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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) (Emergency Hearing Requested)

DEBTORS' EMERGENCY MOTION FOR AUTHORITY TO CONDUCT EXAMINATIONS UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004

Emergency relief has been requested. Relief is requested not later that 1:30 pm on May 7, 2024.

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

[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.

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A hearing will be conducted on this matter on May 7, 2024 at 1:30 pm in Room 1428, Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas, 75242.

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

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by the use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan's home page. The meeting code is 479 393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

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

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, "Debtors" or the "Company") hereby submit this motion (the "Motion"), for entry of an order directing Innovatus Life Sciences Lending Fund I, L.P. ("Innovatus") to appear for depositions and/or produce all documents within their possession, custody, or control that are responsive to the proposed document requests (the "Requests"). In support of this Motion, Debtors respectfully state as follows:

RELIEF REQUESTED

By this Motion, Debtors request entry of an order ('the "Proposed Order"), substantially in the form attached hereto as **Exhibit A**, requiring Innovatus to provide documents and testimony concerning the actions and potential claims described herein pursuant to Bankruptcy Rule 2004, and any further relief the Court deems appropriate under the circumstances. The form of Debtors' proposed subpoena is attached hereto as **Exhibit B**.

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the Northern District of Texas (the "Court") has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984, entered by the United States District Court for the Northern District of Texas. This is a core

proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The legal predicates for the relief requested herein are section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rule 2004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rule 2004-1 of the Bankruptcy Local Rules for the Northern District of Texas (the "Bankruptcy Local Rules"), and Rule 45 of the Federal Rules of Civil Procedure, made applicable to this proceeding pursuant to Rule 9016 of the Bankruptcy Rules.

3. Debtors confirm their consent to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BACKGROUND

A. Debtors' Business and Operations

4. The Company was founded in 2008 as a privately-held biopharmaceutical company focused on bringing to market novel products and "orphan drugs" for the treatment of rare diseases. Orphan drugs are drugs intended to treat rare diseases or conditions. According to the FDA, a disease is classified as a "rare" disease if it affects less than 200,000 people in the United States.

5. In March 2016, the Company completed a business combination with Celladon Corporation ("Celladon"), a biotechnology company historically focused on the development of cardiovascular gene therapy, in accordance with the terms of the Agreement and Plan of Merger and Reorganization (the "Merger Agreement"), dated as of November 18, 2015. Pursuant to the Merger Agreement, the Company acquired a wholly-owned subsidiary of Celladon, with the Company surviving as a wholly-owned subsidiary of Celladon. Immediately following the

merger, on March 23, 2016, Celladon changed its name to "Eiger BioPharmaceuticals, Inc." and Celladon's existing common stock began trading on The Nasdaq Global Market under the ticker symbol "EIGR."

6. The Company operates in a heavily competitive industry. There are many major pharmaceutical companies, specialty pharmaceutical companies, biotechnology companies, public and private universities, and research organizations actively engaged in research and development of product candidates which may target the same markets as Debtors' products.

7. Government authorities in the United States, at the federal, state, and local level, and in other countries and jurisdictions extensively regulate, among other things, the research, development, testing, manufacture, quality control, approval, packaging, storage, recordkeeping, labeling, advertising, promotion, distribution, marketing, post-approval monitoring and reporting, and import and export of pharmaceutical products. The processes for obtaining regulatory approvals in the United States and in foreign countries and jurisdictions, along with subsequent compliance with applicable statutes and regulations and other regulatory authorities, requires substantial time and financial resources.

8. The Company currently has one FDA-approved product on the market and has others in clinical development. Lonafarnib ("LNF") is an orally bioavailable, first-in-class farnesylation inhibitor originally developed by Merck & Co. ("Merck") that the Company has an exclusive license to develop and commercialize. In November 2020, the Company received FDA approval for the use of LNF to reduce the risk of mortality of Hutchinson Gilford progeria syndrome ("HGPS") and for treatment of processing-deficient progeroid laminopathies, collectively known as "progeria," an ultra-rare and rapidly fatal genetic condition causing

accelerated aging in children. Sold under the brand name Zokinvy, the medication is the Company's first and only product that has received FDA approval.

