Docket No. 93] (the “Interim Order”); and a final hearing having been held by this Court on April 23, 2024 (the “Final Hearing”) to consider the relief requested in the Motion; pursuant to Bankruptcy Rule 4001 and Local Rule 2002-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in the Motion and the interim Order; and the Court having considered the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), the Rundell Declaration, the ~~initial~~ Approved Budget (as defined herein) attached hereto as Exhibit 1 ~~(the “Initial Approved Budget”)~~, ~~the 13-week budget attached hereto as Exhibit 2~~, offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing and the Final Hearing; and the Court having considered the relief requested in the Motion; and it appearing to the Court that granting the ~~interim~~ final relief as sought in the Motion ~~on the terms and conditions herein contained~~ is necessary and essential to avoid irreparable harm to the Debtors and their estates and that authorizing the Debtors to use Cash Collateral as contemplated ~~herein~~ in the Motion and this Final Order will enable the Debtors to preserve the value of the Debtors’ business and assets and that such relief is fair and reasonable and that entry of this ~~Interim~~ Final Order is in the best interest of the Debtors and their estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion on a final basis;

IT IS HEREBY FOUND AND DETERMINED THAT:³

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

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

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

C. **Jurisdiction and Venue.** The Court has jurisdiction over the Motion, these Chapter 11 Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. It appears to the Court that venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. § 1408.⁴ This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

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

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

1. **Prepetition Secured Debt.**

⁴ Nothing in this InterimFinal Order shall preclude any later order of the Court approving a motion to transfer venue.

(a) *Prepetition Term Loan Secured Indebtedness.* Under that certain Loan and Security Agreement, dated as of June 1, 2022 (as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Credit Agreement” and, together with all other documentation executed in connection therewith, including without limitation, the Loan Documents (as defined in the Prepetition Term Loan Credit Agreement) executed in connection therewith, as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Documents”), among Eiger BioPharmaceuticals, Inc. (“Eiger”), EB Pharma, LLC (“EB Pharma”), and EBPI Merger, Inc. (“EBPI Merger”, and, together with Eiger and EB Pharma, the “Borrower”), Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto, the “Prepetition Term Loan Agent”), the subsidiary guarantors from time to time party thereto (the “Prepetition Term Loan Guarantors”), and the lenders from time to time party thereto (such lenders, the “Prepetition Term Loan Lenders” and, together with the Prepetition Term Loan Agent, the “Prepetition Term Loan Secured Parties”), the Borrower borrowed, and was liable unconditionally and irrevocably to, and the Prepetition Term Loan Guarantors, as applicable, ~~unconditionally and irrevocably~~ guaranteed for the benefit of, the Prepetition Term Loan Secured Parties pursuant to the Prepetition Term Loan Documents, without offset, contest, objection, recovery, recoupment, reduction, defense, counterclaim, subordination, recharacterization, disgorgement, disallowance, avoidance, challenge, or any other claim or Cause of Action⁵ of any kind, (x) an aggregate principal amount of not less than \$41,685,030.30

⁵ As used in this ~~Interim~~Final Order, “Causes of Action” means any action, claim, cause of action, controversy, demand, right, action, lien, indemnity, interest, guaranty, suit, obligation, liability, damage, judgment, account, defense, or offset of any kind or character whatsoever, whether known, unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, assertable directly or derivatively, whether arising before, on, or after the entry of this Interim Order, in contract or in tort, in law (whether local, state, or federal U.S. or non-U.S. law) or in equity, or pursuant to any other theory of local, state, or federal U.S. or non-U.S. law.

of Term A Loans (as defined in the Prepetition Term Loan Credit Agreement) (the “Prepetition Term Loans”), subject to the relative rights, rankings, and priorities set forth in the Prepetition Term Loan Credit Agreement, plus (y) all accrued and unpaid interest (including capitalized interest) with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accounts’, consultants’, appraisers’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Term Loan Credit Agreement) owing under or in connection with the Prepetition Term Loan Documents (clauses (x) and (y), collectively, the “Prepetition Term Loan Secured Indebtedness”).

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

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

(c) *Validity, Perfection, and Priority of Prepetition Term Loan Liens*

and Prepetition Term Loan Secured Indebtedness. The Debtors acknowledge and agree that, in each case as of the Petition Date: (i) the Prepetition Term Loan Liens encumber all of the Prepetition Collateral, as the same existed on the Petition Date; (ii) the Prepetition Term Loan

Liens are valid, binding, enforceable, ~~non-avoidable~~, and properly perfected liens on and security interests in the Prepetition Collateral and the proceeds, products, offspring, or profits of the Prepetition Collateral; (iii) the Prepetition Term Loan Liens were granted to or for the benefit of the Prepetition Term Loan Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; (iv) the Prepetition Term Loan Secured Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors and is enforceable in accordance with the terms of the Prepetition Term Loan Documents; and (v) the Prepetition Term Loan Liens are subject and subordinate only to Permitted Prior Liens;⁶ ~~(vi) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Term Loan Liens or Prepetition Term Loan Secured Indebtedness exist, and no portion of the Prepetition Term Loan Liens or Prepetition Term Loan Secured Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law or regulation, including in any Successor Cases (as defined below); and (vii) the Debtors and their estates have no claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including~~

⁶ As used herein, “Permitted Prior Liens” shall mean any legal, valid, binding, perfected, enforceable liens on or security interests in the Prepetition Collateral in existence as of the Petition Date, or which are perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, in each case which have priority over the Prepetition Term Loan Liens and that are not subject to avoidance, recharacterization, offset, subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law or other challenge.

