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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)

DEBTORS' OBJECTION TO UNITED STATES TRUSTEE'S EMERGENCY MOTION TO TRANSFER VENUE OR DISMISS UNDER 28 U.S.C. §§ 1406 AND 1408 AND FED. R. BANKR. P. 1014(a)(2)

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") as and for its objection to the *United States Trustee's Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. §§ 1406 and 1408 and Fed. R. Bankr. P. 1014(a)(2)* [Docket No. 111] (the "Motion") respectfully state as follows:

[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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Preliminary Statement

1. The United States Trustee for Region 6 (the "U.S. Trustee") seeks to uproot the Debtors' chapter 11 cases from the United States Bankruptcy Court for the Northern District of Texas (this "Court" and the "District," respectively) and transfer venue to either the Northern District of California or the District of Delaware, a result no other participant in the case has requested. Despite the assertions in the Motion, the United States Bankruptcy Court for the Northern District of Texas (this "Court" and the "District," respectively) is a proper venue for these cases. In addition, this Court is a sensible, centralized, accessible, convenient, and just venue in which these chapter 11 cases can and should proceed. Moreover, there is no other forum which is more convenient or appropriate for these cases.

2. Venue is appropriate in this District for a number of reasons. First, certain of the Debtors are foreign entities whose only connection to the United States is their interest in a retainer held in this District. Second, the Debtors are, as is described herein, a virtual company. Their assets are almost exclusively intellectual property and intangibles. They have no "nerve center"—their general counsel, chief executive officer and chief financial officer are in North Carolina, New Jersey and Nevada, respectively. All of their manufacturing and distribution functions are contracted to third parties. The Debtors have no traditional "nerve center" or principal place of business. To the extent the Debtors have a principal place of business, it is Dallas, Texas. The Debtors have numerous contacts with Texas: a primary staffing company is located in Texas, one of the Debtors' largest prescribers for Zokinvy is based in Texas, and the Debtors' chief restructuring officer is located in Alvarez & Marsal's ("A&M") Dallas office.

3. Of the U.S. Trustee's suggested alternative venues: (1) the Debtors have no contacts with Delaware beyond the location of incorporation for three of the Debtors and (2) only a single, administrative employee works out of a small, local California office. A decision to move these

cases to the District of Delaware would be an affront to the interests of justice, and as the Debtors' nerve center is not in California, these cases would therefore not be properly venued in the Northern District of California. Because the Debtors have a choice of venues (in this case, this District and the District of Delaware), the Debtors looked to the interests of justice, which clearly support the filing of these chapter 11 cases in this Court.

4. With the Debtors having selected a permissible forum for this case, the U.S. Trustee must put forth a compelling case to overcome the substantial deference the law accords to the Debtors' choice. The Motion falls far short of satisfying this burden. The Debtors' actions were, and are, permitted under the relevant statutory authority. Moreover, the Debtors' choice of venue was intended to facilitate the Debtors' successful reorganization and to maximize the value of the estate.

5. As set forth in further detail below, it is respectfully submitted that the Motion should be denied in its entirety.

Jurisdiction and Venue

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b).

7. As discussed more thoroughly herein, venue of these chapter 11 cases in this District is proper pursuant to 28 U.S.C. § 1408. This section provides, in relevant part, that a case under Title 11 of the United States Code (the "Bankruptcy Code") may be commenced in the district in which the potential debtor's principal assets are located.

Background

8. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors' rare disease programs have FDA Breakthrough Therapy designation.[2]

I. The Debtors' Chapter 11 Filing.

9. On April 1, 2024 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are being administered jointly. No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

10. On April 3, 2024, this Court held a first day hearing and subsequently entered interim and final orders on various first day motions, including the Debtors' request for an expedited sale process to maximize the value of their life-saving drug for progeria patients.

11. On April 23, 2024, this Court held a hearing on the approval of sale of the Debtors' Zokinvy assets (the "Sale Hearing"), at which the Court approved the sale. Concurrently with the Sale Hearing, on April 23, 2024, this Court also held a final hearing on the approval of the Debtors' proposed use of cash collateral. On April 24, 2024, the Court entered an order approving the Zokinvy sale and a final order authorizing the Debtors to use cash collateral.

[2] A detailed description of the Debtors and their business, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 19] (the "First Day Declaration"). Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the First Day Declaration

12. On May 1, 2024, the Court conducted a status conference on the *Debtors' Emergency Motion for Entry of an Order Authorizing the Debtors to File the Merck Motion, Merck License, and Sublicense Under Seal* [Docket No. 168].

II. The Debtors' Organizational Structure and Governance.

13. Eiger BioPharmaceuticals, Inc. ("Eiger") is the parent company and 100% owner of the other four Debtors in these cases: EBPI Merger Inc. ("EBPI"), EB Pharma LLC ("EB Pharma"), Eiger BioPharmaceuticals Europe Ltd. ("Eiger Europe"), and EigerBio Europe Ltd. ("EigerBio").

14. Eiger, EBPI, and EB Pharma are all organized and incorporated under the laws of Delaware. Eiger Europe and EigerBio are both European entities, with the former incorporated in the United Kingdom and the latter incorporated in Ireland. The only asset of Eiger Europe and EigerBio in the United States is their interest in a retainer held at Sidley Austin LLP's ("Sidley") Dallas office.

III. The Debtors' Current Operations and Assets.

15. Following two reductions in force ("RIFs"), the Debtors now employ approximately nine full-time employees. The first RIF took place in 2023 and brought the employee count to approximately 25. The second RIF was completed on March 29, 2024 and brought the total number of employees to nine, with most of the remaining employees performing essential management functions. Although the Debtors maintain an office space in Palo Alto, California, the majority of the employees work remotely and are dispersed across the country. In recognition of the fact that the Palo Alto office is effectively empty and is likely to be abandoned, the Debtors have changed their mailing address to A&M's office in Dallas.

16. As discussed more thoroughly in the First Day Declaration, the Debtors' primary assets are intellectual property rights held pursuant to certain license and supply agreements.

