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**PROPOSED SPECIAL CONFLICTS
COUNSEL FOR THE DEBTORS**

**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)

**APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF NELIGAN LLP AS CONFLICTS COUNSEL TO THE DEBTORS**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txnb.uscourts.gov/> no more than twenty-four (24) days after the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk and filed on the docket no more than twenty-four (24) days after the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on May 30, 2024, at 9:30 a.m. in Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496. You may participate in the hearing either in person or by an 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 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 make 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.

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.



The above-captioned debtors (collectively, the “Debtors”) file this application (the “Application”) pursuant to Sections 327 and 328 of the Bankruptcy Code,² Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Northern District of Texas (“N.D. Tex. L.B.R.”) to request entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtors to retain and employ Neligan LLP (“Neligan”) as the Debtors’ conflicts counsel in the above-referenced jointly administered chapter 11 bankruptcy cases. In support of this Application, the Debtors submit the Declaration of Patrick J. Neligan, Jr.(the “Neligan Declaration”), attached hereto as **Exhibit B** and incorporated herein by reference, as well as the Declaration of Douglas Staut (the “Staut Declaration”), attached hereto as **Exhibit C** and incorporated herein by reference, as required by the Appendix B Guidelines of the United States Trustee for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under United States Code by Attorneys in Larger Cases (the “UST Guidelines”). In addition, the Debtors state as follows:

BACKGROUND

1. On April 1, 2024 (the “Petition Date”), the Debtors filed their voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and are operating their businesses as debtors-in-possession in accordance with Sections 1107 and 1108 of the Bankruptcy Code. A detailed description of the Debtors’ business, capital structure, and the events leading to the Debtors’ bankruptcy is set forth in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 19], which is incorporated herein by reference.

² 11 U.S.C. §§ 101, *et seq.* Unless otherwise noted, all statutory references herein are to the Bankruptcy Code.

2. As described more fully in the *Debtor's Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession Effective as of the Petition Date* (the "Sidley Application") [Docket No. 155], the Debtors are represented by and have sought permission to retain and employ Sidley Austin LLP ("Sidley") as bankruptcy counsel under Section 327(a) of the Bankruptcy Code. As disclosed in the Sidley Application, Sidley represents Merck Sharp & Dohme Corp. ("Merck") in matters unrelated to the Debtors. Merck is a counterparty to a certain Licensing Agreement between Debtor Eiger Biopharmaceuticals, Inc. and Merck (the "Merck License"), under which the Debtors have the exclusive right to develop and commercialize Lonafarnib, a medication sold under the brand name "Zokinvy" used to treat progeria.

3. On April 23, 2024, the Court entered its *Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* (the "Zokinvy Sale Order") [Docket No. 162], approving the sale of certain estate assets related to Zokinvy (the "Zokinvy Sale") to Sentyln Therapeutics, Inc. ("Sentyln"). In connection with the Zokinvy Sale, the Debtors will grant Sentyln a sublicense (the "Sublicense") and Sentyln has requested certain assurances from Merck intended to give comfort to Sentyln that Sentyln will not have future unanticipated conflicts with Merck as it exercises its rights under the Sublicense.

4. In light of Sidley's concurrent representation of Merck in matters unrelated to the Debtors, the Debtors have retained Neligan as conflicts counsel, subject to Court approval, to represent the Debtors in connection with litigating any dispute between the Debtors and Merck arising during the case, including in connection with any dispute arising as a result of or in connection with the Zokinvy Sale.

RELIEF REQUESTED

5. A debtor-in-possession, “with the court’s approval, may employ one or more attorneys . . . that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the [debtor in possession] in carrying out [its] duties under this title.” 11 U.S.C. § 327(a). Such employment may be based “on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a).

6. Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, the Debtors request that the Court approve the Debtors’ retention and employment of Neligan as conflicts counsel during the bankruptcy cases on the terms set forth below and in the engagement letter, dated as of April 26, 2024, between the Debtors and Neligan, a copy of which is attached to the proposed order as Exhibit 1 (the “Engagement Letter”). Consistent with N.D. Tex. L.B.R. 2014-1(b)(1), the Debtors request that Neligan’s employment be approved as of April 26, 2024, the date on which Neligan was retained.

NELIGAN’S QUALIFICATIONS

7. The Debtors seek to retain Neligan as their conflicts counsel because of Neligan’s extensive experience in representing both privately held and publicly traded businesses in out-of-court restructurings and Chapter 11 bankruptcy proceedings in this Court and around the country. Neligan is a boutique restructuring firm with a national practice, and each of its professionals have many years of experience in complex restructuring cases. Since being retained, Neligan has become generally familiar with Debtors’ financial condition, business operations, and the issues pertaining to the Debtors’ relationship with Merck for which Neligan has been retained. Accordingly, the Debtors believe that Neligan has the necessary experience, background, and

familiarity with the Debtors to deal effectively with many of the potential legal issues and problems that may arise in the context of these cases within the scope of Neligan's proposed employment, and that Neligan is both well-qualified and able to represent the Debtors in an efficient and effective manner.

