



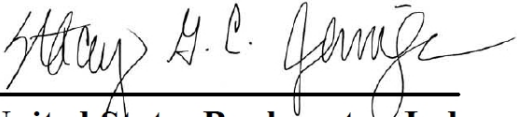
CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed May 13, 2024


United States Bankruptcy Judge

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**FINAL ORDER AUTHORIZING THE DEBTORS TO
(I) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM
AND MAINTAIN EXISTING BANK ACCOUNTS (II) HONOR CERTAIN
OBLIGATIONS RELATING THERETO; AND (III) GRANTING A WAIVER OF
CERTAIN DEPOSIT AND INVESTMENT REQUIREMENTS
IN 11 U.S.C. § 345(b) AND THE UST GUIDELINES**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (this “Final Order”)

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2100 Ross Avenue, Dallas, Texas 75201.

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



(i) authorizing the Debtors to (a) continue to use their existing Cash Management System, including existing bank accounts, (b) honor certain prepetition obligations related thereto, and (c) maintain their existing business forms, (ii) waiving certain requirements of the U.S. Trustee Guidelines (defined below) and section 345(b) of the Bankruptcy Code (defined below), and (iii) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, on a final basis and in their sole discretion, to: (a) continue operating the Cash Management System as described in the Motion and honor any prepetition obligations related to the use thereof; (b) designate, maintain, close, and continue to use any or all of their existing Bank Accounts, including, but not limited to, the Bank Accounts identified on Exhibit D attached to the Motion, in the names and with the account numbers existing immediately before the Petition Date; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, electronic fund transfers, ACH

transfers, and other debits or electronic means; (d) treat their prepetition Bank Accounts for all purposes as debtor in possession accounts; and (e) open new debtor in possession Bank Accounts with reasonable prior written notice to the U.S. Trustee; *provided*, that in the case of each of clauses (a) through (e), such action is taken in the ordinary course of business and consistent with prepetition practices.

2. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, and maintain and continue using, in their present form, the Books and Records; *provided*, that once the Debtors have exhausted their existing stock of Business Forms, they shall ensure that any new Business Forms are clearly labeled with the “Debtor in Possession” designation as soon as reasonably practicable to do so. To the extent the Debtors print any new checks or use any electronic Business Forms, they shall include the “Debtor in Possession” designation and the corresponding bankruptcy case number on all such checks as soon as reasonably practicable.

3. To the extent any of the Debtors’ Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the U.S. Trustee’s requirements or guidelines, the Debtors shall have forty-five (45) days from the Petition Date, without prejudice to seeking an additional extension, to come into compliance with section 345(b) of the Bankruptcy Code or to make other arrangements to which the U.S. Trustee agrees; *provided*, that nothing herein shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The Debtors may obtain a further extension of the time-period referenced above by entering into a written stipulation with the U.S. Trustee and filing such stipulation on the Court’s docket without the need for further Court order.

4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay any and all checks, drafts, electronic fund transfers, and ACH transfers when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved in this Final Order.

5. The Cash Management Banks are authorized to charge, and the Debtors are authorized to pay, honor, or allow any Bank Fees or charges associated with the Bank Accounts and charge back returned items to the Bank Accounts in the ordinary course and consistent with prepetition practices.

6. As soon as practicable after entry of this Final Order, the Debtors shall serve a copy of this Final Order on the Cash Management Banks.

7. The Debtors are authorized, but not directed, to: (a) pay undisputed prepetition amounts outstanding as of the Petition Date, if any, owed in the ordinary course to the Cash Management Banks as service charges for the maintenance of the Cash Management System; (b) reimburse the Cash Management Banks for any claims arising before or after the Petition Date in connection with customer checks deposited with the Cash Management Banks that have been dishonored or returned as a result of insufficient funds in the Bank Accounts in the ordinary course of business, to the same extent the Debtors were responsible for such items prior to the Petition Date.

8. Those certain agreements existing between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks and, subject to applicable bankruptcy or other law, all of the

provisions of such agreements, including the termination, fee provisions, rights, benefits, offset rights and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with any Cash Management Bank (including, for the avoidance of doubt, any rights of a Cash Management Bank to use funds from the Bank Accounts to remedy any overdraft of another Bank Account to the extent permitted under the applicable deposit agreement), unless the Debtors and such Cash Management Bank agree otherwise, and any other legal rights and remedies afforded to the Cash Management Banks under applicable law shall be preserved, subject to applicable bankruptcy law; *provided, however*, that notwithstanding any restrictions of such agreements, the Debtors are hereby permitted to transfer or otherwise move funds from the Investment Account at ML into the Primary Account at SVB.

9. The Debtors are authorized, in the ordinary course and consistent with prepetition practices, to close any existing Bank Account, open new bank accounts and enter into any related deposit agreements as the Debtors may deem necessary and appropriate, subject to the terms and provisions of the Debtors' agreement with the Cash Management Banks, any orders entered by the Court authorizing the Debtors' use of cash collateral (the "Cash Collateral Orders") and the execution of new deposit control agreements with Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders (the "Prepetition Term Loan Agent"); *provided*, that: (a) any such new bank account is with one of the Debtors' existing Cash Management Banks or with a bank that is (i) insured with the FDIC and (ii) designated as an authorized depository by the U.S. Trustee; (b) such bank agrees to be bound by the terms of this Final Order; and (c) any existing or new deposit control agreement with the Prepetition Term Loan Agent shall terminate as of the date of satisfaction in full of the Prepetition Term Loan Secured Indebtedness (as defined in the Cash Collateral Orders). The Debtors shall provide five (5) day's prior written notice, or such notice as

is reasonable under the circumstances, to the U.S. Trustee and the Notice Parties of the opening of any new bank accounts including Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders and counsel thereto; *provided* that all accounts opened by any of the Debtors on or after the Petition Date at any bank shall, for purposes of this Final Order, be deemed a Bank Account as if it had been listed on Exhibit D attached to the Motion.

10. The relief granted in this Final Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

11. Notwithstanding any other provision of this Final Order, should a Cash Management Bank honor a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of customary item handling procedures, the Cash Management Bank shall not be deemed to be nor shall be liable to the Debtors or their estates or otherwise be in violation of this Final Order. Without limiting the foregoing, any of the Cash Management Banks may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

12. The Debtors will not be required to establish separate bank accounts for cash collateral and/or tax payments.

13. The Debtors' credit card processors are authorized to process payments in the ordinary course of business, including the netting out of any fees and/or chargebacks arising before, on or after the Petition Date.

14. Nothing in this Final Order constitutes (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this Final Order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

15. Notwithstanding anything to the contrary herein, any new bank accounts opened and any payment to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court authorizing the Debtors' use of cash collateral and/or any budget in connection therewith.

16. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion under the circumstances and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

17. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

18. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Final Order.

19. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

END OF ORDER

Submitted By:

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