Currently, the Debtors only FDA-approved product, Zokinvy, uses lonafarnib in the treatment of progeria—a life-threatening disease that affects children. To produce and distribute Zokinvy, the Debtors rely on third party manufacturers, as the Debtors do not own or operate any manufacturing facilities of their own. Further, the Debtors' prescribers are located in myriad states, including, for example, Illinois, Kentucky, Michigan, Missouri, Pennsylvania, and, most importantly, Texas. The Debtors do *not*, however, have prescribers in Delaware or California. Given the Debtors' widespread operations, they also contract with certain staffing agencies, including a staffing agency based in Texas, to supplement their workforce needs.

17. Conversely, the Debtors hold very few tangible assets. They do not own land, they do not own manufacturing facilities, they do not own factory equipment. Most of the items in their possession are maintained pursuant to leases or other contractual agreements. What the Debtors do have, however, is approximately $377,955.89 in cash held through Sidley's retainer in Dallas, Texas (the "Retainer"). And while Eiger Europe and EigerBio have bank accounts in Ireland and the United Kingdom, the Retainer is their *only* asset held in the United States. Because the Debtors do not have other significant tangible assets, the Retainer is thus the Debtors' only principal asset with a situs. The situs in question? This District.

Basis For Objection

I. Venue in the Northern District of Texas Is Proper under 28 U.S.C. § 1408.

18. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1408 ("Section 1408"), which governs venue in chapter 11 cases. Pursuant to this statute, a debtor may commence an action in any district where, for 180 days prior to commencement of the case or a longer part of such 180 days than in any other district, it: (i) is domiciled; (ii) resides; (iii) has its principal place of business; (iv) holds its principal assets; or (v) has an affiliate with a pending bankruptcy case. *See* 28 U.S.C. § 1408. A debtor need only satisfy one of the five alternatives to

establish venue. *See In re Dunmore Homes, Inc.*, 380 B.R. 663, 670 (Bankr. S.D.N.Y. 2008) (section 1408 "is written in the disjunctive making venue proper in any of the listed locations"). The Debtors have proper venue in this District because they satisfy the requirements of Section 1408.

A. Pending Case of an Affiliate.

19. First, all of Debtors have proper venue because EigerBio and Eiger Europe have proper venue in this District and this District alone. Section 1408 provides that venue is proper in any district "in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership." 28 U.S.C. § 1408(2). Here, EigerBio and Eiger Europe, as foreign Debtors whose only assets are located in this District, clearly have proper venue. These foreign entities simply do not have contacts with any other district to justify venue anywhere else. Therefore, because the foreign entities have venue here, all of the Debtors meet the requirements of Section 1408.

20. Courts have previously held that bank accounts, including retainers, are property of a debtor's estate. *See, e.g., In re Prudhomme*, 43 F.3d 1000, 1003-04 (5th Cir. 1995) (unearned portion of retainer is property of the debtor's estate); *In re Indep. Eng'g Co., Inc.*, 232 B.R. 529, 533 (B.A.P. 1st Cir.), aff'd, 197 F.3d 13 (1st Cir. 1999) (finding that a chapter 11 debtor "retained an interest in the unapplied retainer upon the filing of the petition, and the retainer became property of the Debtor's estate"); *In re B.C.I. Finances Pty Limited*, 583 B.R. 288, 294 (Bankr. S.D.N.Y. 2018) (holding that attorney's retainer deposited by foreign debtors in a trust account in the United States was property of the foreign debtors and therefore established jurisdiction, even without other property in the country). This finding is contingent upon the debtor's interest in receiving any unearned portions of the retainer. *See re Prudhomme*, 43 F.3d 1000 at 1004 (unearned portion of retainer is property of the debtor's estate).

21. For foreign debtors, courts have applied this principle to hold that a foreign debtor's retainer in a district constitutes property in that district, which is therefore sufficient to establish the requisite jurisdiction. *See In re JPA No. 111 Co., Ltd.*, No. 21-12075 (DSJ) (Bankr. S.D.N.Y. Feb. 1, 2022) (holding that the debtors' bank accounts containing retainer deposits were enough to establish a primary basis for jurisdiction); *In re Yukos Oil Co.*, 231 B.R. 396, 407 (Bankr. S.D. Tex. 2005) (confirming that the court had jurisdiction as a result of a foreign debtor's bank account because "nominal amounts of property located in the United States enable a foreign corporation to qualify as a debtor under Section 109(a) of the Bankruptcy Code"); *In re Global Ocean Carriers, Ltd.*, 251 B.R. 31, 18 (Bankr. D. Del. 2000) (confirming that the foreign debtors' retainer and nominal bank accounts constituted sufficient property in the United States for jurisdiction purposes).

22. In this instance, the Retainer is undoubtedly sufficient to establish jurisdiction, and thus, venue, in this District, as it is their sole asset held in the United States. Any unearned amounts in the Retainer will be returned to the Debtors, creating a property interest in the unearned portion of the Retainer. The Retainer is therefore the foreign Debtors' principal tangible asset and it is held in this District. This is not invalidated by the fact that Eiger, the foreign Debtors' parent, paid the Retainer. *See Global Ocean Carriers,* 251 B.R. at 18 (holding that "it is not relevant who paid the retainer, so long as the retainer is meant to cover the fees of the attorneys for all of the Debtors, as it clearly was in these cases"). Because the foreign Debtors have venue in this District, *all* of the Debtors are properly venued in this District pursuant to Section 1408(2). *See* 28 U.S.C. § 1408(2).

B. Principal Assets.

23. Even further, the domestic Debtors have proper venue in this District because their principal tangible and intangible assets are located here.

i. *The Debtors' Principal Tangible Assets Are Located in This District.*

24. Some courts have found that a *domestic* debtor's bank account is alone sufficient to establish venue if it constitutes the debtor's principal asset. *See In re Farmer*, 288 B.R. 31, 34 (Bankr. N.D.N.Y. 2002) (dismissing the U.S. Trustee's motion to transfer venue on the basis that bank accounts comprising $600 were the debtor's principal assets in the United States and such accounts were held in the district); *In re Newby*, No. 06-16964-BKC-AJC, 2007 WL 1385618, at *2 (Bankr. S.D. Fla. May 7, 2007) (transferring venue on other bases, but noting that "the Court agrees that a bank account may give rise to venue"). In fact, a court in this very District has declined to transfer venue even when the debtors' only connection to the Northern District of Texas was $30,000 located in a bank in Dallas. *See In re ERG Intermediate Holdings, LLC*, No. 15-31858-HDH11, 2015 WL 6521607, at *2 (Bankr. N.D. Tex. Oct. 27, 2015).