SERVICES TO BE PROVIDED BY NELIGAN

8. The services of Neligan are necessary to enable the Debtors to execute their duties as debtors-in-possession. Subject to further order of this Court, Neligan provide the following services as conflicts counsel to the Debtors:

- (a) advising and representing the Debtors in connection with litigating any dispute between the Debtors and Merck arising during the case, including but not limited to any dispute arising as a result of or in connection with the Zokinvy Sale;
- (b) performing any other legal services for the Debtors which may be necessary and proper in these proceedings and in furtherance of the Debtors' rights and duties in the event of any potential or actual conflict of interest of Sidley, as agreed to between the Debtors, Sidley, and Neligan.

Neligan will work closely with Sidley and the Debtors' other professionals to ensure that there is no unnecessary duplication of effort and that Neligan does not undertake matters outside the scope of Neligan's role as conflicts counsel.

9. Neligan has stated its desire and willingness to act in this case and render the necessary professional services as counsel to the Debtors. The Debtors require knowledgeable counsel to render these essential professional services. As noted above, Neligan has substantial expertise in all these areas. As a result, Neligan is well-qualified to perform these services and represent the Debtors' interests in these cases.

PAYMENT OF FEES AND EXPENSES

10. Neligan was not retained until after the Petition Date and has not received any pre- or postpetition retainer or payments from the Debtors. Subject to the Court's approval and as set forth in the Engagement Letter, Neligan will charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date services are rendered. Neligan attorneys' rates range from \$625 - \$775 per hour while the rate for firm paralegals is \$150 per hour. The Neligan professionals that will have the primary responsibility for this engagement are Patrick J. Neligan, Jr. (\$775/hour) and John D. Gaither (\$625/hour). Neligan's rates may change from time to time in accordance with Neligan's established billing practices and procedures. Neligan will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of the services rendered.

11. Neligan will apply to the Court for payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, and the Bankruptcy Rules, the Local Rules and orders of this Court, the UST Guidelines, and pursuant to any additional procedures that may be established by the Court in this case.

12. The Debtors have developed a prospective budget and staffing plan with respect to their professionals, which has been incorporated into the cash collateral budget approved by the Court. Docket No. 161. The Debtors and Neligan will coordinate on a firm-specific budget and staffing plan to be incorporated into the Debtors' overall budget for professional fees in this case. The Debtors recognize that it is the Debtors' responsibility to monitor closely the billing practices of its counsel to ensure the fees and expenses paid by the estate remain consistent with the Debtors' expectations and the exigencies of these chapter 11 cases. The Debtors will continue to review the

invoices that Neligan regularly submits and, together with Neligan, amend the budget and staffing plan periodically as the case develops and the need arises to do so.

DISCLOSURE CONCERNING CONFLICTS OF INTEREST

13. To the best of Debtors' knowledge, information and belief, Neligan represents no interests adverse to the Debtors. Neligan is not a creditor of the Debtors. Other than the matters disclosed in the Neligan Declaration, Neligan has no further connection with any of the Debtors' creditors, the United States Trustee, or any other party with an actual or potential interest in the cases. The Debtors believe that Neligan is a "disinterested person," as defined in Section 101(14) of the Bankruptcy Code. The Debtors submit that the employment of Neligan would be in the best interest of the Debtors and their estate.

14. Given the large number of parties in interest in these Chapter 11 cases and because the information and because the information available to Neligan may change during the pendency of these Chapter 11 cases, Neligan is not able to conclusively identify all relationships or potential relationships with all creditors or other parties in interest in these Chapter 11 cases. If any new relevant facts or relationships are discovered or arise, Neligan will use reasonable efforts to identify such further developments and will promptly file a supplemental declaration, as required by Bankruptcy Rule 2014(a).

PRAYER

15. For the reasons set forth above, the Debtors request that the Court enter an order (i) granting the relief requested herein; and (ii) granting any further relief the Court deems appropriate.

Dated: May 3, 2024

Eiger Biopharmaceuticals, et al.

By: /s/Doug Staut
Doug Staut
Proposed Chief Restructuring Officer
Eiger BioPharmaceuticals, Inc.

CERTIFICATE OF SERVICE

I certify that on May 3, 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/ Patrick J. Neligan, Jr.
Patrick J. Neligan, Jr.

EXHIBIT A

Proposed Order

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*³

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**ORDER GRANTING APPLICATION FOR ORDER AUTHORIZING THE
RETENTION AND EMPLOYMENT OF NELIGAN LLP
AS CONFLICTS COUNSEL TO THE DEBTOR**

Upon the consideration of the Application for an Order Authorizing the Retention and Employment of Neligan LLP as Conflicts Counsel to the Debtors (the “Application”)⁴ [Docket No. []], together with the Neligan Declaration and Staut Declaration, the Court finds that (i) it has jurisdiction over the matters raised in the Application pursuant to 28 U.S.C. § 1334(b); that

³ 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.

⁴ Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Application.

(ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) for which it is proper for this Court to enter final orders; (iii) Neligan represents no interest adverse to the Debtors' estates that would disqualify Neligan from representation of the Debtors in these Chapter 11 cases; (iv) Neligan and each of its attorneys and employees is a "disinterested person" as such term is defined in § 101(14) of the Bankruptcy Code, and as required by § 327(a) of the Bankruptcy Code; (v) the retention of Neligan as counsel for the Debtors is in the best interest of the Debtors and their estates, creditors and other parties-in-interest; (vi) proper and adequate notice of the Application and the hearing thereon has been given and no other of further notice is necessary; and (vii) good and sufficient cause exists for the granting of the relief requested in the Application after having given due deliberation upon the Application, the Neligan Declaration, and all of the proceedings had before the Court in connection therewith. Therefore, it is **ORDERED, ADJUDGED AND DECREED:**

1. The Application is **GRANTED** to the extent provided herein.
2. The Debtors are authorized to retain and employ Neligan as their counsel in these Chapter 11 cases in accordance with the terms and conditions set forth the Application and the Engagement Letter effective as of April 26, 2024 pursuant to Local Bankruptcy Rule 2014-1(a).
3. Neligan shall be compensated in accordance with the procedures set forth in the Application, the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and N.D. Tex. L.B.R., the UST Guidelines, and such procedures as may be fixed by order of the Court.
4. The Debtors and their counsel are authorized and empowered to take all actions necessary to implement the relief granted in this Order.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Court shall retain jurisdiction to hear and consider all disputes arising out of the interpretation or implementation of this Order.

END OF ORDER

EXHIBIT "1"
Engagement Letter



Patrick J. Neligan, Jr.
Direct Dial No.: 214.840.5333
pneligan@neliganlaw.com

April 26, 2024

**ATTORNEY/CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL**

Eiger BioPharmaceuticals, Inc.
Attn: David Apelian
2155 Park Boulevard
Palo Alto, California 94305

Re: Engagement of Neligan LLP

Dear Mr. Apelian:

Thank you for asking Neligan LLP (the “Firm”) to represent Eiger BioPharmaceuticals, Inc.; EBPI Merger Inc.; EB Pharma LLC; Eiger BioPharmaceuticals Europe Limited; and EigerBio Europe Limited (collectively, the “the “Client”) as special conflicts counsel in connection with a potential dispute between the Client and Merck Sharp & Dohme LLC (the “Matter”) in the proceeding styled *In re Eiger BioPharmaceuticals, Inc., et al.*, Case No. 24-80040, in the United States District Court for the Northern District of Texas (the “Bankruptcy Court”). This letter agreement (the “Agreement”) confirms and memorializes the terms of, limitations on, and conditions of the representation of Client by the Firm. The Firm and Client acknowledge that the terms of this Agreement are subject to the provisions of the United States Bankruptcy Code and approval by the Bankruptcy Court.

Attached to this Agreement are the following documents: (i) a copy of the Firm’s document retention policy; and (ii) the Firm’s wire transfer instructions for sending payments to the Firm. If you have any questions about the terms and conditions of this Agreement, the Firm’s representation of the Client, or either attachment, do not hesitate to contact me (214-840-5333) or John Gaither (214-840-5327) to discuss.

A. Limitations on Scope of Engagement.

The scope of the Firm’s representation of Client under this Agreement is expressly limited to the Matter described above. The Firm does not provide any business or financial advice, or advice relating to tax matters, environmental matters, intellectual property or patent matters, labor

or ERISA matters, regulatory matters or the securities laws of the United States or of any state. You are hereby advised to obtain separate representation to provide advice relating to these areas.

By signing this Agreement, Client acknowledges and agrees that, in connection with the Firm's engagement as counsel to Client, attorneys at the Firm may provide Client or its advisors with suggestions relating to, or may identify an issue regarding, a non-bankruptcy matter, for Client's attention, and that any such observation or suggestion by attorneys at the Firm on issues or matters outside the scope of this Agreement is solely provided to assist Client in determining whether to seek and/or obtain separate representation and advice with respect thereto, and does not constitute legal advice from the Firm on account of matters outside the scope of this engagement. Client and the Firm acknowledge and agree that the Firm's engagement under this Agreement is expressly limited to the Matter described above, and such engagement cannot be expanded or amended except in a written amendment to this Agreement that expressly references this Agreement and is signed by both Client and the Firm.

Finally, it is impossible to predict the result or success of any engagement. Nothing in this Agreement, and nothing in any of the Firm's attorneys' statements to Client, is to be construed as a promise or guarantee about the outcome of this representation. The Firm makes no such promises or guarantees.

B. Fees and Expenses; Retainer.

Client agrees to compensate the Firm for professional time incurred in connection with this Agreement at the Firm's standard hourly rates, and to reimburse the Firm for expenses incurred by the Firm in connection therewith. The Firm has agreed to waive its standard requirement of an initial retainer payment, but Firm reserves the right to condition any future work on the provision of a retainer. Client agrees and acknowledge that any retainer deposited with the Firm is solely intended to secure payment for services provided by the Firm and is not an estimate, cap, or limitation on the amounts the Firm may charge for the Matter.

