

**KRAMER LEVIN NAFTALIS & FRANKEL, LLP**

Adam C. Rogoff (admitted *Pro Hac Vice*)  
P. Bradley O'Neill (admitted *Pro Hac Vice*)  
1177 Avenue of the Americas  
New York, NY 10036  
Tel: 212-715-7583  
Fax: 212-715-8382  
Email: [ARogoff@kramerlevin.com](mailto:ARogoff@kramerlevin.com)  
[BOneill@kramerlevin.com](mailto:BOneill@kramerlevin.com)

**BRADLEY ARANT BOULT CUMMINGS LLP**

Jay R. Bender  
TX State Bar No. 24104932  
214 North Tryon Street  
Suite 3700  
Charlotte, NC 28202  
Telephone: 704-338-6000  
Facsimile: 704-332-8858  
Email: [jbender@bradley.com](mailto:jbender@bradley.com)

**FORSHEY & PROSTOK, LLP**

Jeff P. Prostok  
TX State Bar No. 16352500  
Emily S. Chou  
TX State Bar No. 24006997  
777 Main Street, Suite 1550  
Fort Worth, TX 76012  
Tel: 817-877-8855  
Fax: 817-877-4151  
Email: [jprostok@forsheyprostok.com](mailto:jprostok@forsheyprostok.com)  
[echou@forsheyprostok.com](mailto:echou@forsheyprostok.com)

**BRADLEY ARANT BOULT CUMMINGS LLP**

Roger Jones (admitted *Pro Hac Vice*)  
1221 Broadway  
Suite 2400  
Nashville, TN 37203  
Telephone: 615-244-2582  
Facsimile: 615-252-4714  
Email: [rjones@bradley.com](mailto:rjones@bradley.com)

*Counsel Innovatus Life Sciences Lending Fund I, LLP*

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

In re: §  
§ Chapter 11  
EIGER BIOPHARMACEUTICALS, INC. *et* §  
*al.*<sup>1</sup>, § Case No. 24-80040 (SGJ)  
§ (Jointly Administered)  
Debtors. §  
§

**AMENDED NOTICE OF APPEAL**

Innovatus Life Sciences Lending Fund I, LP (“Innovatus”), hereby files this Amended Notice of Appeal pursuant to 28 U.S.C. § 158(a), from the *Final Order (I) Authorizing The Debtors To Use Cash Collateral; (II) Granting Adequate Protection To Prepetition Term Loan Secured*

<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors’ service address is 2155 Park Boulevard, Palo Alto, California 94036.



*Parties; and (III) Modifying Automatic Stay* [Docket No. 161] (the “Order”), which is attached hereto as **Exhibit A** and was entered on April 24, 2024.

This Amended Notice of Appeal is filed at the request of the Clerk and to separately identify each of the Debtors as Appellees. *See* Docket No. 265. This Amended Notice of Appeal relates back to Innovatus’s previously filed notice of appeal dated May 8, 2024 [Docket No. 245] (the “Notice of Appeal”).

The parties affected by this appeal of the Order are:

**Appellant:**

**Innovatus Life Sciences Lending Fund I, LP**

Represented by:

KRAMER LEVIN NAFTALIS & FRANKEL, LLP  
Adam C. Rogoff (admitted *Pro Hac Vice*)  
P. Bradley O’Neill (admitted *Pro Hac Vice*)  
1177 Avenue of the Americas  
New York, NY 10036  
Tel: 212-715-7583  
Fax: 212-715-8382  
Email: [ARogoff@kramerlevin.com](mailto:ARogoff@kramerlevin.com)  
[BOneill@kramerlevin.com](mailto:BOneill@kramerlevin.com)

-and-

BRADLEY ARANT BOULT  
CUMMINGS LLP  
Jay R. Bender  
TX State Bar No. 24104932  
214 North Tryon Street  
Suite 3700  
Charlotte, NC 28202  
Telephone: 704-338-6000  
Facsimile: 704-332-8858  
Email: [jbender@bradley.com](mailto:jbender@bradley.com)

Roger Jones (admitted *Pro Hac Vice*)  
1221 Broadway  
Suite 2400  
Nashville, TN 37203  
Telephone: 615-244-2582

Facsimile: 615-252-4714  
Email: [rjones@bradley.com](mailto:rjones@bradley.com)

-and-

FORSHEY & PROSTOK, LLP  
Jeff P. Prostok  
TX State Bar No. 16352500  
Emily S. Chou  
TX State Bar No. 24006997  
777 Main Street, Suite 1550  
Fort Worth, TX 76012  
Tel: 817-877-8855  
Fax: 817-877-4151  
Email: [jprostok@forsheyprostok.com](mailto:jprostok@forsheyprostok.com)  
[echou@forsheyprostok.com](mailto:echou@forsheyprostok.com)

**Debtors / Appellees:**

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

Represented by:

**SIDLEY AUSTIN LLP**  
Thomas R. Califano (TX State Bar No. 24122825)  
William E. Curtin (admitted *Pro Hac Vice*)  
Anne G. Wallice (admitted *Pro Hac Vice*)  
787 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: [tom.califano@sidley.com](mailto:tom.califano@sidley.com)  
[wcurtin@sidley.com](mailto:wcurtin@sidley.com)  
[anne.wallice@sidley.com](mailto:anne.wallice@sidley.com)