9. Debtors commercially launched Zokinvy in the United States in January 2021 and began generating product revenue shortly thereafter. International regulatory approvals followed beginning in May 2022. In July 2022, the Company received marketing authorization under exceptional circumstances for Zokinvy for the treatment of progeria in all 27 European Union member states, plus Iceland, Liechtenstein, and Norway. Upon licensing LNF from Merck, the Company also began researching alternative uses of LNF and found a potentially viable solution for the treatment of hepatitis delta virus ("HDV"), the most severe form of viral hepatitis for which there is currently no FDA-approved therapy.

10. Although Zokinvy is the Company's only commercialized drug, the Company has other valuable drugs in its pipeline. Specifically, Avexitide is a well-characterized peptide in development for the treatment of post-bariatric hypoglycemia ("PBH") and other forms of hyperinsulinemic hypoglycemia ("HH") arising after gastrointestinal surgeries. These disorders are characterized by exaggerated secretion of GLP-1 after meals, dysregulated secretion of insulin, followed by a rapid drop in blood sugar. Avexitide is the only drug in development for PBH with Breakthrough Therapy designation by the FDA. Avexitide is also in development for congenital hyperinsulinism ("HI"), an ultra-rare, life-threatening, pediatric disorder of persistent hypoglycemia that results in irreversible brain damage in up to 50% of children with the condition. For both PBH and HI, Avexitide has completed Phase II and is ready for Phase III clinical trials.

11. Avexitide has been granted Breakthrough Therapy designation by the FDA for the treatment of HI, Orphan Drug designation by the EMA for the treatment of HI and Orphan Drug designation by the FDA for the treatment of hyperinsulinemic hypoglycemia, which includes HI.

Avexitide has also been granted Rare Pediatric Disease designation by the FDA for the treatment of HI. The Company licensed worldwide rights to Peginterferon Lambda ("Lambda"), a well-tolerated interferon that stimulates immune responses critical for the development of host protection during viral infections, from Bristol Myers Squibb Company in April 2016.

12. Concurrently with its efforts to utilize LNF for the treatment of HDV, the Company sought to develop a separate treatment utilizing Lambda for the treatment of HDV. In the early stages of its development, Lambda for the treatment of HDV infection received Orphan Drug designation from the FDA and the EMA and Fast Track and Breakthrough Therapy designations from the FDA. Due to the initially promising results in Phase II of the Company's study, the FDA and EMA authorized a single pivotal, randomized Phase III study of Lambda as a monotherapy for treatment of HDV (the "LIMT Study"). Along with the LIMT Study, the Company began exploring opportunities to use Lambda to treat COVID-19 and other viral respiratory infections. Early studies suggested potential efficacy in this domain and the Company remains open to further strategic development.

13. Research and development is the foundation upon which the Company is built, and therefore, the Company invests heavily in this area. The Company does not own or operate manufacturing facilities for the production of its products, nor does it have any plans to build such facilities. Therefore, the Company heavily relies on third parties for the commercial manufacturing of Zokinvy and all of its clinical product candidates.

14. On May 15, 2018, the Company entered into a Collaboration and Supply Agreement (the "PRF Collaboration Agreement") with the Progeria Research Foundation ("PRF"). PRF is a non-profit organization founded by the family and friends of a child with progeria that is dedicated to developing treatments and, ultimately, a cure for progeria. One of

PRF's major campaigns is Find the Other 150, the goal of which is to identify and diagnose as many progeria patients as possible globally.

15. Under the PRF Collaboration Agreement, PRF granted the Company a non-exclusive, world-wide, royalty-free, sub-licensable license pertaining to all intellectual property and data controlled by PRF to prepare and file any new drug application for a product containing LNF for progeria. In exchange, the Company is subject to numerous requirements, including, but not limited to: (i) exclusively supplying LNF to PRF for use in clinical trials and non-clinical research in progeria, (ii) preparing and sponsoring any NDA submission for LNF for the treatment of progeria to the FDA, (iii) using commercially reasonable efforts to file a New Drug Application (an "NDA") for progeria according to a specified timeline, (iv) submitting certain FDA expedited approval requests in connection with an NDA filing, and (v) accepting responsibility for any additional studies necessary for obtaining an NDA for progeria.