25. As aforementioned, the Debtors hold very few tangible assets. They do not own land, they do not own manufacturing centers, they do not own other factory equipment. Most of the items in their possession are maintained pursuant to leases or other contractual agreements. Their most valuable tangible asset, therefore, is the Retainer held in this District.

26. The Retainer also satisfies the 180-day rule of Section 1408. By its text, Section 1408 does not require that the principal place of business or principal assets be in a district for 180 days, but rather only "for a longer portion of such one-hundred-and-eighty-day period" than another district. 28 U.S.C. § 1408(1); *see, e.g.*, *In re Frame*, 120 B.R. 718, 722 (Bankr. S.D.N.Y. 1990) (court must determine where "the debtor was longer in order to determine whether venue is proper"); *In re Handel*, 253 B.R. 308, 311 (1st Cir. B.A.P.) (summarizing same and explaining "longer than" requirement). The Debtors did not have a retainer prior to funding the Retainer, and

the Retainer was not held anywhere other than Dallas, Texas in the 180-day period preceding commencement of these chapter 11 cases; therefore, Section 1408 is satisfied.

27. Importantly, Section 1408 contemplates that a debtor's "principal assets" may be located in more than one district. *In re Mid Atlantic Retail Grp., Inc.*, No. 07-81745, 2008 WL 612287, at *3 (Bankr. M.D.N.C. Jan. 4, 2008). As the court explained in *Mid Atlantic*, "a debtor's principal assets can be located in several different districts because '[t]he venue statute does not require that only *the* principal asset may support venue; rather, venue may be proper in a district where principal assets are located. Thus, a debtor may have more than one appropriate venue based upon more than one principal asset.'" *Id.* (alteration in original) (quoting *In re Ross*, 312 B.R. 879, 889 (Bankr. W.D. Tenn. 2004)). The *Mid Atlantic* court found that, although the debtor's principal assets (retail inventory) were located in several states, the Middle District of North Carolina was an appropriate venue since around 19 percent of the debtor's assets were located there. *See id.* Other courts have reached similar holdings. *See In re Sorrento Therapeutics, Inc., et al.*, Case No. 23-90085 (CML) (Bankr. S.D. Tex. Mar. 11, 2024) (Docket. No. 2017) (denying motion to transfer based upon the court's conclusion at the hearing, which included an acknowledgement that the debtor may have multiple principal assets in more than one district); *In re Ortiz*, No. 15-05938 (ESL), 2017 WL 770611, at *3 (Bankr. D.P.R. Feb. 27, 2017) (affirming *Mid Atlantic* and finding that the debtor has proper venue anywhere it has its principal assets); *In re Ross*, 312 B.R. 879, 888–89 (Bankr. W.D. Tenn. 2004) (explaining that venue may be proper in multiple places because the debtors may have more than one principal asset).

28. In denying the U.S. Trustee's motion to transfer venue, the court in *In re Ortiz* found that venue was proper in Puerto Rico based solely upon the location of the debtor's principal assets, even though 53 percent of the debtor's assets were in Florida as opposed to only 46 percent

of the assets being located in Puerto Rico. 2017 WL 770611, at *2. The court read the language of Section 1408 and reasonably concluded that the language used in the venue statute was "principal assets," and *not* "primary assets." The court then considered the debtor's real property and its bank accounts located in Puerto Rico to determine that the assets collectively constituted "principal assets." *Id.* Because the debtor held such assets in Puerto Rico in the 180 days prior to the commencement of the case, venue was proper. *Id.* (finding that the language of section 1408 "confirms that the court should focus the inquiry on the 'principal assets' owned by the Debtor").

29. The same is true here. The Debtors do not have other significant tangible assets. Their primary assets are intangible, and, as discussed below, also support venue in this District. Regardless, to the extent that the Debtors do hold assets in other districts, that does not invalidate the Debtors' basis for venue here. The Retainer, along with the Debtors' intellectual property interests, establish a legitimate basis for venue under Section 1408, in the same way that the debtor's real property and bank accounts established venue in *In re Ortiz*.

ii. *The Debtors' Principal Intangible Assets Are Located in This District.*

30. Aside from the Retainer, the Debtors do not have "principal assets" in the traditional sense—their principal assets are intangible intellectual property rights that have no true, physical location. *See, e.g., Delaware v. New York*, 507 U.S. 490, 498 (1993) ("intangible property is not physical matter which can be located on a map"); *Office Depot Inc. v. Zuccarini*, 596 F.3d 696, 702 (9th Cir. 2010) (internal citations omitted) (explaining that "attaching a situs to intangible property is necessarily a legal fiction"); *see also SE Prop. Holdings, LLC v. Green,* No. CV 19-00430-KD-B, 2020 WL 9396383, at *4 (S.D. Ala. Sept. 1, 2020) (noting that intangible property has no physical location).

31. Without any true physical location, courts have thus held that a "single piece of intangible property may be located in multiple places for some purposes." *Office Depot*, 596 F.3d at 702; *see also Tabacalera Severiano Jorge, S.A. v. Standard Cigar Co.*, 392 F.2d 706, 714 (5th Cir. 1968) (refusing to irrevocably rely on domicile to establish the situs of intangible property and explaining that it may be in different places for different purposes, including venue). Rather than hold that intellectual property rights have no location for venue purposes, however, courts have adopted a "context-specific" analysis that employs a "common sense appraisal of the requirements of justice and convenience in particular conditions" test to determine the proper situs of such intellectual property rights. *Office Depot*, 596 F.3d at 702 (internal citations omitted); *see also SE Prop. Holdings*, 2020 WL 9396383, at *4 (same); *In re Iroquois Energy Mgmt., LLC*, 284 B.R. 28, 31 (Bankr. W.D.N.Y. 2002) (quoting *Severnoe Sec. Corp. v. London & Lancashire Ins. Co.*, 174 N.E. 299, 300 (1931) (noting that, in determining the appropriate situs for intangibles, "the root of the selection is generally a common sense appraisal of the requirements of justice and convenience in particular conditions").