-and-

Charles M. Persons (TX State Bar No. 24060413)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (214) 981-3400  
Email: [cpersons@sidley.com](mailto:cpersons@sidley.com)

**Interested Party:**

**Office of the United States Trustee for the  
Northern District of Texas**

Represented by:

Elizabeth Young  
Assistant United States Trustee  
Office of The United States Trustee  
Earle Cabell Federal Building  
1100 Commerce Street, Room 976  
Dallas, TX 75242  
Phone: (214) 767-8967  
Facsimile: (214) 767-8971  
Email: [elizabeth.a.young@usdoj.gov](mailto:elizabeth.a.young@usdoj.gov)

Innovatus paid the prescribed fee for an appeal contemporaneous with filing the Notice of Appeal.

Dated: May 17, 2024

Respectfully submitted,

/s/ P. Bradley O'Neill  
Adam C. Rogoff (admitted *Pro Hac Vice*)  
P. Bradley O'Neill (admitted *Pro Hac Vice*)  
KRAMER LEVIN NAFTALIS &  
FRANKEL, LLP  
1177 Avenue of the Americas  
New York, NY 10036  
Tel: 212-715-7583  
Fax: 212-715-8382  
Email: [ARogoff@kramerlevin.com](mailto:ARogoff@kramerlevin.com)  
[BOneill@kramerlevin.com](mailto:BOneill@kramerlevin.com)

-and-

/s/ Jeff P. Prostok  
Jeff P. Prostok  
TX State Bar No. 16352500  
Emily S. Chou  
TX State Bar No. 24006997  
Forshey & Prostok LLP  
777 Main St., Suite 1550  
Fort Worth, TX 76102  
Telephone: 817-877-8855  
Facsimile: 817-877-4151

[jprostok@forsheyprostok.com](mailto:jprostok@forsheyprostok.com)  
[echou@forsheyprostok.com](mailto:echou@forsheyprostok.com)

**ATTORNEYS FOR INNOVATUS LIFE  
SCIENCES LENDING FUND I, LP**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing instrument has been served on all parties and counsel of record in compliance with the Federal Rules of Civil Procedure via the Court's CM/ECF on this 17th day of May 2024.

*/s/ Jeff P. Prostok* \_\_\_\_\_  
Jeff P. Prostok

# **EXHIBIT A**




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 April 24, 2024

  
United States Bankruptcy Judge

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

<p>In re:</p> <p>EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i><sup>1</sup></p> <p>Debtors.</p>	<p>Chapter 11</p> <p>Case No. 24-80040 (SGJ)</p> <p>(Jointly Administered)</p>
--	--

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

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

<sup>1</sup> 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.

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

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

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

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



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

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

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

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

---

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

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

C. ***Jurisdiction and Venue.*** The Court has jurisdiction over the Motion, these Chapter 11 Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. The Debtors have asserted that venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. § 1408.<sup>4</sup> This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

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

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

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

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

---

<sup>4</sup> On April 11, 2024, the Office of the United States Trustee filed 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 “Venue Motion”). The Venue Motion is set to be heard and determined on May 7, 2024. All parties’ rights are hereby expressly reserved as to the determination of whether venue is proper in this District.

therewith, as amended, restated, or otherwise modified from time to time, the “Prepetition Term Loan Documents”), among Eiger BioPharmaceuticals, Inc. (“Eiger”), EB Pharma, LLC (“EB Pharma”), and EBPI Merger, Inc. (“EBPI Merger”, and, together with Eiger and EB Pharma, the “Borrower”), Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto, the “Prepetition Term Loan Agent”), the subsidiary guarantors from time to time party thereto (the “Prepetition Term Loan Guarantors”), and the lenders from time to time party thereto (such lenders, the “Prepetition Term Loan Lenders” and, together with the Prepetition Term Loan Agent, the “Prepetition Term Loan Secured Parties”), the Borrower borrowed, and was liable unconditionally and irrevocably to, and the Prepetition Term Loan Guarantors, as applicable, guaranteed for the benefit of, the Prepetition Term Loan Secured Parties pursuant to the Prepetition Term Loan Documents, without offset, contest, objection, recovery, recoupment, reduction, defense, counterclaim, subordination, recharacterization, disgorgement, disallowance, avoidance, challenge, or any other claim or Cause of Action<sup>5</sup> of any kind, (x) an aggregate principal amount of not less than \$41,685,030.30 of Term A Loans (as defined in the Prepetition Term Loan Credit Agreement) (the “Prepetition Term Loans”), subject to the relative rights, rankings, and priorities set forth in the Prepetition Term Loan Credit Agreement, plus (y) all accrued and unpaid interest (including capitalized interest) with respect thereto and any additional fees, costs, premiums, expenses (including any attorneys’, accounts’, consultants’, appraisers’, financial advisors’, and

---

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

other professionals' fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations (as defined in the Prepetition Term Loan Credit Agreement) owing under or in connection with the Prepetition Term Loan Documents (clauses (x) and (y), collectively, the "Prepetition Term Loan Secured Indebtedness").