16. PRF is an important partner to the Company and is critical to the continued treatment of progeria worldwide.

B. The Loan and Security Agreement

17. On June 1, 2022, certain of the Debtors entered into the Loan and Security Agreement between Innovatus and Debtors, dated June 1, 2022 (the "LSA") with Innovatus, providing for up to $75 million with a maturity date of August 31, 2027. The funding was to come in three tranches: an initial $40 million tranche (called the Term A Loan), along with two additional $17.5 million tranches (called Term B and C Loans) which were to be made available to Debtors if, among other things, Debtors achieved certain milestones and there were no Events of Default under the LSA. In fact, Debtors had achieved several of the negotiated milestones required to draw the Term B Loan. Moreover, Innovatus could accelerate repayment obligations under the LSA in the event of an Event of Default, or if certain shareholder transactions described

in Section 7.2(c)(ii) of the LSA occurred. As of December 31, 2023, the effective interest rate for the Innovatus Loan is 13.84%. The LSA is allegedly secured by asserted first priority liens on the Company's assets.

18. Section 3.2(c) of the LSA provide that a Material Adverse Change ("MAC") constitutes an Event of Default. Section 13 of the LSA defines a MAC as "(a) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary, when taken as a whole; (b) a material impairment of the prospect of repayment of any portion of the Obligations, or (c) a material adverse effect on the Collateral."

19. Section 7.1 of the LSA provides that the Company cannot "[c]onvey, sell, lease, transfer, assign, [or] dispose of . . . all or any part of its business or property" without the prior written consent of Innovatus. However, there is no similar negative covenant that precluded the Company from raising capital via its equity so long as (per Section 7.2(c)(ii)) there was "no transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own fifty-one percent (51%) or more of the voting stock of Borrower" as a consequence of any such transaction(s). Neither Section 7.2(c)(ii) nor any other provision of the LSA precluded the Company from obtaining an equity investment without the consent of Innovatus. In fact, Section 7.2(c)(ii) specifically permits "the sale of Borrower's equity securities in a public offering, or a private placement of public equity."

20. Pursuant to the LSA, Innovatus also agreed in the LSA to maintain Debtors' confidential information. Section 12.8 provides that "[i]n handling any confidential information of [Debtors], the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information." None of the exceptions set forth in Section 12.8 applied to confidential information that Debtors shared with Innovatus concerning a potential

equity investment and its alternative plans to sell Zokinvy or any other assets, without Debtors' express consent.

C. Debtors' Efforts to Obtain PIPE Financing

21. Since its inception, as was projected, the Company has incurred operating losses. The Company had a net loss of approximately $75 million and $96.8 million for the years ended December 31, 2023 and 2022, respectively. Developing product lines is an intrinsically resource-intensive process, so such losses were to be expected. As such, Debtors have relied historically on the sale of equity securities and debt facilities to fund their operations. All of this was known to Innovatus when it agreed to provide Debtors with funding pursuant to the LSA. For instance, the Company's March 10, 2022 10-K disclosed that the Company had "incurred net losses in each year since our inception . . . and prior to 2021, have never generated any product revenue and may never be profitable." The March 10, 2022 10-K further disclosed that the Company has "invested substantially all of our efforts and financial resources to identify, acquire, and develop our portfolio of product candidates" and that "[o]ur future success is dependent on our ability to further develop, obtain regulatory approvals for, and commercialize one or more of these product candidates."

22. Notwithstanding the Company's cost-reduction efforts, because of the sustained operating losses, the Company recognized that additional financing was necessary beyond the Innovatus loan to support ongoing development and commercialization. In June 2023, the Company strategically pivoted away from developing LNF for HDV in order to focus on its development of Avexitide. The Company attempted to raise funds to support these efforts, including by attempting to sell its Lambda assets – a process that Innovatus delayed and leveraged as an opportunity to seek to renegotiate the terms of the LSA. As discussed below, the Lambda sale could not be consummated, however, after the Phase III Lambda clinical trial was terminated.