~~“lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Term Loan Secured Parties or any of their affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees in such capacity arising out of, based upon, or related to the Prepetition Term Loan Documents, the Prepetition Term Loan Secured Indebtedness, or the Prepetition Term Loan Liens.~~

(d) *No Further Commitment to Extend Loans.* As a result of the Debtors filing their voluntary petitions for bankruptcy, none of the Prepetition Term Loan Secured Parties have any commitment or obligation of any kind to extend any loan or other extensions of credit or financial accommodations to the Debtors.

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

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

3. **Bank Accounts.** The Debtors acknowledge and agree that, as of the Petition Date, the Debtors do not maintain any bank accounts other than those accounts covered by any motion or order authorizing the Debtors to continue to use the Debtors' existing cash management system and all cash in such accounts constitute Cash Collateral of the Prepetition Term Loan Secured Parties.

F. **Adequate Protection.** Pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, the Prepetition Term Loan Secured Parties are entitled to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to ~~the extent of~~ any aggregate diminution in value of their interests in the Prepetition Collateral (including any Cash Collateral) resulting from, among other things, the subordination of the Prepetition Term Loan Liens to the Carve Out, the Debtors' use of Cash Collateral, the use, sale or lease of any of the Prepetition Collateral, the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and/or for any other reason for which adequate protection may be granted under the Bankruptcy Code ("Diminution in Value"). The foregoing shall not, nor shall any provision of ~~this~~the Interim Order or this Final Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition

Collateral (including Cash Collateral) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration, the Rundell Declaration, and the record presented to the Court at the Interim Hearing [and the Final Hearing](#), the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral, including Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

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

H. *Notice.* In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and Local Rule 2002-1, adequate notice of the [InterimFinal](#) Hearing and the ~~emergency~~ relief requested in the Motion [on a final basis](#) has been provided by the Debtors to the necessary notice parties. Under the circumstances, the notice given by the Debtors of (and as described in) the Motion, the relief requested herein, and the [InterimFinal](#) Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and Local Rule 2002-1.

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

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

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

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

(c) **Budget Testing.** Except as otherwise provided herein, the Debtors may use Cash Collateral in accordance with the Approved Budget, subject to Permitted

Variations (as defined below) and in accordance with this Final Order. Permitted Variations for each Approved Budget shall be tested by no later than the fifth Friday following the Petition Date and each fourth Friday thereafter (each such date, a “Testing Date”). On or before 5:00 p.m. (prevailing Central time) on each Testing Date, the Debtors shall prepare and deliver to the Prepetition Term Loan Agent and its advisors, in form and substance reasonably acceptable to the Prepetition Term Loan Agent, a variance report (the “Variance Report”) setting forth for the prior four-week period the Debtors’ actual disbursements on an aggregate basis (the “Actual Disbursements”).

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

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

(f) *Update of Budget.* By no later than 5:00 p.m. (prevailing Central Time) on the Friday following each Budget Period (or as otherwise consented to by the Prepetition Term Loan Agent), the Debtors shall deliver to the Prepetition Term Loan Advisors (as defined below) an updated budget, consistent with the form and level of detail set forth in the InitialApproved Budget (each, a "Proposed Budget"), and each Proposed Budget shall constitute the "Budget" for purposes of this InterimFinal Order upon written approval delivered by the

Prepetition Term Loan Advisors or the Prepetition Term Loan Agent (email being sufficient); *provided*, however, that, following the consummation of any sale of the Debtors' assets in accordance with the Bid Procedures, the Budget Period shall reset and a new Proposed Budget shall be delivered to the Prepetition Term Loan Advisors in accordance with this paragraph. In the absence of such approval, the prior Approved Budget shall remain in full force and effect; *provided, however*, in the event the Prepetition Term Loan Agent does not approve a Proposed Budget within fifteen (15) business days of its delivery, the Debtors may request an emergency hearing with the Court (but on not less than five (5) business days' written notice to the Prepetition Term Loan Agent) to seek Court approval of the Proposed Budget for purposes of this ~~Interim~~Final Order. When required under the terms of this ~~Interim~~Final Order, the consent or approval of the Prepetition Term Loan Agent may be communicated via email to the Debtors or their professionals by the Prepetition Term Loan Advisors. For the avoidance of doubt, the Prepetition Term Loan Agent's approval of any Proposed Budget for any period of time shall not be deemed consent or approval for any further period of time.

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

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

(a) *Adequate Protection Liens.* Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control by the Prepetition Term Loan Agent or any other party, the Debtors ~~are authorized to grant~~granted, and hereby are deemed to have granted on a final basis, to the Prepetition Term Loan Agent, for the benefit of itself and the other Prepetition Term Loan Secured Parties, valid, binding, continuing, enforceable, fully-perfected, nonavoidable, first-priority senior (except as otherwise provided in this paragraph below with respect to the Permitted Prior Liens (as defined below) and the Carve Out), additional and replacement security interests in and liens on (all such liens and security interests, the “Adequate Protection Liens”) (i) the Prepetition Collateral and (ii) all of the Debtors’ now-owned and hereafter-acquired real and personal property, assets and rights, including all prepetition property and post-petition property of the Debtors of any kind or nature, wherever located, whether encumbered or unencumbered, including, without limitation, a 100% equity pledge of any first-tier foreign or domestic subsidiaries and any unencumbered assets of the Debtors, if any, and all prepetition property and post-petition property of the Debtors’ estates, and the proceeds, products, offspring, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all equipment, goods, accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date), insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract

rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements, all owned real estate, real property leaseholds, fixtures, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, all commercial tort claims, and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from the Debtors to a non-Debtor affiliate incurred on or following the Petition Date), and any and all proceeds, products, offspring, rents, and profits of the foregoing (all property identified in this paragraph being collectively referred to as the “Collateral”), subject only to the Permitted Prior Liens and the Carve Out, in which case the Adequate Protection Liens shall be immediately junior in priority to such Permitted Prior Liens and to the Carve Out; notwithstanding the foregoing, the Collateral shall exclude the Professional Fee Reserve Account (other than with respect to the residual interest therein provided in this InterimFinal Order) and all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code (other than claims and causes of action arising under section 549 of the Bankruptcy Code) (the “Avoidance Actions”), but, ~~subject to entry of a Final Order,~~ shall include any and all proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Action (“Avoidance Proceeds”).

(b) *Adequate Protection Superpriority Claims.* As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors ~~are authorized to grant~~granted, and hereby are deemed to have granted on a final basis effective as of the Petition Date, to the Prepetition Term Loan Agent, for the benefit of itself and the Prepetition Term Loan Secured Parties, allowed superpriority administrative expense claims in these Chapter 11 Cases ahead of and senior to any and all other administrative expense claims

in these Chapter 11 Cases to the extent of any Diminution in Value (the “Adequate Protection Superpriority Claims”), junior only to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims shall not be junior or *pari passu* to any other administrative claims against the Debtors and shall have priority over all now or hereinafter incurred administrative expense claims against the Debtors, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c) ~~(subject to entry of the Final Order)~~, 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code; ~~provided that any recovery against Avoidance Proceeds shall be subject to entry of a Final Order.~~

(c) Fees and Expenses. As additional adequate protection, the Debtors shall, and are authorized and directed to, pay in full in cash and in immediately available funds:

(i) within ten (10) business days after the Debtors’ receipt of invoices therefor, the professional fees, expenses and disbursements (including, but not limited to, the professional fees, expenses and disbursements of counsel and other third-party consultants and/or experts, including financial advisors, and all other Lenders’ Expenses (as defined in the Prepetition Term Loan Documents)) incurred prior to the Petition Date by the Prepetition Term Loan Agent (including, without limitation, reasonable fees, expenses and disbursements incurred by Bradley Arant Boult Cummings, LLP, as counsel, collectively, the “Prepetition Term Loan Advisors”), and (ii) subject to the notice provisions in paragraph 26 hereof, the reasonable fees and expenses incurred on and after the Petition Date by the Prepetition Term Loan Agent, including the fees and expenses of the Prepetition Term Loan Advisors (including without limitation, professional fees, expenses, and disbursements of counsel, and all other Lenders’ Expenses (as defined in the Prepetition Term Loan Documents)). None of the foregoing fees, expenses and disbursements

shall be subject to separate approval by this Court or require compliance with the U.S. Trustee guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

(d) *Partial Payment from Proceeds of Zokinvy Assets; Segregation of Proceeds of Zokinvy Assets.* As further adequate protection, the Prepetition Term Loan Agent, on behalf of itself and the other Prepetition Term Loan Secured Parties, shall receive at closing of the sale of the Zokinvy Assets (as defined in the Court's bid procedures order [Docket No. 94] (the "Bid Procedures Order")), the amount of \$15 million from the net sale proceeds from the sale of the Zokinvy Assets (the "Zokinvy Adequate Protection Payment" and, such payment together with the payment of the fees and expenses as provided in paragraph 4(c), collectively, the "Adequate Protection Payments"). Additionally, as further adequate protection, the Debtors shall deposit the net proceeds from the sale of the Zokinvy Assets (less the Zokinvy Adequate Protection Payment) into a segregated bank account which account shall be subject to the liens in favor of the Prepetition Term Loan Secured Parties subject to further Order of this Court.

(e) ~~(e)-Reporting Requirements.~~ As additional adequate protection to the Prepetition Term Loan Secured Parties, the Debtors shall use reasonable best efforts to comply with those reporting requirements set forth in the Prepetition Term Loan Credit Agreement in a manner consistent with prior practices ~~(other than the reporting requirements pursuant to Section 6.2(a)(ii), (v) of the Prepetition Term Loan Credit Agreement)~~ and shall further provide, subject to any applicable limitations set forth below, to (i) the Prepetition Term Loan Agent and (ii) the Prepetition Term Loan Advisors:

- (i) weekly (or with such other frequency as may be agreed to between the Debtors and the Prepetition Term Loan Agent) calls with the Prepetition Term Loan Agent and the Prepetition Term Loan Advisors with respect to (a) business updates, (b) the Debtors'

discussions with any potential financing party, strategic partner, or acquirer, and (c) the status of any material litigation, litigation claims, and other claims, and (d) any other updates in form and scope reasonably agreed by the Debtors and the Prepetition Term Loan Agent;

- (ii) at the times specified in paragraph 3(c) hereof, the Variance Report required by paragraph 3(c) hereof;
- (iii) timely delivery of each Proposed Budget as set forth in this ~~Interim~~Final Order;
- (iv) promptly, all written demands or claims related to or asserting any liens in respect of property or assets of the Debtors (including liens imposed by law, such as landlord's, vendors', suppliers', carriers', warehousemen's, repairmen's, construction contractors', workers' and mechanics' liens and other similar liens) if the amount demanded or claimed exceeds \$50,000 individually or \$500,000 in the aggregate;
- (v) promptly upon request after the end of each prior month (a) net receivables/payables due to third parties, (b) account payables and payments, and (c) accounts payable aging; and
- (vi) as soon as reasonably practicable ~~after written~~upon request from the Prepetition Term Loan Advisors, the Debtors will provide the Prepetition Term Loan Agent and the Prepetition Term Loan Advisors with reasonable access to any consultant, turnaround management, broker or financial advisory firm retained by the Debtors in these Chapter 11 Cases.