The current hourly rates of the Firm's partners range from \$625 to \$775 and the current hourly rate of the Firm's paralegal is \$150. During the engagement, the Firm will send periodic bills for services rendered and expenses and disbursements incurred, and payment is due upon receipt, subject to approval of the Bankruptcy Court. Certain expenses and disbursements may be billed directly or separately from the Firm's regular statement if they are significant in amount. Client agrees to compensate the Firm on an hourly basis and to promptly pay the amount on each statement or bill. In addition, Client agrees to promptly pay all expenses incurred in connection with pursuit of this matter including, but not limited to, filing fees, service fees, copying charges, litigation support expenses, postage, telecommunication expenses, and travel expenses, if any. Client agrees and acknowledge that this is an hourly engagement and that any estimate or budget provided to Client shall not serve as a cap or limitation on the amounts the Firm may collect from the Client.

C. No Opinion Letters.

By virtue of the Firm's practice areas, the Firm does not generally provide opinion letters. In the event that Client requires an opinion letter, Client acknowledge that an opinion letter would

constitute a separate engagement for which a separate engagement letter must be executed, and that the Firm charges a flat fee, which flat fee must be agreed to by the Firm and must be paid prior to the Firm's undertaking the work necessary to draft the opinion letter. The flat fee for an opinion letter will be determined on a case-by-case basis. Regardless of the foregoing, the Firm reserves the right to decline to provide an opinion letter to any Client, and Client acknowledge and agree that this engagement of the Firm expressly excludes the issuance of opinion letters by the Firm.

D. Withdrawal/Discharge.

The Firm reserves the right to withdraw from representation if the Client:

1. insist on presenting a claim or defense that is not well grounded in fact and warranted by existing law or supported by a good faith argument for an extension, modification, or reversal of existing law;
2. insist that the Firm pursue a course of conduct that is illegal or prohibited by the Texas Disciplinary Rules of Professional Conduct;
3. insist that the Firm engage in conduct that is contrary to the advice and judgment of the Firm, even if not illegal or prohibited by the Texas Disciplinary Rules of Professional Conduct;
4. make it unreasonably difficult for the Firm to accomplish the object of this representation;
5. disregard an agreement or obligation to the Firm to pay attorneys' fees and expenses; or
6. other good cause for withdrawal exists as contemplated by the Texas Disciplinary Rules of Professional Conduct.

If Client discharges the Firm from representing them after the Firm is hired as counsel of record, the Firm will seek court permission to withdraw if the Firm deems such to be appropriate. The Firm does not waive its right to payment for professional fees and expenses for services rendered and work performed prior to such discharge.

E. Miscellaneous.

The Firm will not be responsible for independently verifying the truth and accuracy of the information supplied by or on behalf of Client to the Firm. Client's delivery of such information to the Firm constitutes a warranty of its accuracy and completeness. In addition, you understand that the Firm will be relying upon Client to review for correctness all applications, pleadings, and other communications drafted by the Firm that will or could be submitted or reviewed by other third parties.

You recognize that technology is ever evolving and that electronic communications cannot be fully protected from unauthorized interception. In addition, human error may at times result in electronic communications being missent. Nonetheless, for efficiency purposes, you authorize

April 26, 2024

Page 4

the Firm to transmit information, including information of a confidential nature, to you by email or cellular telephone.

Upon completion of your legal matter, no further work will be performed on your behalf and your file will be closed. At that time, all original records or documents you provided to us will be returned to you. The remaining contents of your file will be stored and disposed of in accordance with our Firm's record retention and destruction policy, a copy of which is attached.

The Agreement is performable in Dallas County, Texas, and all sums due must be sent to the Firm's office at 4851 LBJ Freeway, Suite 700, Dallas, Texas 75244. Both this Agreement and all aspects of the relationship between the Firm and Client will be governed by the laws of the State of Texas, without regard to its choice-of-law principles. The bankruptcy court shall be the exclusive venue for any dispute arising from or related to this Agreement once a bankruptcy case is filed. If no bankruptcy case is filed, then the state and federal courts having jurisdiction in Dallas County, Texas will be the exclusive venue for any dispute arising from or related to this Agreement or the relationship between the Firm and Client, and Client consents to both venue and personal jurisdiction in those courts with respect to any such dispute.

This Agreement constitutes the final and integrated agreement among the parties hereto with regard to the subject matter hereof. This Agreement can only be amended, modified, or revised in writing signed by the party to be bound.

The State Bar of Texas requires all attorneys licensed in Texas to notify all Client of the following:

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint. For more information, please call 1/800/932-1900. This is a toll-free phone call.

If you have any questions or concerns during the course of this engagement, please feel free to contact me.

Once again, on behalf of the Firm, I appreciate your confidence by requesting the Firm to undertake this Matter. Please have the bottom portion of this letter executed acknowledging your understanding and agreement to the terms and conditions stated herein and return the same to me at your earliest convenience. Thank you.

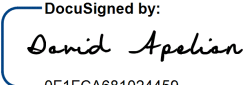
Sincerely,

NELIGAN LLP

/s/ Patrick J. Neligan, Jr.
Patrick J. Neligan, Jr.

AGREED TO AND ACCEPTED:

EIGER BIOPHARMACEUTICALS, INC.
EBPI MERGER INC.
EB PHARMA LLC
EIGER BIOPHARMACEUTICALS EUROPE LIMITED
EIGERBIO EUROPE LIMITED

By: 
0F1FCA681024459...