32. Puzzlingly, the US Trustee's motion actually cites to *In re Blixseth*, 484 B.R. 360 (B.A.P. 9th Cir. 2012), one of the few bankruptcy-specific cases that discusses the matter and actually provides support for the Debtors' argument that it has proper venue. *See* Motion, ¶ 21 (citing in support of the notion that the location of an equity ownership interest is generally either the domicile of the owner or the place of incorporation of the subsidiary). In *Blixseth*, the court employed the aforementioned context-specific analysis to evaluate proper venue in light of the intangible assets, explaining that in a bankruptcy case, the principal place of assets should logically "be construed in a way most resonant with the *functional concerns of the administration of the bankruptcy estate*….". 484 B.R. at 367 (emphasis added); *see also In re Green Jane, Inc.*, No.

2:17-BK-12677-ER, 2017 WL 2312851, at *8 (Bankr. C.D. Cal. May 26, 2017) (taking into account the functional concerns of the administration of the bankruptcy estate in applying a context-specific analysis of the intangible assets for venue purposes).

33. The test to determine proper venue based upon a debtor's principal place of assets when such assets are intangible thus mirrors the analysis for a discretionary transfer under 28 U.S.C. § 1412. To avoid an unnecessary and lengthy recitation of the same facts, this analysis is discussed in greater detail below in Section III.B. In short, the functional concerns of the administration of the bankruptcy estate support a finding that the principal place of the intangible assets is in the Northern District of Texas because: (i) there is no superior alternative venue, (ii) the Debtors and other parties in interest have already retained restructuring professionals in this District, (iii) the Debtors have significant operations and meaningful contacts in this District, and (iv) transferring these cases would require a new court to get "up to speed" on the complex nature of the Debtors' business and the substantial developments that have already occurred in these cases, thereby hindering the efficient administration of these chapter 11 cases.

34. By applying the aforementioned principles and employing a context-specific analysis, with a lens focused on the requirements of justice and convenience, the Debtors, for the reasons elucidated below, have properly identified the Northern District of Texas as one district in which it has principal assets. Therefore, Section 1408 is satisfied and venue in this District is proper.

C. Principal Place of Business.

35. Although the Debtors do have an office in Palo Alto, it can hardly be considered the "principal place of business" as the term has been interpreted by bankruptcy courts. Tasked with determining a debtor's principal place of business, courts have employed the "nerve center" test. *See In re AnthymTV Co.*, 650 B.R. 261, 277 (Bankr. D.S.C. 2023) (applying the nerve center

test in a venue determination to hold that the debtor's principal place of business was South Carolina because the CEO made significant business decisions there). Recognized by the Supreme Court in *Hertz Corp. v. Friend*, the nerve center test considers "where a corporation's officers direct, control, and coordinate the corporation's activities." 559 U.S. 77, 80 (2010). Although the "nerve center" test in *Hertz* was applied in the context of the federal diversity jurisdiction statute, it has likewise been applied in bankruptcy cases for the purposes of Section 1408 venue determination given the similarity of the two statutes. *See CORCO*, 596 F.2d at 1246 (holding under the predecessor to section 1408 that the principal place of business for bankruptcy venue is "where a debtor manages its business"); *In re Peachtree Lane Assocs., Ltd.*, 198 B.R. 272, 281 (Bankr. N.D. Ill. 1996) (finding that the "nerve" center test tasks the court with determining where the debtor's significant business decisions are made); *In re W. Coast Interventional Pain Med.*, Inc., 435 B.R. 569, 575 (Bankr. N.D. Ind. 2010) (describing the "nerve center" test and explaining that "the critical focus of § 1408 us the location at which supervisory/management decisions on behalf of the debtor are actually made"). The nerve center must be "more than a mail drop box, a bare office with a computer, or the location of an annual executive retreat." *Hertz*, 559 U.S. at 97.

36. Here, the Debtors' Palo Alto office is effectively a mail drop box. To the extent the office space in Palo Alto is utilized, it is only by rank-and-file employees.[3] Further, in this post-COVID world, it is not uncommon for employees to work almost entirely remotely, meaning they retain the flexibility to live anywhere. Such is the case here. The Debtors are essentially a virtual company, with their nine remaining employees dispersed across the country. For example, the Debtors' chief executive officer resides in New Jersey, their general counsel in North Carolina,

[3] The Debtors have completed two reductions in force. The first reduction in force was completed in 2023 and brought the employee count to approximately 25. The second reduction in force was completed on March 29, 2024 and brought the total number of employees to nine, with most of the remaining employees performing essential management functions.

and their chief financial officer in Nevada. California therefore does not constitute the "nerve" center of the Debtors' operations—there is no real nerve center when the Debtors' management decisions are simultaneously being made in New Jersey, North Carolina, and Nevada through the use of today's technology. *See generally Evans v. Cardlytics, Inc.*, No. 823CV00606JWHKES, 2023 WL 7345762, at *4 (C.D. Cal. Nov. 7, 2023) (concluding that the company's principal place of business was in California and not Georgia, where it was headquartered, because the leadership team was remote and the CEO and COO lived in California).

37. Although the Debtors do not fully stake their venue claim on the Northern District of Texas being their principal place of business, there is certainly a case to be made. In *In re B.L. of Miami, Inc.*, the court was unable to conclude where the debtor's business decisions were made and thus concluded that the principal place of business based on the location of the debtor's business activity and assets. 294 B.R. 325, 333 (Bankr. D. Nev. 2003). Like the debtor in *In re B.L. of Miami*, it is difficult to pinpoint where the Debtors' business decisions are actually made. As already discussed, however, the Debtors' principal assets are located in this District and, contrary the U.S. Trustee's assertions, the Debtors engage in business activity in this District, as discussed further herein.