(f) ~~(d)~~ *Other Covenants*. The Debtors shall maintain their cash management arrangements in a manner consistent with this Court's order(s) granting the Debtors' cash management motion unless otherwise consented to by the Prepetition Term Loan Lenders. The Debtors shall continue ordinary course practices to maintain good standing under the jurisdiction in which each Debtor and each of its subsidiaries is incorporated or organized and continue to operate the business in the ordinary course of business customary in the normal course of ordinary operations consistent with past practice taking into account these Chapter 11 Cases and the funding available under the Approved Budget unless otherwise consented to by the

Prepetition Term Loan Lenders. The Debtors shall continue to comply in all respects with those covenants contained in the Prepetition Term Loan Credit Agreement, in each case as in effect on the Petition Date, solely with respect to the preservation of rights, qualifications, licenses, permits, privileges, franchises, governmental authorizations and intellectual property rights, in each case, that are material to the conduct of the business and the maintenance of properties ~~and~~ insurance, and all other Prepetition Collateral or Collateral. The Debtors shall cooperate in good faith and coordinate with the Prepetition Term Loan Secured Parties with respect to any transactions to be taken in these Chapter 11 Cases.

(g) ~~(e)~~ *Miscellaneous.*

- (i) Except for (i) the Carve Out and (ii) as otherwise provided in paragraph 4, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties pursuant to paragraph 4 of this ~~Interim~~Final Order shall not be subject, junior, or *pari passu*, to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise in these Chapter 11 Cases or any Successor Case.

(ii) The Adequate Protection Liens are deemed automatically perfected as of the Petition Date without the necessity of recording same and without further notice or order. The Prepetition Term Loan Agent shall not be required to file any UCC financing statements or other instruments (or to take any other action) to perfect such Adequate Protection Liens.

(iii) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified to the extent necessary to permit the Prepetition Term Loan Agent to perform any act authorized or permitted under or by virtue of this ~~Interim~~Final Order including, without limitation, to take any act to create, validate, evidence, attach or perfect any of the Adequate Protection Liens and to receive any payments expressly authorized by this ~~Interim~~Final Order with respect to the Prepetition Term Loan Secured Indebtedness or adequate protection.

(h) ~~(f)~~ *Right to Seek Additional Adequate Protection.* This ~~Interim~~Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Term Loan Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Subject to the Carve Out, nothing herein shall impair or modify the

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

5. ***Carve Out.***

(a) Notwithstanding anything to the contrary herein, the Debtors' obligations to the Prepetition Term Loan Secured Parties, and the liens, security interests and superpriority claims granted by this ~~Interim~~Final Order or under the Prepetition Term Loan Documents, and the payment of all such obligations, shall be subject and subordinate in all respects to payment of the following fees and expenses: (a) the payment of unpaid fees required to be paid to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (b) reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code; (c) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals"), and any official Committee (the "Committee Professionals" and, together with the Debtor Professionals, the "Estate Professionals") at any time before the delivery by the Prepetition Term Loan Agent of a Carve-Out Trigger Notice (defined below) and without regard to whether such fees and expenses

are provided for in any Approved Budget or were invoiced after the Carve-Out Trigger Notice Date (the amounts set forth in this clause (c) being the “Pre Carve-Out Trigger Notice Cap”); and (d) the Allowed Professional Fees of Debtor Professionals in an aggregate amount not to exceed \$500,000, less the amount of any retainer held by such Estate Professional and not previously returned or applied to fees and expenses, incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court, (the amount set forth in this clause (d) being the “Debtor Post Carve-Out Trigger Notice Cap”); (e) Allowed Professional Fees of Committee Professionals in an aggregate amount not to exceed \$75,000 incurred on or after the first business day following delivery by the Prepetition Term Loan Agent of the Carve-Out Trigger Notice to the extent allowed at any time, whether by interim order, procedural order, or otherwise, but subject to final allowance by the Court (the amount set forth in this clause (e) being the “Committee Post Carve-Out Trigger Notice Cap” and together with the Debtor Post Carve-Out Trigger Notice Cap, such amount, the “Post Carve-Out Trigger Notice Cap” and the Pre Carve-Out Trigger Notice Cap together with the Post Carve-Out Trigger Notice Cap and the amounts set forth in clauses (a) and (b), the “Carve-Out Cap”) (the foregoing clauses (a) through (e), collectively, the “Carve-Out”). The term “Carve-Out Trigger Notice” shall mean a written notice stating that the Post-Carve-Out Trigger Notice Cap has been invoked, delivered by hard copy or email by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to lead bankruptcy counsel for the Debtors, the U.S. Trustee, ~~Prepetition Term Loan Secured Parties~~, and counsel to the Committee, if any, which notice may be delivered following the occurrence and during the continued existence of a Termination Event (as defined herein) under the terms of this ~~Interim~~Final Order. The term