David Apelian
Chief Executive Officer

Exhibit B

Neligan Declaration

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*⁵

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**DECLARATION OF PATRICK J. NELIGAN, JR. IN SUPPORT OF APPLICATION
FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
NELIGAN LLP AS CONFLICTS COUNSEL TO THE DEBTORS**

1. My name is Patrick J. Neligan, Jr. I am an attorney admitted to practice in the State of Texas. I am a partner with the law firm Neligan LLP (“Neligan”), a Dallas, Texas law firm with its principal place of business at 4851 LBJ Freeway, Suite 700, Dallas, Texas 75244.

2. I submit this Declaration in support of the *Application for Order Authorizing Retention and Employment of Neligan LLP as Conflicts Counsel to the Debtors* (the “Application”), filed by the above-captioned debtors (collectively, the “Debtors”) and to apprise the Court of Neligan’s qualifications. Capitalized terms not otherwise defined herein are used as defined in the Application.

3. I have personal knowledge of each of the facts stated in this Declaration, except for those facts stated on information and belief and, as to those facts, I am informed and believe them to be true. If called as a witness, I could and would testify as to the matters set forth below based upon my knowledge, except where otherwise indicated below. To the extent that any information

⁵ 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.

disclosed herein requires amendment or modification upon Neligan's completion of further analysis or as additional creditor information becomes available to it, a supplemental declaration will be submitted to the Court.

4. I have read the Application. To the best of my knowledge, the statements set forth in the Application are true and correct, including statements made therein regarding Neligan's qualifications and compensation rates. Based on my discussions with representatives of the Debtors and my experience in representing debtors-in-possession in similar situations, I believe that the representation of the Debtors will involve the issues and require the services described in the Application. The proposed employment of Neligan is not prohibited by or improper under Rule 5002 of the Bankruptcy Rules. Neligan and the professionals it employs are qualified to represent the Debtors in the matter for which the Application proposes to employ Neligan.

NELIGAN'S QUALIFICATIONS

5. Neligan has extensive experience in representing both privately held and publicly traded businesses in out-of-court restructurings and Chapter 11 bankruptcy proceedings in this Court and around the country. Neligan is a boutique restructuring firm with a national practice, and each of its professionals have many years of experience in complex restructuring cases. Since being retained, Neligan has become generally familiar with Debtors' financial condition, business operations, and the issues pertaining to the Debtors' relationship with Merck for which Neligan has been retained. Accordingly, Neligan has the necessary experience, background, and familiarity with the Debtors to deal effectively with many of the potential legal issues and problems that may arise in the context of these cases within the scope of Neligan's proposed employment, and that Neligan is both well-qualified and able to represent the Debtors in an efficient and effective manner.

SERVICES TO BE PROVIDED BY NELIGAN

6. Subject to further order of this Court, Neligan will render the following services as conflicts counsel to the Debtors:

- (a) advising and representing the Debtors in connection with litigating any dispute between the Debtors and Merck arising during the case, including but not limited to any dispute arising as a result of or in connection with the Zokinvy Sale;
- (b) performing any other legal services for the Debtors which may be necessary and proper in these proceedings and in furtherance of the Debtors' rights and duties in the event of any potential or actual conflict of interest of Sidley, as agreed to between the Debtors, Sidley, and Neligan.

Neligan will work closely with Sidley and the Debtors' other professionals to ensure that there is no unnecessary duplication of effort and that Neligan does not undertake matters outside the scope of Neligan's role as conflicts counsel.

PAYMENT OF FEES AND EXPENSES

7. Neligan was not retained until after the Petition Date and has not received any pre- or postpetition retainer or payments from the Debtors. Subject to the Court's approval and as set forth in the Engagement Letter Neligan will charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly rates in effect on the date services are rendered. Neligan attorneys' rates range from \$625 - \$775 per hour while the rate for firm paralegals is \$150 per hour. The Neligan professionals that will have the primary responsibility for this engagement are Patrick J. Neligan, Jr. (\$775/hour) and John D. Gaither (\$625/hour). Neligan's rates may change from time to time in accordance with Neligan's established billing practices and procedures. Neligan will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of the services rendered.

8. Neligan will apply to the Court for payment of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, and the Bankruptcy Rules, the N.D. Tex. L.B.R., the UST Guidelines, and pursuant to any additional procedures that may be established by the Court in this case.

9. Neligan will coordinate with the Debtors on a firm-specific budget and staffing plan to be incorporated into the Debtors' overall budget for professional fees in this case.

DISCLOSURES REGARDING CONFLICTS OF INTEREST

10. Neligan has received a list of the individuals and entities that may be parties in interest in these Chapter 11 cases (collectively, the "Potential Parties in Interest"), which is attached hereto as Schedule 1. Based on that list, Neligan ran a conflicts check against a list of all of Neligan's clients over the last ten (10) years, known affiliates of those clients, officers and directors of those clients, if known, and/or principals of those clients, if known. Based on a review of those records together with a conflicts memorandum sent to every lawyer and employee of Neligan, I have determined that Neligan had no prior relationship with the Debtors or any Potential Parties in Interest except as set forth in this Declaration.