23. On October 20, 2023, Propel Bio Management LLC ("Propel"), one of the Company's largest stockholders, implored the Company in a public filing to shift its strategy back towards the development of LNF. Propel stated that it "would be prepared to support the Company at this critical juncture." Consistent with Propel's offer of "support," beginning in November 2023 and continuing into 2024, the Company and Propel attempted to negotiate the terms of a PIPE transaction to support the Company's LNF development efforts and allow it to continue operations without an asset sale.

24. The Company 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 until, as discussed further below, Innovatus interfered with and ultimately prevented the PIPE investment from being consummated.

D. Debtors' Pre-Petition Asset Sale Efforts

25. In June 2023, the Company entered into a non-binding term sheet to sell its Lambda assets to a public biotechnology company. Pursuant to the LSA, the Company required Innovatus's consent with respect to the transaction and the prospective buyer wanted Innovatus to release its security interests in the Lambda assets as a condition of the sale. In order to obtain Innovatus's consent, Innovatus demanded that the Company agree to substantial loan pre-payments with respect to proceeds from the Lambda assets and future asset sales, termination of additional loan tranches, the issuance of warrants to purchase shares of the Company's common stock, and an amended management rights letter with Board observer rights in favor of Innovatus – provisions, economic upside, and rights that were a far cry from what the parties had negotiated in the LSA.

26. In September 2023, following its quarterly safety review, the Data Safety Monitoring Board observed four (4) patients in the LIMT Study with hepatobiliary events that

resulted in liver decompensation. Shortly thereafter, the Company announced its decision to discontinue Phase III of its LIMT Study, citing recommendations from the DSMB and FDA as the reason for such cessation. As a result, the public biotechnology company terminated the proposed acquisition of the Lambda assets. Were it not for the delay caused by Innovatus's efforts to rewrite the terms of the LSA, the Company would have entered into and publicly announced the agreement, would have received an upfront payment from the potential Lambda buyer, and would have faced the risks relating to Phase III of its LIMT Study alongside its new partner, rather than alone. Regardless, the Company believes that Lambda may have potential uses for development in hepatitis B virus (HBV), respiratory diseases such as COVID-19 and influenza, as well as other virology indications. At all relevant times, the Company believed (and continues to believe) that these pipeline products have promising potential and prospects to be developed into commercialized products to treat diseases affecting the most vulnerable populations.

27. At the same time the Company was actively pursuing the PIPE investment, the Company also was exploring a sale of its valuable Zokinvy assets. Although the Company was pursuing an asset sale in parallel to the PIPE offering, its strong preference was to receive new funds from an equity raise without the need to sell assets, including Zokinvy.

28. The Company engaged with Sentnyl Therapeutics, Inc. ("Sentnyl") – the Company's Stalking Horse Bidder and highest auction bidder in these Chapter 11 cases – for a six-month period in parallel with its financing efforts. On October 4, 2023, the Company entered a non-binding term sheet to out-license Zokinvy to Sentynl Therapeutics for $37.5 million. The LSA requires Innovatus's consent for such an out-license, and thus the Company discussed with Innovatus the terms of the proposed transaction.

29. On October 9, 2023, the Company received an unsolicited offer from Eton Pharmaceuticals to acquire Zokinvy for $40 million. The small increase from Sentnyl's offer was no coincidence. Innovatus and Eton were in fact speaking with each other without the Company's knowledge or involvement. Initially, the Company intended to achieve a sale outside of court if such a sale became necessary, but, again, due to Innovatus's misconduct, the potential out-of-court sale opportunity was lost.

E. Innovatus's Coercive Actions Against Debtors

30. Innovatus has stated on more than one occasion that it desired to be paid long before the maturity of the LSA and that the Company "would need to find a new lender," which Innovatus sought to accomplish by starving the Company of the capital it desperately required to continue running its business and forcing an asset sale to Innovatus's preferred buyer.

31. In November 2023, Innovatus first attempted to obstruct the PIPE offering – and thereby force an asset sale and early repayment – by threatening litigation on the basis that such investment would result in the novel concept of "functional subordination." No such legal concept exists, as Innovatus well knew. Moreover, Innovatus was well aware that it had no legal basis to object to the PIPE offering given that the offering involved an equity investment, not the assumption of new debt. Innovatus withdrew that frivolous objection when challenged, but its obstruction continued.