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

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

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

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

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

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

6. **Access and Information.** Upon reasonable prior written notice (as applicable, including via acknowledged email) during normal business hours, the Debtors shall provide the Prepetition Term Loan Secured Parties and the Prepetition Term Loan Advisors with (a) reasonable access to the Debtors' books and records, including all non-privileged records and files of the Debtors pertaining to the Prepetition Collateral and the Collateral and other available information (including historical information) regarding the Debtors, their property, operations or finances that they shall reasonably request, (b) reasonable access to the Debtors' properties and (c) reasonable access to the Debtors' officers, counsel and financial advisors to discuss the Debtors' affairs, finances, and condition; it being understood that nothing in this paragraph shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

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

(a) the effective date of any confirmed chapter 11 plan in any of the Chapter 11 Cases;

(b) ~~(a)~~ The violation of any material term of this ~~Interim~~Final Order by the Debtors that is not cured within ~~ten~~five (~~10~~5) business days of receipt by the Debtors of

notice from the Prepetition Term Loan Agent of such default, violation, or breach (which may be provided to the Debtors by email), and which shall be delivered by copy to the U.S. Trustee and Committee (if any));

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

(d) ~~(e)~~ These Chapter 11 Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code, or the Debtors file any motion, pleading or proceedings (or supports any such motion, pleading or proceeding filed by a third party) seeking or consenting to the granting of any of the foregoing relief, or any order is entered granting any of the foregoing relief;

(e) ~~(d)~~ Other than with respect to the ~~Bid Protections~~bid protections previously approved in the Bid Procedures Order, and except in connection with a motion for debtor in possession financing or any order entered in connection therewith, in each case, on terms acceptable to the Prepetition Term Loan Agent, the Debtors file any motion, pleading, or proceeding (or solicits, supports, or encourages any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, any lien or other interest *pari passu* with or senior to any of the Prepetition Term Loan Liens, Adequate Protection Liens or Adequate Protection Superpriority Claims granted to the Prepetition Term Loan Secured Parties under this ~~Interim~~Final Order, or any order of the Court is entered reversing, staying for a period in excess of ~~ten~~five (~~10~~5) business days, vacating or otherwise amending, supplementing, or modifying this ~~Interim~~Final Order in a manner adverse to the

Prepetition Term Loan Secured Parties, in each case without the written consent of the Prepetition Term Loan Agent;

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

(g) the Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest or lien to permit foreclosure (or the granting of deed in lieu of foreclosure or the like) on any of the Debtor's assets (other than with respect to assets having a fair market value of less than \$50,000 that are not material to the Debtors' going concern operations).

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

~~withdrawn or vacated within three (3) business days after notice thereof is delivered to the Debtors; and~~

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

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

(a) Notwithstanding anything contained herein, the Debtors’ authorization to use Cash Collateral hereunder shall automatically terminate on such date (the “Termination Date”) that is, unless otherwise extended with the express written consent of the Prepetition Term Loan Agent, the earliest of (i) the effective date of any chapter 11 plan with respect to the Debtors that is confirmed by the Court and (ii) unless otherwise ordered by the Court, ~~ten~~five (~~10~~5) business days from date (the “Termination Declaration Date”) on which written notice of the occurrence of any Termination Event is given (which notice may be given by electronic mail or other electronic means) by the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors to the Debtors’ counsel, counsel to a Committee (if appointed), any other holders of liens on the Collateral, and the U.S. Trustee (the “Termination Declaration”) and such period commencing on the Termination Declaration Date and ending ~~ten~~five (~~10~~5) business days later, which period shall be automatically extended if the Debtors, the Committee (if appointed), or the U.S. Trustee seeks an emergency hearing as provided in clause (b) below prior to the expiration of such period to enable the Court to rule thereon, the “Remedies Notice Period”); *provided* that until the expiration of the Remedies Notice Period, the Debtors may (a) continue to use Cash Collateral to make payments in respect of expenses reasonably necessary to keep the business of the Debtors operating in accordance with the

Approved Budget, (b) contest or cure any alleged Termination Event, (c) to pay professional fees and fund the Professional Fee Reserve Account and (d) seek other relief as provided for in this paragraph 8. For the avoidance of doubt, the Prepetition Term Loan Agent or the Prepetition Term Loan Advisors may provide a Termination Declaration, notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion or notice to, hearing before, or order from the Court.

(b) If a Termination Declaration is delivered as provided above, the Debtors, the Committee (if appointed), and the Prepetition Term Loan Agent hereby consent to an emergency hearing being held before the Court on an expedited basis (if sought by a party in interest) and related motions (if applicable) shall be filed with the Court on at least ~~ten~~five (~~10~~5) business days' notice (subject to the Court's availability) for the purpose (unless the Court orders otherwise) of considering (a) whether a Termination Event has occurred or is continuing and (b) any appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash Collateral and the adequate protection of the Prepetition Term Loan Secured Parties necessary for such non-consensual use of Cash Collateral). Unless the Court has determined that a Termination Event has not occurred and/or is not continuing or the Court orders otherwise, the automatic stay, as to all of the Prepetition Term Loan Secured Parties, shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the Prepetition Term Loan Agent and the other Prepetition Term Loan Secured Parties shall be permitted to exercise all remedies set forth herein and in the Prepetition Term Loan Documents and as otherwise available at law or in equity without further order of or application or motion to this Court. including without limitation, (a) setting off and applying immediately any and all amounts in accounts maintained by the Debtors

against the Prepetition Term Loan Secured Indebtedness and the Debtors' adequate protection obligations hereunder and otherwise enforce rights against the Collateral for application against all such obligations, (b) taking any and all actions necessary to take control of the Prepetition Collateral and/or the Collateral, including any Cash Collateral, and (c) taking any other actions or exercising any other rights or remedies permitted under this Interim Order, the Prepetition Term Loan Documents, and applicable non-bankruptcy law to effect the payment of Prepetition Term Loan Secured Indebtedness and the Debtors' adequate protection obligations hereunder. The rights and remedies of the Prepetition Term Loan Agent and the Prepetition Term Loan Secured Parties specified herein are cumulative and not exclusive of any rights or remedies that they may otherwise have.