11. Based on our review of our records, I believe that:

- a. Neligan is not and was not a creditor of the Debtors;
- b. Neither Neligan nor its attorneys hold equity securities or have an ownership interest in the Debtors; and
- c. Neligan does not have an interest materially adverse to the interest of the Debtors' estates or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtors.

Except as set forth herein, I do not believe there is any connection or interest (as such terms are used in Bankruptcy Code Section 101(14)(C) and Bankruptcy Rule 2014(a)) between Neligan or its attorneys and (a) the United States Trustee or any person employed by the Office of the United States Trustee, or (b) any creditors or attorneys of creditors in these cases.

12. Based on its lengthy history of practice, and the familiarity of the local and national bankruptcy bar, it is likely that Neligan or its attorneys may have professional connections to other attorneys in these cases. Neligan does not believe its professional relationship with attorneys in these cases resulting from prior unrelated engagements affects its qualification to serve as counsel to the Debtors. Neligan does not, nor will it, represent an entity directly adverse to the Debtors or their estates. Neligan is not a creditor of the Debtors and would not be subject to an avoidance action.

13. Consistent with its professional responsibility, Neligan has identified all known creditors and parties in interest to evaluate potential conflicts of interest and believes that none exist. Neligan expects to receive additional information regarding the Debtors' creditors in the early stages of the Case. Neligan will promptly conduct additional conflicts checks as it receives that information and will immediately supplement the Application and this Declaration to disclose any conflicts or potential conflicts it discovers.

14. Accordingly, except as set forth herein, and based upon the information available to me, neither I, Neligan, nor any partner or associate thereof, insofar as I have been able to ascertain, holds or represents any interest adverse to the Debtors or their estates in the matters upon which Neligan is to be employed. Based upon the information available to me, I believe that Neligan is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code, as modified by Section 1107(b) of the Bankruptcy Code.

STATEMENT REQUIRED BY UST GUIDELINES

15. The following responses are provided in response to the questions set forth in Paragraph D.1 of the UST Guidelines:

- a. **Question:** Did Neligan agree to any variations from, or alternatives to, its standard or customary billing arrangements for this engagement?

Answer: No.

- b. **Question:** Do any of the Neligan professionals in this engagement vary their rate based on the geographic location of the bankruptcy case?

Answer: No.

- c. **Question:** If Neligan represented the Debtors in the 12 months prepetition, disclose Neligan's billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If Neligan's billing rates and material financial terms have changed postpetition, explain the difference and the reasons for the difference.

Answer: Neligan did not represent the Debtors in the 12 months prepetition.

- d. **Question:** Have the Debtors approved Neligan's prospective budget and staffing plan, and, if so, for what budget period?

Answer: Neligan is coordinating with the Debtors, Sidley, and Alvarez & Marsal, on a prospective budget and staffing plan for these Chapter 11 cases, which will include Neligan's prospective fees.

16. No promises have been received by Neligan, or by any partner or associate thereof, as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code, the Bankruptcy Rules, the UST Guidelines, and the N.D. Tex. L.B.R. Neligan has no agreement with any other entity to share any compensation received by Neligan.

17. The foregoing constitutes the statement of Neligan pursuant to Sections 329 and 504 of the Bankruptcy Code, and Bankruptcy Rules 2014(a) and 2016(b). I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 3, 2024
Dallas, Texas

/s/ Patrick J. Neligan, Jr.
Patrick J. Neligan, Jr.

Schedule 1

Potential Parties in Interest List¹

Schedule (a): Debtors and Including Trade

Names and Aliases

Eiger Biopharmaceuticals Inc.
EBPI Merger, Inc.
EB Pharma LLC
EigerBio Europe Limited
Eiger BioPharmaceuticals Europe
Limited

Schedule (b): Debtors' Known Affiliates

Celladon Corporation
Eiger Biotherapeutics, Inc.

Schedule (c): Current Directors and Officers

Apelian, David
Craig, Colleen
Dietz, Thomas J.
Eiger Group International, Inc.
Glenn, Jeffrey S.
Hislop, Colin
Kaichoff, William
Kelly-Croswell, Lisa
Kurtz, Christopher
Loh, Evan
Sablich, Kimberly Lynn
Sachdev, Amit K.
Vollins, James

Schedule (d): Former Directors and Officers

Cory, David A.
Mathieson, Sarah
Mayer, Eldon, III
Murray, Christine

Schedule (e): Banks

Bank of Ireland
JP Morgan
Merill Lynch
Silicon Valley Bank

Schedule (f): 5% or More Equity Holders

Ameriprise Financial, Inc.
Moshe Arkin
Propel Bio Partners LLC

Schedule (g): 363 Sale Parties

Eton Pharmaceuticals
Sentynl Therapeutics, Inc

Schedule (h): Administrative and Collateral Agents

Innovatus Life Sciences Lending
Fund I, LP

Schedule (i): Customers

AnGes Inc.
CVS
Sciensus

Schedule (j): Debtors' Professionals

Alvarez & Marsal North America LLC
Kurtzman Carson Consultants LLC

Schedule (k): Insurance

Arch Specialty Insurance Company
Ascot Specialty Insurance Company
Asterra Grup J.S.C
Chubb
Coalition Insurance Solutions, Inc.
"Evanston Insurance
Company"
Falvey

¹ The parties included on this list (and the categories contained herein) are for purposes of a conflicts check only and should not be relied upon by any party as a list of creditors or for any other purpose. As listing a party once allows our conflicts specialists to run a check on such party, we have attempted to remove duplicate entries where possible. Accordingly, a party that would otherwise fall under multiple categories is likely to be listed under only one category.