32. In deference to its hostile lender, and in parallel to the PIPE investment negotiations, the Company explored a sale of its Zokinvy assets. The Company explored a variety of potential sale counterparties, including Eton. For reasons that are unclear and irregular, 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. Given the importance of PRF's role in identifying and serving

progeria patients, Eton's refusal even to engage with PRF before a potential sale of Zokinvy was problematic for the Company. Accordingly, the Company began to focus its efforts on other potential buyers, including Sentnyl. Sentnyl, in stark contrast to Eton, made itself available to and actively engaged with PRF, including meetings between senior members of leadership of both parties.

33. Innovatus, frustrated by its inability to force the Company to sell its Zokinvy assets to Eton, the Company's 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 Company.

34. 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 during a telephone call 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 during the telephone call to explain the basis for any purported notice of default.

35. Two days later, on January 17, 2024, Innovatus followed through on its threat by sending a notice of default (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."

36. The LSA contains several heavily negotiated representations, warranties, affirmative, negative and financial covenants and events of default governing the operations and measuring certain financial metrics of the Company, but maintaining a cash balance and liquidity to remain a "going concern" for more than 12 months following the issuance of financial statements or maintaining a certain stock price are not among those negotiated provisions. As the Company reported in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2023, the Company had $39.4 million of cash, cash equivalents and short-term securities, more than 18x the liquidity to satisfy the liquidity covenant in Section 6.13 of the LSA, which required a cash balance of at least $2.1 million (representing 5% of the outstanding principal amount) at September 30, 2023.

37. The alleged "dramatic decline" in the Company's stock price and market capitalization is likewise neither a Material Adverse Change nor evidence of an Event of Default. Section 8.13 of the LSA provides that an Event of Default shall occur if "[t]he shares of common stock of Parent are delisted from The Nasdaq Stock Market LLC because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed promptly on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as The Nasdaq Stock Market LLC." None of these events occurred.

38. Moreover, neither a decline in stock price nor a reduced market capitalization had any impact on the Company's ability to pay Innovatus, and the Company was in compliance with all other obligations under the LSA.

39. Innovatus's Notice of Default caused the Company to lose the opportunity to obtain PIPE financing. For obvious reasons, no investor would want to make an equity investment in a

company that is in default on its existing debt. Thus, 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.

40. As a result, and in light of the Company's dire need for capital, the Company 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 Company with whom the PRF was comfortable proceeding.

41. In sum, Innovatus forced the Company into a position where its only option to obtain capital was an asset sale, tried to coerce the Company into selling to its preferred buyer, with whom it had been sharing the Company's confidential information, and then destroyed the Company's prospects for an out-of-court sale.

F. Debtors' Chapter 11 Filing

42. Without the ability to obtain new equity financing, draw on its current loan facility, or achieve an asset sale to a buyer with whom its partner PRF was comfortable – all results of Innovatus's bad acts – the Company was out of options. On April 1, 2024, the Company filed for Chapter 11 to ensure stability and continuity in the provision of life-saving drugs for progeria patients worldwide, especially children, and to maximize the value for the benefit of all stakeholders.

43. Although Sentnyl prevailed in Debtors' Section 363 sale of Zokinvy, for a price of $45.1 million, that amount does not account for fact that Debtors, but for Innovatus's actions, had the potential to avoid bankruptcy, retain Zokinvy, and produce other life-saving drugs focused on rare diseases.

BASIS FOR RELIEF REQUESTED

44. A Rule 2004 examination is the basic discovery device in bankruptcy cases, and states that "[o]n motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004. The scope of a Rule 2004 examination is exceptionally broad and the rule itself is peculiar to bankruptcy law and procedure because it affords few of the procedural safeguards that an examination under Rule 26 of the Federal Rules of Civil Procedure does. *In re Correra,* 589 B.R. 76, 108 (Bankr. N.D. Tex. 2018) (citing *In re GHR Energy Corp*., 33 B.R. 451, 453-54 (Bankr. D. Mass. 1983)).