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

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

9. ~~10.~~ *Limitation on Charging Expenses Against Collateral.* Except to the extent of the Carve Out, ~~subject to entry of the Final Order,~~ all rights to surcharge the interests of the Prepetition Term Loan Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in these Chapter 11 Cases, and any trustee appointed during these Chapter 11 Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and in any Successor Case.

10. ~~11.~~ *Reservation of Rights of the Prepetition Term Loan Secured Parties.* This ~~Interim~~Final Order and the transactions contemplated hereby shall be without prejudice to (a) the rights of any of the Prepetition Term Loan Secured Parties to seek additional or different adequate protection, move to vacate the automatic stay; and to recover Prepetition Collateral or Collateral, move for the appointment of a trustee or examiner, move to dismiss or convert these Chapter 11 Cases, or to take any other action in these Chapter 11 Cases and to appear and be heard in any matter raised in these Chapter 11 Cases, or the right of any party in interest from contesting any of the foregoing, and (b) any and all rights, remedies, claims and causes of action

which the Prepetition Term Loan Secured Parties may have against any non-Debtor party. For adequate protection purposes, each of the Prepetition Term Loan Secured Parties shall be deemed to have requested relief from the automatic stay and for adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this ~~Interim~~Final Order.

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

12. ~~13.~~ *Survival of ~~Interim~~Final Order.* The provisions of this ~~Interim~~Final Order shall be binding upon any trustee appointed during these Chapter 11 Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and in any Successor Case, and any actions taken in reliance hereof shall survive entry of any order which may be entered converting these Chapter 11 Cases to chapter 7 cases, dismissing these Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Collateral or Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this ~~Interim~~Final Order, as well as the priorities in payments, liens, and security interests granted pursuant to this ~~Interim~~Final Order, shall continue notwithstanding any conversion of these Chapter 11 Cases to chapter 7 cases under the Bankruptcy Code, dismissal of these Chapter 11 Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise.

Subject to the provisions and limitations described in paragraph 19 of this ~~Interim~~Final Order, the Adequate Protection Payments made pursuant to this ~~Interim~~Final Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in these Chapter 11 Cases or any Successor Case.

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

~~15. ***Release.*** Subject to the rights, provisions and limitations set forth in paragraph 19 of this Interim Order and entry of a Final Order, the Debtors shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Term Loan Secured Parties (each in their roles as such), and each of their affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, agents, and predecessors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Prepetition Term Loans, the Prepetition Term Loan Liens, the Prepetition Term Loan Secured Indebtedness, the Prepetition~~

~~Term Loan Documents, or this Interim Order, as applicable, and/or the transactions contemplated hereunder or thereunder, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Term Loan Secured Parties; provided, however, that no such parties will be released to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties’ gross negligence, fraud, or willful misconduct.~~

14. ~~16.~~ **Binding Effect and Controlling Effect of Final Order**. The terms of this ~~Interim~~Final Order shall be valid and binding upon the Debtors, all creditors of the Debtors and all other parties in interest from and after the entry of this ~~Interim~~Final Order by this Court, and none of the terms and provisions of this Final Order shall be abrogated or superseded by the conflicting provisions of any other order entered by this Court (unless otherwise contemplated hereunder). To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion or the Interim Order, the provisions of this Final Order shall control.

15. ~~17.~~ **Reversal, Stay, Modification or Vacatur**. In the event the provisions of this ~~Interim~~Final Order are hereinafter reversed, stayed, modified, or vacated, such reversal, modification, stay or vacatur shall not affect the rights and priorities of the Prepetition Term Loan Secured Parties granted and in effect pursuant to ~~this~~the Interim Order or this Final Order, as applicable, immediately prior thereto. In other words, notwithstanding any such reversal, stay, modification or vacatur, any indebtedness, obligation or liability incurred by the Debtors pursuant to ~~this~~the Interim Order or this Final Order, as applicable, arising prior to the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the

| original provisions of ~~this~~the Interim Order or this Final Order, as applicable, including any payments made hereunder or security interests and liens granted herein.

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

| *Claims.*

(a) ~~The Subject to entry of the Final Order, the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. Subject to entry of the Final Order, the stipulations, admissions, waivers and releases contained in this Interim~~Final Order, including, the Debtors' Stipulations ~~and the release~~ in paragraph ~~15 (the "Release")~~E, shall be binding upon the Debtors' estates (and all successors of the Debtors) and all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, including a chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases or any Successor ~~Case, responsible party, examiner or other estate representative, except~~Cases (a "Trustee"), unless and to the extent (a) ~~at~~the Committee (if any) or any other party in interest ~~other than any Committee and, for purposes of such exception, solely to the extent such party in interest obtains proper,~~ in each case, after obtaining requisite standing ~~and,~~ has ~~timely and properly~~duly filed an adversary proceeding ~~or contested matter under the Bankruptcy Rules (i) asserting a Challenge (as defined below) on or before the date that is seventy-five (75) calendar days after the entry of this Interim Order or (b) any Committee, and, for purposes of such exception, solely to the extent such Committee obtains proper standing and has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules asserting a Challenge on or before the date that is sixty (60) days from the date of appointment of such Committee, if appointed within (30) days of the Petition Date, and in any event not more than ninety (90) days of the Petition Date; provided, however, that if, prior to the Challenge Period Termination Date, either these Chapter 11 Cases convert to chapter 7 or chapter 11 trustee is appointed in these Chapter 11 Cases or any Successor Cases, then in such~~