Fireman's Fund Indemnity Corporation
Fortegra Specialty Insurance Company
Hudson Insurance Company
Ingosstrakh Insurance Company
JSC Insurance Company GPI Holding
Lloyd's of London
Newfront Insurance Services
The Travelers Indemnity Company Of
Connecticut
Travelers Corp.
Travelers Property Casualty Co. Of
America
XL Insurance Company SE
XL Professional Insurance

Schedule (l): Lenders

Innovatus Flagship Fund I, LP
Innovatus Flagship Offshore Fund I, LP
Innovatus Life Sciences Lending
Fund I, LP
Innovatus Life Sciences Lending I, LP
Innovatus Life Sciences Offshore
Fund I-A, LP

Schedule (m): Lenders' Professionals

Bradley Arant
Greenberg Traurig, LLP
SCS Financial

Schedule (n): Landlord

McDonald Family Co. LLC
Regus CME Ireland Limited

Schedule (o): Adverse Litigation Parties

Progeria Research Foundation
Schoen, Ronald A.
Skinner, Shane

**Schedule (p): Material Contract
Counterparties**

AbbVie Inc.
Apelian, David
Atkisson, Erik
Baker Hughes Oilfield Operations, Inc.
Bristol-Meyers Squibb Company
Choong, Ingrid

Cory, David A.
Craig, Colleen
Danforth Advisors, LLC
Eiger Group International, Inc.
JTC a California General Partnership
Mayer, Eldon
McLaughlin, Tracey
Merck Corporation
Merck Sharp & Dohme Corp. (MSD) -
f/k/a Schering Corporation
Oxford Finance LLC
Patton, Stephana E.
Progeria Research Foundation
RRD International, LLC
Ryali, Sriram
Schering Corporation
Shaffer, James
The Children's Hospital of Philadelphia
Trustees of the University of
Pennsylvania
Vollins, James

**Schedule (q): Ordinary Course
Professionals**

KPMG LLC

Schedule (r): Significant Competitors

Albireo
Assembly Biosciences
Crinetics
Gilead
Hamni
Janssen Research & Development, LLC
PharmaEssentia
PRG Science & Technology
Replicor, Inc.
Rezolute, Inc.
Vir Biotechnology
Vogenyx
Xeris Pharmaceuticals
Zealand Pharmaceuticals

Schedule (s): Surety & Letters of Credit

Harco National Insurance Company
State of California, Board of Pharmacy
State of Kentucky, Board of Pharmacy

Tokio Marine Europe S.A.

**Schedule (t): Taxing Authority/
Governmental/Regulatory Agencies**

County of Santa Clara Office of The
Assessor
Department of Tax and Collections
European Medicines Agency
Medicines & Healthcare products
Regulatory Agency
Pharma Solutions USA, Inc.
San Diego County Treasurer
State of California, Franchise Tax Board
State of Delaware Department of Finance
- Office Of Unclaimed Property
State of Delaware, Secretary of State
State of Kentucky Board of Pharmacy
State of New Jersey, Department of
Health
State of New Jersey, Division of Taxation
State of Oregon, Department of
Consumer & Business Services
State of Texas, Comptroller of Public
Accounts
State of Texas, Department of State
Health Services, Food & Drug
Licensing
U.S. Food and Drug Administration
U.S. Internal Revenue Service
U.S. Securities and Exchange
Commission

Schedule (u): Top 30 Creditors

Merck Sharp & Dohme LLC
IQVIA Biotech LLC
SATT Conectus Alsace SAS
RRD International, LLC
Real Staffing Group
Patheon Inc.
Biorasi LLC
Connor Group Global Services LLC
Sharp Packaging Services LLC
Patheon Manufacturing Services LLC
Trustees of the University of
Pennsylvania

Yuki Gosei Kogyo Co Ltd
ICON Clinical Research Limited
Bachem Americas, Inc.
Fisher Clinical Services, Inc.
Kilpatrick Townsend and Stockton LLP
IQVIA Inc.
Frontage Laboratories, Inc.
CPA Global Limited
Fisher BioServices, Inc.
Eurofins Lancaster Laboratories, Inc.
Intsel Chimos
Addison Whitney
Oracle America Inc.
Partners4access B.V.
Broadridge ICS
Integrichain, Inc.
Clinigen Inc.
Accenture LLP
TRG Communications LLC

Schedule (v): UCC Lien Parties

Innovatus Life Sciences Lending
Fund I, LP

Schedule (w): Vendors²

AllCare Plus Pharmacy LLC
Altasciences Clinical Kansas, P.A.
Axis Clinicals LLC
Bachem
Becton, Dickinson and Company
Bend Research/ Lonza Bend, Inc.
Biorasi LLC
Bristol-Meyers Squibb
Charles River Laboratories
Montreal ULC
Connor Group Global Services LLC
Corden Pharma Colorado Inc.
Danforth Advisors LLC
Donnelley Financial Solutions, LLC
Fisher Clinical Services, Inc.
Food and Drug Administration
Fujifilm Diosynth Biotechnologies
USA, Inc.
GLSynthesis, Inc.
Innovatus Capital Partners, LLC

² Represents 10% materiality standard of accounts payable over the last three years.