45. Rule 2004 examinations are "'unfettered and broad[,]'" in scope, often referred to by courts as permissible fishing expeditions. *Id*. at 108-09 (citations omitted). Discovery under Bankruptcy Rule 2004 includes, among other things, "the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan." Fed. R. Bankr. P. 2004(b); *see also In re Correra*, 589 B.R. 76, 108 (Bankr. N.D. Tex. 2018) (Jernigan, J.) ("Third parties are subject to examination pursuant to Rule 2004 if they have knowledge of the debtor's affairs.") (quoting *In re Ecam Publ'ns, Inc*., 131 B.R. 556, 559 (Bankr. S.D.N.Y. 1991)); *In re Mirant Corp*., 326 B.R. 354, 357 (Bankr. N.D. Tex. 2005) (allowing discovery pursuant to Rule 2004 to "ensure that no viable cause of action is lost"); *In re Millennium Lab Holdings II, LLC*, 562 B.R. 614, 628-29 (Bankr. D. Del. 2016) (allowing 2004 examination on behalf of corporate trust to evaluate potential causes of action against third parties).

46. The document requests set forth in Debtors' proposed subpoenas are narrowly tailored to explore whether Debtors have contract or tort causes of action that may result in a recovery for Debtors' estate.

47. As set forth by this Motion and the attached certificate of conference, Debtors have been unable to resolve these issues without the filing of the Motion.

RESERVATION OF RIGHTS

48. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE

49. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the

Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for the states in which the Debtors conduct business; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

[*Remainder of page left intentionally blank*]

WHEREFORE, Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: April 29, 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 29, 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

Certificate of Conference

The undersigned hereby certifies that, on April 26, 2024, at 7:57 a.m. (CT), he communicated via email correspondence with a representative of Innovatus, requesting consent to the relief sought by the *Debtors' Motion for Authority to Conduct Examinations under Federal Rule of Bankruptcy Procedure 2004* (the "Motion"). The undersigned further certifies that on April 29, 2024, at 3:15 p.m. (CT), he again communicated via email correspondence with a representative of Innovatus, requesting consent to the relief sought by the Motion.

Innovatus have not consented to the relief requested herein. As such, Debtors were unable to arrange for a mutually agreeable date, place and time for the examination, and so no examination has taken place.

/s/ Jon W. Muenz
Jon W. Muenz

Exhibit A

Proposed Order

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

In re:	Chapter 11
EIGER BIOPHARMACEUTICALS, *et al.*[1]	Case No. 24-80040 (SGJ)
Debtors.	(Jointly Administered)

ORDER GRANTING THE DEBTORS' EMERGENCY MOTION FOR AUTHORITY TO CONDUCT EXAMINATIONS UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 2004

Upon consideration of the motion (the "Motion")[2] of Eiger BioPharmaceuticals, Inc., and its debtor affiliates, as debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") authorizing and directing Innovatus Life Sciences Lending Fund I, L.P. ("Innovatus") to appear for depositions and/or produce all documents within their possession,

[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.

custody, or control that are responsive to the proposed document requests (the "Requests"), each as more fully set forth in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* dated August 3, 1984, entered by the United States District Court for the Northern District of Texas; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing, if any, before this Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted as set forth herein.

2. This Order is subject to Rule 30 and Rule 45 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable by Rule 9016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

3. The Debtors may examine Innovatus in accordance with Bankruptcy Rule 2004(b) and, if necessary, seek to compel Innovatus's compliance under Bankruptcy Rules 2004(c) and (d), as applicable.

4. Innovatus is directed to produce to the Debtors, at a to be specified location within 100 miles of Innovatus, all documents within its respective possession, custody, or control that are responsive to the categories set forth on Exhibit B, attached to the Motion, on a rolling basis following the entry of this Order so as to be completed no later than fourteen days after entry of this Order.

5. The corporate designee with information regarding the Topics for Examination set forth on Exhibit B attached to the motion shall appear to be examined, under oath, by the Debtors no later than twenty-one days after entry of this Order at, (a) the office of **Sidley Austin LLP, 787 Seventh Avenue, New York, NY 10019**, or on such other date and location as mutually agreed upon by the parties in accordance with the requirements set forth in Rule 45 of the Federal Rules of Civil Procedure.

6. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed as a waiver of Innovatus's rights under applicable law to seek an order limiting the scope of the Debtors' examination to the extent information sought by the Debtors is not within the scope of Bankruptcy Rule 2004 or is otherwise unduly burdensome or privileged under applicable Federal Rules.