~~case the Challenge Period Termination Date shall be extended solely with respect to the chapter 7 or chapter 11 trustee until the later of the then Challenge Period Termination Date and the date that is thirty (30) days following such conversion or appointment; (ii) seeking to avoid, object to, or otherwise challenge the Debtors' Stipulations or the Release regarding: (A) the validity, enforceability, extent, priority, or perfection of Prepetition Term Loan Liens, including any mortgages or security interests in the Prepetition Collateral; or (B) the validity, enforceability, allowability, priority, secured status, or amount~~challenging in whole or part the validity, enforceability, priority or extent of the Prepetition Term Loan Secured Indebtedness ~~(any such claim, a "Challenge"); and (iii) in which the Court enters a final order~~ or the liens on the Prepetition Collateral securing the Prepetition Term Loan Secured Indebtedness held by or on behalf of the Prepetition Term Loan Secured Parties or otherwise asserting or prosecuting any Avoidance Actions, recharacterization, subordination, "lender liability", or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "Challenges") against the Prepetition Term Loan Secured Parties in connection with any matter related to the Prepetition Term Loan Secured Indebtedness, the Prepetition Collateral, or the Prepetition Term Loan Liens by no later than the later of (i) in the case of any such adversary proceeding filed by a party in interest with requisite standing other than the Creditors' Committee, June 19, 2024 (i.e., seventy-five (75) days after the date of entry of the Interim Order), (ii) in the case of any such adversary proceeding filed by the Committee (if any), sixty (60) days after the appointment of the Committee (if any), and (iii) any such later date agreed to in writing by the Prepetition Term Loan Secured Parties in their sole and absolute discretion (the time period established by the later of the foregoing clauses (i), (ii) and (iii), the "Challenge Period"), and (b) an order is entered by a court of competent jurisdiction and becomes final and

non-appealable in favor of the plaintiff sustaining any such ~~Challenge~~challenge or claim in any such ~~timely~~duly filed adversary proceeding ~~or contested matter.~~

~~(b).~~ If no such adversary proceeding is timely filed prior to ~~Upon~~ ~~the occurrence~~expiration of the Challenge Period ~~Termination Date without the filing of a Challenge (or if any Challenge is filed and overruled)~~by the Committee (if any) or a party in interest, in any case which has been granted the appropriate standing, without further order of this Court:

~~(i~~w) any and all Challenges by any party (whether on behalf of the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Chapter 11 Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases (as defined below)) shall be deemed to be forever barred; ~~(ii~~x) the Prepetition Term Loan Secured Indebtedness shall constitute allowed secured claims, not subject to counterclaim, setoff, recoupment, reduction, ~~subordination,~~ recharacterization, defense, or avoidance for all purposes in these Chapter 11 Cases and any Successor Cases; ~~(iii~~y) the Prepetition Term Loan Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected liens on the Prepetition Collateral, not subject to recharacterization, subordination, or avoidance of any kind; and ~~(iv~~z) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Term Loan Secured Parties' claims, liens, and interests contained in ~~this Interim~~the Final Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any Successor Cases.

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

~~19. Limitation on Use of Collateral and Cash Collateral.~~ Notwithstanding anything to the contrary ~~set forth in this Interim Order~~, none of the Collateral, ~~the Prepetition Collateral~~, including Cash Collateral, or the Carve Out or proceeds of any of the foregoing may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense,

~~adversary proceeding, or other litigation of any type (excluding any proceedings contemplated by paragraph 8 hereof but solely to the extent provided in this paragraph 19) (i) against any of the Prepetition Term Loan Secured Parties (in their capacities as such) or any of their affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors in such capacity, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief against any of the Prepetition Term Loan Secured Parties or that that would otherwise impair the rights and remedies of the Prepetition Term Loan Secured Parties hereunder, under the Prepetition Term Loan Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed (if any) in these Chapter 11 Cases in connection with the assertion of or joinder in any such claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the Prepetition Term Loan Secured Parties to recover on the Prepetition Collateral or the Collateral or seeking affirmative relief against any of the Prepetition Term Loan Secured Parties related to the Prepetition Term Loan Secured Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Prepetition Term Loan Secured Indebtedness or the Prepetition Term Loan Liens or security interests in the Prepetition Collateral or the Collateral; or (iii) for monetary, injunctive, or other affirmative relief against any of the Prepetition Term Loan Secured Parties, or with respect to the Prepetition Term Loan Secured Parties' liens on or security interests in the Prepetition Collateral~~

~~or the Collateral that would impair the ability of any of the Prepetition Term Loan Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Prepetition Term Loan Secured Indebtedness, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including, without limitation, the Prepetition Term Loan Liens) held by or on behalf of each of the Prepetition Term Loan Secured Parties related to the Prepetition Term Loan Secured Indebtedness; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to or in connection with the Prepetition Term Loan Secured Indebtedness or the Prepetition Term Loan Liens, including any cause of action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens or Adequate Protection Liens; (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Term Loan Liens or any other rights or interests of any of the Prepetition Term Loan Secured Parties related to the Prepetition Term Loan Secured Indebtedness or the Prepetition Term Loan Liens; or (e) for monetary, injunctive, or other affirmative relief against any of the Prepetition Term Loan Secured Parties relating in any way to the Prepetition Term Loan Secured Indebtedness; *provided* that no more than \$25,000 of the proceeds of the Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used solely by any Committee appointed (if any) in these Chapter 11 Cases, if any, solely to investigate (and for no other purpose), prior to the Challenge Period Termination Date, any potential Challenge, including claims, causes of action, adversary proceedings, or other litigation against the Prepetition Term Loan Secured Parties solely concerning the legality,~~