38. To produce and distribute Zokinvy, the Debtors rely on third party manufacturers, as the Debtors do not own or operate any manufacturing facilities of their own. Further, the Debtors' prescribers are located in myriad states, including, for example, Illinois, Kentucky, Michigan, Missouri, Pennsylvania, and, most importantly, Texas. Conversely, the Debtors do *not* have prescribers in Delaware or California. Similarly, the Debtors contract with Real Staffing Group, a staffing agency based in Texas.

39. The Debtors also have a license from the Texas Department of State Health Services, Food & Drug Licensing to distribute prescription drugs. The Debtors have maintained this license for almost two full years and are currently in the process of renewing it. And while the U.S. Trustee is correct that the Debtors are not registered to do business with the Texas Secretary of State, other courts have nevertheless found that such registration is not required in determining a debtor's principal place of business for venue purposes. *See In re Grand Dakota Partners, LLC*, 573 B.R. 197, 201 (Bankr. W.D.N.C. 2017) (noting that "any such lack of registration is only non-dispositive evidence regarding the location of a corporation's principal place of business").

40. Taken together, a strong argument exists that the Debtors principal place of business is, in fact, this District. The case law establishes that the Debtors' principal place of business must be where a corporation's officers direct, control, and coordinate the corporation's activities and neither the Northern District of California nor Delaware satisfy this requirement.

D. Domicile or Residence.

41. Typically, the domicile or residence of a corporate debtor for venue purposes is the state of the debtor's incorporation, rather than the place in which the corporation does business or has its offices. *See In re ERG Intermediate Holdings*, 2015 WL 6521607, at *4. The Debtors acknowledge, and have already reflected in the filed petitions, that Eiger is a Delaware corporation, with the other Debtors organized under the laws of Delaware, the United Kingdom, and Ireland.

42. The fact that venue would technically be proper in Delaware, however, does not mean that venue is not proper in the Northern District of Texas. And it certainly does not support transferring these chapter 11 cases to Delaware in a situation like the one here, where the Debtors do not have any operations in Delaware—their only connection to Delaware is their incorporation. *See Royal Indem. Co. v. Am. Bond & Mortg. Co.*, 289 U.S. 165, 169 (1933) (finding venue to be

proper where the Debtors had its primary operations, rather than the state of incorporation because "[i]n these days of corporate activity it is not unusual for a company chartered in one of the states to conduct most, if not all its business in another state far removed from that of incorporation.").

43. There are myriad examples of courts refusing to transfer venue solely on the basis of the Debtors' incorporation when the interest of justice support venue elsewhere. *See Matter of Commonwealth Oil Refining Co., Inc.*, 596 F.2d 1239, 1249 (5th Cir. 1979) (declining to transfer the debtors' case to Puerto Rico, where it was incorporated, because its principal place of business was in Texas); *In re Hermitage Inn Real Est. Holding Co., LLC*, No. 19-10214, 2019 WL 2536075, at *18 (Bankr. D. Vt. June 19, 2019) (finding that the place of the Debtors' principal assets and business were "entitled to greater weight than the Debtors' incorporation" in another state and that "there is little to connect the Debtors to Connecticut other than…their incorporation…").

44. Given the lack of connections to the state of Delaware, there is too flimsy a nexus to justify transferring venue in light of the considerations weighing against that choice.

II. The Court Has Discretion to Retain These Cases, Even If Venue Is Improper.

45. The U.S. Trustee contends that this Court must dismiss or transfer these cases because they are improperly venued in this District. *See* Motion, ¶ 23-24. In doing so, the U.S. Trustee purportedly relies on 28 U.S.C. § 1406(a) ("Section 1406") and Bankruptcy Rule 1014(a)(2) in support of its Motion. *Id.* This argument fails in the first instance because, as demonstrated above, the Debtors *are* properly venued in this District. Even if this Court were to conclude to the contrary, however, the U.S. Trustee's reliance on the aforementioned provisions is misplaced and their argument fails as a result.

46. Section 1406(a) provides that: "The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. §

1406(a). On its face, Section 1406 does not authorize transfer of a *bankruptcy* case; rather, it addresses change of venue of improperly venued district court civil litigation and thus, should not govern in these cases.

47. Conspicuously absent from the U.S. Trustee's Motion is the express language in Section 1406 that a *district court* shall dismiss or transfer an improperly venued case. *See* Motion, ¶ 23. Omitting that very critical context is misleading. Transfer of a *bankruptcy* case is, at least from the text of the statute itself, is governed by 28 U.S.C. § 1412 ("Section 1412"), which provides: "A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Unlike Section 1406, the text of Section 1412 does not require a dismissal for a case on the basis of venue, does not require the court to transfer the case, and does not discuss improper venue. Instead, it grants the court *discretion* to transfer a case if the transfer would serve the interest of justice or the convenience of the parties, but it does not require it.

48. Meanwhile, Bankruptcy Rule 1014(a)(2) does discuss improper venue and provides that:

> If a petition is filed in an improper district, the court, on the timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, **may dismiss the case or transfer it to any other district if the court determines that transfer is in the interest of justice or for the convenience of the parties.**

Fed. R. Bankr. P. 1014(a)(2) (emphasis added).

49. Thus while Rule 1406 contains the mandatory language "shall," Bankruptcy Rule 1014 (a)(2) contains the permissive "may" and incorporates the concepts of interests of justice and convenience of the parties. Yet again, there is no requirement on the face of the Rule to dismiss or transfer an improperly venued case. In this instance, the Debtors are not asking for any improper

expansion of this Court's powers—the Debtors merely ask this Court to utilize the powers bestowed to it by Congress.