Inotiv, Inc.
IntegriChain, Inc. - Disbursement
Account
IQVIA Biotech LLC
IQVIA Inc.
Kilpatrick Townsend and Stockton LLP
KPMG LLP
L.E.K. Consulting LLC
McDonald Family Company LLC
Medpace Inc.
Newfront Insurance Services
Oxford Finance LLC
Patheon Inc
Patheon Manufacturing Services LLC
Patheon UK Limited
Pharmaceutical Research Associates, Inc.
Platform Lifesciences Inc.
Real Staffing Group
RRD International, LLC
Safeguardworld International Limited
Sidley Austin LLP
Yuki Gosei Kogyo Co Ltd.

Garnica, Fernando
Goodier, C. Marie
Hersh, Susan
Hughes, Alexandria
Kippes, Meredyth
Lambert, Lisa L.
Palos, Felicia P.
Resnick, Nancy S.
Rust, Kendra M.
Schmidt, Erin
Suchedina, Rafay
Wilcoxson, Cheryl H.
Young, Elizabeth

**Schedule (x): Judges for the Northern
District of Texas**

Everett, Scott W. (Hon. Judge)
Jernigan, Stacey G. C. (Hon. Chief Judge)
Jones, Robert L. (Hon. Judge)
Larson, Michelle V. (Hon. Judge)
Morris, Edward L. (Hon. Judge)
Mullin, Mark X. (Hon. Judge)

**Schedule (y): Courtroom Deputies for the
Northern District of Texas**

Bergreen, Jenni
Calfee, Jennifer
Ellison, Traci
Graham, Christi
Harden, Dawn
Rueter, Karyn

Schedule (z): U.S. Trustee Personnel,

Region 6

Bublick, Asher
Croop, Kara
Epstein, Kevin M.

Exhibit B

Staut Declaration

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*⁶

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**DECLARATION OF DOUGLAS STAUT IN SUPPORT OF APPLICATION FOR AN
ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF
NELIGAN LLP AS CONFLICTS COUNSEL TO THE DEBTORS**

1. My name is Douglas Staut. I am the Proposed Chief Restructuring Officer (“CRO”) of Debtor Eiger Biopharmaceuticals, Inc. (“Eiger”), the ultimate parent of each of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”). I submit this declaration in support of the Debtors’ Application for an Order Authorizing the Retention and Employment of Neligan LLP as Conflicts Counsel to the Debtors (the “Application”). Except as otherwise noted, I have personal knowledge of the matters set forth herein.

2. The Debtors recognize that a comprehensive process is necessary when selecting and managing chapter 11 counsel to ensure that bankruptcy professionals are subject to the same client-driven market scrutiny and accountability as professionals in non-bankruptcy engagements. To that end, the review process utilized by the Debtors here assessed potential counsel based on their expertise in the relevant legal issues, their experience and credentials. The Debtors retained

⁶ 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.

Neligan as restructuring counsel because of, among other factors, its extensive restructuring expertise and its ability to handle the discrete issues for which it has been retained in an efficient manner. I believe that Neligan is well qualified to represent the Debtors in these chapter 11 cases in an efficient and expert manner.

3. In my capacity as Chief Restructuring Officer, I will supervise Neligan's engagement during these chapter 11 cases. Neligan has informed the Debtors that its rates for bankruptcy representations are comparable to the rates Neligan charges for non-bankruptcy representations. This is consistent with the Debtors' prepetition practice of managing its legal costs, as well as the Debtors' management of its legal costs from other law firms. Given the size of the Debtors' operations, I believe this provides a sufficient means to ensure counsel is working efficiently and effectively.

4. The Debtors and their professionals, including Neligan, expect to develop a continued budget and staffing plan, recognizing that during the pendency of large chapter 11 cases such as these that there may be unforeseen fees and expenses that will need to be addressed. The Debtors further recognize that it is their responsibility to monitor closely the billing practices of their counsel to ensure the fees and expenses paid by the estates remain consistent with the Debtors' expectations and the exigencies of these chapter 11 cases. The Debtors will review the invoices that Neligan regularly submits and, together with their professionals, amend the budget and staffing plan periodically as needed as the case develops. As they did prepetition, the Debtors will continue to bring discipline, predictability, client involvement, and accountability to the counsel fees and expenses reimbursement process. Although every chapter 11 case is different, these budgets will provide guidance on the periods of time involved, the level of attorneys and

professionals that will work on various matters, and projections of average hourly rates for the attorneys and professionals for various matters.

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

Dated: May 3, 2024

/s/ Douglas Staut
Douglas Staut
Proposed Chief Restructuring Officer
Eiger BioPharmaceuticals, Inc.