7. Nothing in this Order shall be deemed to limit or restrict the Debtors' right to seek further discovery.

8. This Court shall retain jurisdiction to resolve any disputes arising from or related to this Order, and to interpret, implement, and enforce the provisions of this Order.

 # # # END OF ORDER # # #

Submitted By:

SIDLEY AUSTIN LLP

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Proposed Attorneys to the Debtors and Debtors in Possession

Exhibit B

Proposed Subpoena

Exhibit B

DEFINITIONS

1. BANKRUPTCY. The term "BANKRUPTCY" means the legal proceeding initialed by DEBTORS in the COURT on the PETITION DATE.

2. COMMUNICATION. The term "COMMUNICATION" means any contact, transmission, or exchange of information between two or more persons, orally or in writing (including, but not limited to, any conversation or discussion, whether by chance or prearranged, formal or informal, face-to-face or by telephone, telegraph, telex, telecopier, electronic mail or other media).

3. COURT. The term "COURT" means the United States Bankruptcy Court for the Northern District of Texas, Dallas Division.

4. DEBTORS. The term "DEBTORS" means, collectively Eiger BioPharmaceuticals, Inc.; EBPI Merger Inc.; EB Pharma LLC; Eiger BioPharmaceuticals Europe Limited; and EigerBio Europe Limited, along with any of the officers, managers, agents, representatives, employees, attorneys, assigns, predecessors in interest, or any other person acting or purporting to act on the behalf of any of the foregoing.

5. DOCUMENT. The term "DOCUMENT" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A).

6. ETON. The term "ETON" shall mean Eton Pharmaceuticals, Inc.

7. INNOVATUS. The term "INNOVATUS" shall mean Innovatus Life Sciences Lending Fund I, L.P.

8. LSA. The term "LSA" shall mean the Loan and Security Agreement between INNOVATUS and DEBTORS dated June 1, 2022 (the "LSA")

9. MAC. The term "MAC" shall mean the Material Adverse Change as alleged in the NOTICE OF DEFAULT.

10. NOTICE OF DEFAULT. The term "NOTICE OF DEFAULT" shall mean the January 17, 2024 notice of default issued by INNOVATUS to DEBTORS that alleged an Event of Default under Section 8.3 of the LSA.

11. PROPEL. The term "PROPEL" shall mean Propel Bio Management LLC.

12. REQUESTS FOR PRODUCTION. The term "REQUESTS FOR PRODUCTION" means the requests for production presented herein.

13. SENTNYL. The term "SENTNYL" shall mean Sentnyl Therapeutics, Inc.

14. YOU/YOUR. The terms "YOU" and "YOUR" shall mean the parties responding to these REQUESTS FOR PRODUCTION, and any party acting on the behalf of or under the control of any of the foregoing, including any attorney professionals, officers, directors, employees, agents, representatives, sub-contractors, parents, subsidiaries, affiliates, predecessors, or successors.

15. VIR. The term "VIR" shall mean Vir Biotechnology, Inc.

16. ZOKINVY. The term "ZOKINVY" shall mean the drug developed by DEBTORS that extends the lives of children inflicted with Hutchinson Gilford progeria syndrome.

GENERAL INSTRUCTIONS

17. Each REQUEST FOR PRODUCTION shall be answered fully, in writing and under oath, unless it is objected to, in which event, YOU shall state the reason(s) for objection and shall answer the REQUEST FOR PRODUCTION to the extent the REQUEST FOR PRODUCTION is not objected to.

18. The following rules of interpretation shall apply to these REQUESTS FOR PRODUCTION: (a) the terms "all" and "any" shall each be construed as encompassing any and

all; (b) the connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these REQUESTS FOR PRODUCTION all responses that might otherwise be construed to be outside of its scope; (c) the term "concerning" shall be construed to mean relating to, referring to, describing, evidencing, or constituting; (d) the term "including" shall be construed to mean including, but not limited to; and (e) the term "person" shall refer to any natural person or legal entity, including without limitation any business or governmental entity or association.