50. The Debtors do acknowledge, however, that the sole circuit level case and the majority of recent bankruptcy cases that have expressed a definitive view on this matter have concluded that a bankruptcy court may not retain an improperly venued case. *See Thompson v. Greenwood*, 507 F.3d 416, 424 (6th Cir. 2007) (concluding that improper venue required dismissal or transfer and the case could not be retained); *Swinney v. Turner*, 309 B.R. 638 (M.D.Ga. 2004) (same); *In re Ross*, 312 B.R. 879 (Bankr.W.D.Tenn. 2004) (same); *In re Townsend*, 84 B.R. 764 (Bankr.N.D.Fla. 1988) (same). Regardless, neither the Sixth Circuit opinion nor the majority of other cases are binding authority on this Court. Instead, this Court should align itself with precedent from either the Fifth Circuit or, at the very least, the state of Texas. Seeing as there is no Fifth Circuit precedent, this Court should adopt the reasoning set forth by the United States Bankruptcy Court in the Western District of Texas in *In re Lazaro*, 128 B.R. 168, 171 (Bankr. W.D. Tex. 1991). *See also In re Brown, Howard & Aldea*, 184 B.R. 741, 742 (Bankr. W.D. Tex. 1995) (rejecting movant's argument that *Lazaro*'s statutory analysis was incorrect and suggesting that, although not present in this instance, there may be circumstances where a venue is "so inconvenient that [the court is] justified in ignoring the normal rules for venue placement"). In concluding that the bankruptcy court is authorized to retain an improperly venued case, the court relied on the actual text of Section 1412, the "statute which [the rule] was designed to implement." *Id.* The court recognized the incongruity between the advisory note for Bankruptcy Rule 1014(a)(2), which explained that Section 1412 "authorizes only the transfer of a case," and the text of the statute itself, which explicitly says that the court "*may* transfer a case." *Id.* (finding that the "statute *permits* rather than authorizes" and that "[t]his permissive language allows a [ ] court *not*

to transfer a case if the interest of justice or the convenience of the parties so dictates"); *see also In re Leonard*, 55 B.R. 106, 109-10 (Bankr. D.D.C. 1985) (analyzing the legislative history and text of the statute to conclude that bankruptcy courts may retain improperly-venued cases). Accordingly, by adopting the same line of reasoning, this Court has authority to retain these cases, even if venue is improper.

51. In any event, even if this Court were to apply the analysis for transfer of a bankruptcy case under Section 1412 and Bankruptcy Rule 1014(a)(2), this Court should, respectfully, find in the Debtors' favor. Thus, this Court should retain venue over these cases, and it can and should do so even if these cases are improperly venued.

III. Venue Should Not Be Transferred Pursuant to 28 U.S.C. § 1412.

52. When asked to make a discretionary transfer of an entire bankruptcy case to another venue pursuant to Section 1412, as the U.S. Trustee has done in its Motion, courts examine whether the transfer would be (a) in the interest of justice, or (b) more convenient to the parties. As discussed below, transferring these cases to Delaware or the Northern District of California would neither serve the interest of justice, nor would it be more convenient to the parties.

A. Substantial Weight and Deference Should Be Accorded to the Debtors' Choice of Forum.

53. Before turning to consideration of the interest or justice and convenience of the parties, however, it must first be acknowledged that since venue in this Court is proper, the Debtors' choice of this forum is entitled to great weight. *See, e.g.*, *In re Restaurants Acquisition I, LLC*, 2016 WL 855089, at *2 (Bankr. D. Del. Mar. 4, 2016) ("[C]ourts will generally grant substantial deference to a debtor's choice of forum."); *In re Ocean Props. of Del., Inc.*, 95 B.R. 304, 305 (Bankr. D. Del. 1988) (debtor's choice of a proper venue "entitled to great weight"); *In re PWS Holding Corp.*, 1998 Bankr. LEXIS 549, at *4-5 (Bankr. D. Del. Apr. 28, 1998) (debtor's

"choice of forum is to be accorded substantial weight and deference"). Based on this starting principle, "there is a presumption in favor of maintaining the debtor's choice of forum." *In re Alcorn Corp.*, No. 12-13742, 2012 Bankr. LEXIS 3346, at *1 n.2 (Bankr. E.D. Pa. July 20, 2012).

54. Accordingly, a court "should exercise its power to transfer cautiously, and the party moving for the transfer must show by a preponderance of the evidence that the case should be transferred." *In re Commonwealth Oil Ref. Co. (Puerto Rico v. Commonwealth Oil Ref. Co.)*, 596 F.2d 1239, 1241 (5th Cir. 1979), *cert. denied*, 444 U.S. 1045 (1980) (referred to herein as "*CORCO*") (citation omitted). Venue should be disturbed only when the transfer is heavily favored. *See In re PWS Holding Corp.*, No. 98-212-SLR, 1998 Bankr. LEXIS 549, at *5 (Bankr. D. Del. Apr. 28, 1998) (court must "determin[e] whether the balance of interests **strongly** favors transfer" (emphasis in original)); *see also In re Enron Corp.*, 274 B.R. 327, 342–43 (Bankr. S.D.N.Y. 2002) ("*Enron I*") ("Where a transfer would merely shift the inconvenience from one party to the other . . . the [debtor's] choice of forum should not be disturbed.") (quoting *In re Garden Manor Assocs., L.P.*, 99 B.R. 551, 555 (Bankr. S.D.N.Y.1988))). The moving party must show by a heavy preponderance of the evidence that the case cannot "be efficiently and fairly administered in the debtor's chosen forum." *In re Denham Homes, LLC*, 2010 Bankr. LEXIS 1127, at *4-5 (Bankr. N.D. Ill. Apr. 12, 2010). Given the strong presumption that a debtor's choice of forum should not be disturbed, courts rarely grant such relief.

55. The Debtors, in their reasonable business judgment, elected to commence these chapter in cases in this District because it has principal assets and engages in significant business here, this was the most convenient location for the majority of parties in interest, and this Court has recent experience in analyzing and considering the complexities of biopharmaceutical

companies.[4] Ultimately, the Debtors elected to commence these chapter 11 cases in this District because they determined that it was in the best interest of all stakeholders, and that decision should not be usurped by the U.S. Trustee. Conversely, there is no party that is prejudiced by venue in this Court and the U.S. Trustee has not pointed to any legitimate consideration that would justify transfer.