~~validity, priority, perfection, enforceability or extent of the Prepetition Term Loan Secured Indebtedness and/or the Prepetition Term Loan Liens.~~

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

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

19. ~~22.~~ ***Proofs of Claim.*** Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, the Prepetition Term Loan Secured Parties shall not be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Term Loan Secured Indebtedness, the Prepetition Term Loan Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition Term

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

20. ~~23.~~ *Section 552(b) of the Bankruptcy Code.* ~~Subject to entry of the~~Pursuant to this Final Order, (i) the Prepetition Term Loan Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and (ii) the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Term Loan Secured Parties with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral or the Collateral.

21. ~~24.~~ *No Marshaling.* ~~Subject to entry of the~~Pursuant to this Final Order ~~granting such relief~~, the Prepetition Term Loan Secured Parties shall not be subject to the

equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral.

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

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

(b) The professional fees and expenses covered by paragraph 4 of this ~~Interim~~Final Order shall be payable without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines; *provided* that copies of invoices for such professional fees, expenses, and disbursements (the “Invoiced Fees”) shall be served by email on counsel to the Debtors (Sidley Austin LLP, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallice (anne.wallice@sidley.com)), the U.S. Trustee, Attn: Elizabeth A. Young (Elizabeth.A.Young@usdoj.gov), and counsel to any Committee (if appointed), who shall have ten (10) calendar days (the “Review Period”) to review and assert any objections thereto. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of these Chapter 11 Cases and shall include (i) summary of the work performed during the relevant compensation period, (ii) the name of, hourly rate (if applicable) of, and number of hours worked by each professional and paraprofessional who worked on the matter during the relevant compensation period, and (iii) the total fee amount being requested, and such invoice summary shall not be required to contain time entries, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any

other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, the Debtors, any Committee, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees. If the parties are unable to reach resolution with respect to the Disputed Invoiced Fees, then the Court may resolve any such issues upon at least ten (10) business days’ prior notice and a hearing. For avoidance of doubt, following the Review Period, the Debtors shall pay in full all Invoiced Fees other than the Disputed Invoiced Fees within 5 days of the date on which the submitting party informs the Debtors by email of the non-Disputed Invoiced Fees.

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

~~Code section 363, in a chapter 11 or chapter 7 proceeding, under Bankruptcy Code section 1129, by a chapter 7 or chapter 11 trustee, or otherwise, subject to applicable law.~~

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

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

25. ~~29.~~ **Retention of Jurisdiction.** ~~The~~Unless the Court orders the transfer of venue of the Chapter 11 Cases, the Court has and will retain jurisdiction to enforce this ~~Interim~~Final Order and with respect to all matters arising from or related to the implementation of this ~~Interim~~Final Order.

26. ~~30.~~ **Notice.** ~~Subject to paragraph 31 below, to~~To the extent notice is required to be given, or documents are required to be delivered, pursuant to this ~~Interim~~Final Order, such notice or documents shall be provided as follows: (i) if to the Debtors, to (a) Eiger BioPharmaceuticals, Inc., 2155 Park Boulevard, Palo Alto, California 94036, Attn: James Vollins (jvollins@eigerbio.com); (b) proposed counsel to the Debtors, Sidley Austin LLP, 787

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

~~31. **Final Hearing.** A Final Hearing to consider the relief requested in the Motion on a final basis shall be held on April 23, 2024 at 9:30 a.m. (prevailing Central time). Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, notice of the Final Hearing, along with a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order, by first class mail, electronic transmission or other appropriate method of service on (a) the parties who received notice of the Motion, (b) counsel to any Committee and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. Any responses or objections to approval of the Motion on a final basis shall be made in writing, conform to the applicable Bankruptcy Rules, be filed with this Court and served so as to be actually received no later than April 21, 2024, at 4:00 p.m. (prevailing Central time) by the following parties: (a) proposed counsel to the Debtors, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019, Attn: Thomas R. Califano (tom.califano@sidley.com); William E. Curtin (wcurtin@sidley.com); and Anne G. Wallace (anne.wallice@sidley.com); (b) the Office of the United States Trustee for the Northern District of Texas; (c) counsel to Innovatus Life Sciences Lending Fund I LP, as the Prepetition Term~~

~~Loan Agent, and (d) proposed counsel to any statutory committee appointed in these Chapter 11
Cases. If no objections are filed to the Motion, this Court may enter a Final Order without
further notice or hearing.~~

END OF ORDER

Submitted By:

SIDLEY AUSTIN LLP

Thomas R. Califano (TX Bar No. 24122825)

William E. Curtin ([admitted](#) *pro hac vice*
pending)

Anne G. Wallice ([admitted](#) *pro hac vice*
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and

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Dallas, Texas 75201

Telephone: (214) 981-3300

Facsimile: (214) 981-3400

Email: cpersons@sidley.com

*Proposed Counsel to the Debtors and Debtors
in Possession*

Exhibit 1

~~Initial~~ Approved Budget

Exhibit 2

~~Proposed Final Budget~~

Exhibit 3

Milestones

Milestones

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

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

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

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

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

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

Statement”) in accordance with a chapter 11 plan reasonably acceptable to the Prepetition Term Loan Lenders (the “Plan”).

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

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