19. If a claim of privilege is asserted in objecting to any REQUEST FOR PRODUCTION, or sub- part thereof, YOU shall furnish the following information with respect to that portion of the REQUEST FOR PRODUCTION as to which the claim of privilege is asserted: (a) the basis on which the privilege is claimed; (b) the type of information withheld; and (c) the general subject matter of the information withheld.

20. The responses to these REQUESTS FOR PRODUCTION are to be signed by the person making them, and the objections are to be signed by the attorney making them.

21. All grounds for an objection to a REQUEST FOR PRODUCTION shall be stated with specificity.

22. YOU shall promptly amend or supplement the answers to these REQUESTS FOR PRODUCTION.

23. These REQUESTS FOR PRODUCTION are continuing in nature. If after answering the REQUESTS FOR PRODUCTION, YOU obtain or become aware of any information or answers which are responsive to these REQUESTS FOR PRODUCTION, supplementary responses are required.

24. If YOU cannot answer the following REQUESTS FOR PRODUCTION in full after exercising due diligence to secure the full information to do so, state an answer to the extent possible, specifying the reasons for YOUR inability to answer the remainder, and stating whatever information or knowledge YOU have concerning the unanswered portion.

25. YOU shall produce the requested DOCUMENTS that are in your possession, custody or control, including DOCUMENTS in the possession of advisors, agents or other persons acting on YOUR behalf. If no DOCUMENT exists that is responsive to one or more of the following requests, please so indicate. If any of the requested DOCUMENTS are no longer within YOUR possession, custody or control, please so indicate and set forth the location of such DOCUMENT, if known.

26. If a DOCUMENT is available in both English and another language, both versions must be produced.

27. With respect to electronically stored information, corresponding metadata shall be produced to the extent that such metadata exists and can be extracted using standard processing tools.

28. Unless a REQUEST FOR PRODUCTION or DEPOSITION TOPIC expressly sets forth a different time period, all REQUESTS FOR PRODUCTION and DEPOSITION TOPICS encompass the time frame from March 1, 2022 to the present. Requests for DOCUMENTS for a specified period are for all DOCUMENTS prepared during such specified period and all DOCUMENTS reflecting, referring, or relating to any time or event in such specified period.

DOCUMENT REQUESTS

1. All DOCUMENTS and COMMUNICATIONS in YOUR possession, custody or control which concern Innovatus underwriting of its loan to the Debtors, including but not limited to internal communications and memoranda, credit committee reports, and projections.

2. All DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern Tranche B of the LSA.

3. All DOCUMENTS and COMMUNICATIONS in YOUR possession, custody or control that concern YOUR contention that the Debtors were attempting a "functional subordination" of the LSA.

4. All DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern DEBTORS' confidential information, including, but not limited to, DOCUMENTS and COMMUNICATIONS received from DEBTORS pursuant to the LSA or otherwise subject to Section 12.8 of the LSA and whether such DOCUMENTS or COMMUNICATIONS were shared with third parties.

5. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern the MAC or NOTICE OF DEFAULT.

6. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern any potential or actual sale of ZOKINVY.

7. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession that concern any potential transaction between YOU and ETON, including without limitation with respect to any potential acquisition by ETON of any assets from DEBTORS.

8. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern a potential transaction between DEBTORS and SENTNYL.

9. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern a potential transaction between DEBTORS and VIR.

10. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern a potential transaction between DEBTORS and PROPEL.

11. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody, or control that concern the PRF.

12. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody or control that concern the DEBTORS' assets or valuation.

13. ALL DOCUMENTS and COMMUNICATIONS in YOUR possession, custody or control that concern any non-legal third party consultant retained by INNOVATUS in connection with the DEBTORS, the LSA or the DEBTORS' assets.

TOPICS ON WHICH DEPOSITION TESTIMONY IS SOUGHT

1. Information regarding DEBTORS.

2. Information regarding the LSA.

3. Information regarding the MAC and NOTICE AND DEFAULT.

4. Information regarding the DEBTORS' confidential information.

5. Information regarding any potential or actual transaction between DEBTORS and SENTNYL, ETON, VIR, or PROPEL.

6. Information regarding the PRF.

7. Information regarding any potential or actual sale of ZOKINVY

Dated: April 29, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ *Thomas R. Califano*

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