B. The Convenience of the Parties Weighs in Favor of Retaining Venue.

56. When evaluating what is in the "convenience of the parties," bankruptcy courts, including this Court, have generally utilized six factors, as set forth in *CORCO*, to help guide their analysis. *See* 596 F.2d at 1247. The six *CORCO* factors are: (1) the economic administration of the estate; (2) the location of the assets; (3) the proximity of creditors of every kind to the court; (4) the proximity of the debtors to the court; (5) the proximity of the witnesses necessary to the administration of the estate; and (6) the necessity for ancillary administration if liquidation should result. *Id.* The most significant factor is the promotion of the economic and efficient administration of the estate. *Enron I*, 274 B.R. at 343. As shown below, consideration of these factors requires denial of the Motion.

i. *Economic Administration of the Estate*

57. As noted above, of the six *CORCO* factors, the "economic and efficient administration of the estate" is given the most weight. *Enron I*, 274 B.R. at 343. Courts consider this factor in tandem with the great deference given to a debtor's chosen forum insofar as a venue "transfer is a cumbersome disruption of the Chapter 11 process" that necessarily creates additional costs and delay. *See, e.g., In re Suzanne De Lyon, Inc.*, 125 B.R. 863, 868 (Bankr. S.D.N.Y. 1991).

[4] On April 1, 2024, the same day that these chapter 11 cases commenced, this Court held a confirmation hearing to approve the chapter 11 plan of another biopharmaceutical company. *See In re Impel Pharmaceuticals, Inc., et al.*, Case No. 23-80016 (SGJ) (Bankr. N.D. Tex. 2023).

58. Taking into account the functional and economic concerns of the administration of the bankruptcy estate, it is evident that the Motion must be denied. Contrary to the U.S. Trustee's assertions, there is no superior alternative venue. With a small office in California and incorporated in Delaware, the Debtors do not own assets in either location, nor, as noted above, are there any physical distribution sites or other significant business operations.

59. The Debtors have also already applied for the retention of restructuring advisors, some of whom are located in Dallas, including their proposed chief restructuring officer ("CRO"), who has been hired out of the Dallas office of Alvarez & Marsal. Other parties in interest, including the sole lender in this case, Innovatus Life Sciences Lending Fund I LP ("Innovatus"), and The Progeria Research Foundation ("PRF"), have similarly retained counsel. PRF's counsel is based in the Houston office of Weil, Gotshal & Manges LLP. Innovatus is based out of New York and its counsel, Bradley Arant Boult Cummings LLP ("Bradley"), is primarily located in Nashville, with an established office in Dallas as well. Bradley does not, however, have any offices in Delaware or California. If these chapter 11 cases were to be transferred to either of these jurisdictions, the Debtors and other interested parties would need to hire local counsel, resulting in significant delays and duplicative administrative expenses to the ultimate detriment of the Debtors' estates.

60. Transferring these chapter 11 cases will also hinder the administration of the bankruptcy estate as it will require a different judge to repeat the work already done by this Court to educate itself, which is inefficient and contrary to judicial economy. *Enron I*, 274 B.R. at 349-50 (explaining how the "necessities of this case resulted in an accrual of knowledge by the Court" and how a "learning curve analysis involves consideration of the time and effort spent by the current judge and the corresponding effect on the bankruptcy case in transferring venue"); *see also*

In re DDMD Trucking, Inc., No. 14-12511-TA11, 2015 WL 381299, at *6 (Bankr. D.N.M. Jan. 28, 2015) (finding that judicial economy weighed against venue transfer since "it would be more efficient to keep the case in this court rather than require another court to 'get up to speed'"). The "learning curve" also favors against transferring when a case has progressed with significant developments, "because any venue transfer inherently requires a new court to start over and familiarize itself with a debtor's business operations and structure." *In re Restaurants Acquisition*, 2016 WL 855089, at *5; *see also In re AnthymTV*, 650 B.R. at 283 (even though a "relatively short period of time" had passed since the bankruptcy filing, "a considerable amount of information has been provided to this court during this time regarding the debtor and its operations" and thus "allowing the bankruptcy cases to proceed in this court would be more efficient and would promote judicial economy").

61. This Court has already familiarized itself with the Debtors' business, structure, and operations. It has read countless pages of pleadings apprising the Court on the Debtors' background, the events leading to these chapter 11 cases, and why certain relief is necessary. It has listened to numerous lengthy testimonies, with both direct and cross examinations, of the Debtors' management team and advisors, who explained incredibly complex and technical aspects of the Debtors' products and business. It has heard from other interested parties, such as PRF, and is being asked to resolve issues regarding the scope and breadth of the Debtors' license with Merck and a number of other issues which have already arisen and will continue to arise on a daily basis in these cases. The learning curve here is steep and asking another court to appropriately and expeditiously acquaint itself with the facts herein would impose an undue burden on a new court and would undoubtedly cause delay and additional expense.

62. Finally, the core question is not whether the goals of these chapter 11 cases—pursuing a value maximizing asset sale—*could* be accomplished in another district, but instead, whether transferring venue *would* lead to a case being "actually easier, faster or less expensive" to administer in another district. *In re ONCO Inv. Co.*, 320 B.R. 577, 581 (Bankr. D. Del. 2005). Here, the answer is a resounding "no." It is unequivocally clear that the most efficient administration of these chapter 11 cases hinges on venue remaining in this District.

ii. *Location of Assets*

63. As discussed above, the Debtors hold very few tangible assets. The Debtors' principal assets, however, are located in this District. Therefore, this CORCO factor weighs in favor of retaining venue.

iii. *Proximity of Creditors, Debtors, and Witnesses*

64. The third, fourth, and fifth convenience factors—the proximity of the creditors, debtors and witnesses—all of which turn on the parties' proximity to the Court, support retaining venue in Texas.

65. When courts consider the proximity of a debtor in connection with a venue transfer motion, the analysis should focus on the location of the debtor's representatives who will appear in court, not with the employees who conduct the day-to-day business activities. *CORCO*, 596 F.2d at 1248; *In re Enron Corp.*, 284 B.R. 376, 392-93 (Bankr. S.D.N.Y. 2002) ("*Enron II*") (noting that the relevant debtor contacts are those persons who are "intimately familiar with the financial status of the company"). The necessary participants in this case are the Debtors' restructuring professionals and the Debtors' management team, all of whom reside in varying jurisdictions. The restructuring professionals are located in various locations as well, including Texas, Pennsylvania, and New York. None of the Debtors' management team, nor their restructuring professionals, are located in California or Delaware.

66. Going forward, the Debtors' primary witnesses will likely include the Debtors' CEO and the Debtors' proposed CRO. Inasmuch as out-of-state witnesses have already traveled to and appeared in the district in which the court is located, such fact weighs against transfer of venue. *See Mid Atlantic*, 2008 WL 612287, at *4. This Court has already heard testimony from the Debtors' CEO, proposed CRO, and other of its restructuring advisors. Further, the Debtors' proposed CRO is based out of Dallas.

67. Similarly, the Debtors' creditors are geographically diverse, comprising approximately 500 entities scattered across approximately 37 states and 14 countries. To date, none of the creditors have had any objections or concerns with venue in this District. Tellingly, the Motion even defers to the views of creditors on which proposed venue they find appropriate for transfer, but not a single creditor has expressed support on the matter. *See* Motion, ¶ 28.

68. Moreover, in analyzing the accessibility of alternative venues, courts consider each venue's transportation options, especially where interested parties do not all reside in the same place. *See, e.g.*, *Enron I*, 274 B.R. at 339, 351 (comparing accessibility of certain locations in venue analysis); *In re Del. & Hudson Ry. Co.*, 96 B.R. 467, 468-69 (Bankr. D. Del. 1988) (same). Because the parties in interest here, including the Debtors and their creditors, are dispersed worldwide, Dallas is a logical meeting point in these chapter 11 cases, as it is easily accessible for the majority of parties in interest.

69. In light of these facts, it is impossible to conclude that the convenience of the parties would be best served by transferring this case to the Northern District of California or Delaware. There is no centralized nexus that would be more convenient for all parties in interest.

v. *Necessity for Ancillary Administration if Liquidation Should Result*

70. The final *CORCO* factor relates to the necessity for ancillary administration if liquidation should result. This factor is often given minimal weight in the analysis. *See, e.g.*, *In re Caesars Entm't Operating Co. Inc.*, No. 15-10047 (KG), 2015 WL 49529, at *6 n.7; *Enron I*, 274 B.R. at 343 n.11. Here, the Debtors have a clear, workable strategy that is already in the process of being implemented. The Debtors anticipate that there is (or will be) little need for any ancillary administration resulting from liquidation. Accordingly, this factor does not support transferring venue to any other district.

71. In sum, the *CORCO* factors either support leaving these chapter 11 cases in this District, or they are as neutral between this District and any alternative forum. The factors certainly do not strongly favor any particular court over the one chosen by the Debtor. As such, the U.S. Trustee has not satisfied its burden of proof, and because of the deference given to the Debtors' choice of forum, there is no basis for the Court to transfer venue based on the convenience of the parties. *See In re Caesars*, 2015 Bankr. LEXIS 314, at *22-23 (declining to base venue decision based on *CORCO* factors when the available forums were "on balance equally convenient to the lawyers and professionals who represent the key constituencies in the Debtor's bankruptcy cases" and hence "the CORCO convenience factors are a 'push'").

C. The Interest of Justice Is Not Served by Transferring Venue.

72. In determining whether a transfer would be "in the interest of justice," the Court should primarily consider "whether transfer of venue will promote the efficient administration of the estate, judicial economy, timeliness, and fairness." *Enron II*, 284 B.R. at 387. Courts often combine the "interest of justice" and "convenience of parties" analyses "since the facts and circumstances which inform one evaluation will almost always bear on the other as well." *In re LaGuardia Assocs., L.P.*, 316 B.R. 832, 839 (Bankr. E.D. Pa. 2004). And although these factors

have generally been discussed above and support keeping this case in this District, it cannot be understated how critical it is to the interest of justice for this Court to deny the Motion and retain venue.

73. As described above, the delay and uncertainty caused by a transfer of these cases to another venue would negatively impact the Debtors' efforts to realize the highest values for their assets, thus impairing all stakeholders. The disruption caused by transferring this case would not promote the efficient administration of the Debtors' estates and would prejudice the Debtors' stakeholders. With the lives of children on the line, it is hard to imagine a situation in which swift and efficient administration of these chapter 11 cases is more crucial than here.

74. Further, the Debtors have not engaged in any sort of bad faith or abusive behavior. As explained in a prior case in this District:

> When a proper venue is chosen and no abuse can be shown, there is no forum shopping in the pejorative sense. Rather, the Debtors considered their options for where to file these Cases and chose to file in Dallas because they determined, in the exercise of their fiduciary duties, that it provided the best opportunity to maximize value for all interested stakeholders.

In re ERG Intermediate Holdings, 2015 WL 6521607, at *7.

75. Here, in a proper exercise of their fiduciary duties, the Debtors carefully and thoughtfully considered their options and concluded that this District was not only appropriate, but presented the "best opportunity to maximize value for all interested stakeholders." *Id.* This Court has recently considered biopharmaceutical cases, it has substantial experience in analyzing and considering matters related to cash collateral financing, handling reorganizations and sales of assets, and doing so on an expedited timeline, all of which are central to the Debtors' goals in these cases.

76. And to the extent not already made clear in this objection, the U.S. Trustee's assertion that the Debtors lack meaningful contacts with this venue is patently false. *See* Motion, ¶ 26. The Debtors have just as many, if not more, contacts in this venue as any other. Such meaningful contacts include (i) the Debtors' CRO, who was hired out of the Dallas office, (ii) one of the Debtors' largest Zokinvy prescribers, (iii) a staffing agency used by the Debtors, and (iv) various creditors located across Texas.

77. For all these reasons, the interest of justice would be best served by maintaining this case in the Northern District of Texas. Simply put, the U.S. Trustee has not proven by a preponderance of evidence that transfer to either Delaware or the Northern District of California would serve the interest of justice or the convenience of the parties. Transfer would, at best, merely shift any inconvenience from one party to another. Therefore, because the Debtors' choice of forum is proper, it should not be disturbed.

Conclusion

78. WHEREFORE, for all the reasons set forth herein, the Debtors respectfully request that the Motion be denied and that the Court decline to transfer these chapter 11 cases to any other district.

[*Remainder of page intentionally left blank.*]

Respectfully submitted,

Dated: May 2, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

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Proposed Attorneys for the Debtors and Debtors in Possession

Certificate of Service

I certify that on May 2, 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
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