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

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

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

loans and/or commitments and other financial accommodations secured thereby; (iv) the Prepetition Term Loan Secured Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors and is enforceable in accordance with the terms of the Prepetition Term Loan Documents; and (v) the Prepetition Term Loan Liens are subject and subordinate only to Permitted Prior Liens.<sup>6</sup>

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

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

2. *Cash Collateral.* All of the Debtors' cash constitutes cash collateral of the Prepetition Term Loan Secured Parties within the meaning of Bankruptcy Code section 363(a)

---

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

(the “Cash Collateral”), including amounts generated by the collection of Prepetition Collateral, including but not limited to accounts receivable, all other cash proceeds, products, offspring, or profits of the Prepetition Collateral and amounts now or hereafter held in any of the Debtors’ banking, checking, or other deposit accounts as of the Petition Date or amounts deposited or transferred into the Debtors’ banking, checking, or deposit accounts after the Petition Date.

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

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

Hearing and the Final Hearing, the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral, including Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

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

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

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

businesses, the administration of these Chapter 11 Cases, and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein. The terms of the Order and the use of Cash Collateral are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with the Debtors' fiduciary duties.

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

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

**IT IS HEREBY ORDERED THAT:**

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

(g) *Miscellaneous.*

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

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

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

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

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

5. *Carve Out.*

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

22. *Expense Invoices; Disputes; Indemnification.*

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

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

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

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

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

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

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

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

**### END OF ORDER ###**

Submitted By:

**SIDLEY AUSTIN LLP**

Thomas R. Califano (TX Bar No. 24122825)  
William E. Curtin (admitted *pro hac vice*)  
Anne G. Wallice (admitted *pro hac vice*)  
787 Seventh Avenue  
New York, NY 10019  
Telephone: (212) 839-5300  
Facsimile: (212) 839-5599  
Email: tom.califano@sidley.com  
wcurtin@sidley.com  
anne.wallice@sidley.com

*and*

Charles M. Persons (TX Bar No. 24060413)  
2021 McKinney Avenue, Suite 2000  
Dallas, Texas 75201  
Telephone: (214) 981-3300  
Facsimile: (214) 981-3400  
Email: cpersons@sidley.com

*Proposed Counsel to the Debtors and Debtors  
in Possession*

**Exhibit 1**

**Approved Budget**



# Cash Collateral Budget

	Week Ending													Total	
	19-Apr	26-Apr	3-May	10-May	17-May	24-May	31-May	7-Jun	14-Jun	21-Jun	28-Jun	5-Jul	12-Jul		19-Jul
<b>Receipts</b>															
Product Revenue - Zokiny Product Sales	\$ 370	\$ 325	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260	\$ 260
Other Receipts (Milestone payments, deposit returns)	-	-	1,440	-	-	360	-	-	-	-	-	-	-	-	-
Net Proceeds from Sale of Zokiny	-	37,184	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Receipts</b>	<b>\$ 370</b>	<b>\$ 37,509</b>	<b>\$ 1,700</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 620</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 260</b>	<b>\$ 40,718</b>
<b>Operating Disbursements</b>															
Zokiny Commercialization Disbursements	\$ (35)	\$ (176)	\$ (262)	\$ (118)	\$ (118)	\$ (103)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (83)	\$ (1,142)
R&D / Post-Marketing Disbursements	-	(137)	(246)	(55)	(55)	(55)	(55)	(55)	(55)	(55)	(55)	(55)	(55)	(20)	(902)
Payroll	-	(168)	-	(106)	-	(106)	-	(106)	-	(106)	-	(106)	-	(106)	(805)
Interest Expense	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Eiger Overhead	-	(105)	(161)	(53)	(53)	(53)	(53)	(66)	(66)	(66)	(62)	(62)	(62)	(62)	(984)
Medical Claims	-	(1,063)	-	-	-	-	-	-	-	-	-	-	-	(1,063)	(2,127)
Other	(39)	(10)	(61)	(51)	(51)	(51)	(51)	(64)	(64)	(64)	(26)	(26)	(26)	(26)	(673)
Contingency	(100)	(100)	(73)	(38)	(28)	(37)	(24)	(37)	(27)	(27)	(11)	(11)	(21)	(117)	(690)
<b>Total Operating Disbursements</b>	<b>\$ (175)</b>	<b>\$ (1,760)</b>	<b>\$ (803)</b>	<b>\$ (420)</b>	<b>\$ (304)</b>	<b>\$ (405)</b>	<b>\$ (265)</b>	<b>\$ (410)</b>	<b>\$ (294)</b>	<b>\$ (294)</b>	<b>\$ (316)</b>	<b>\$ (119)</b>	<b>\$ (236)</b>	<b>\$ (1,289)</b>	<b>\$ (7,322)</b>
<b>Restructuring Expenses</b>															
Professional Fees	\$ -	\$ (125)	\$ -	\$ (147)	\$ (21)	\$ (242)	\$ (1,106)	\$ -	\$ (21)	\$ -	\$ (860)	\$ -	\$ (112)	\$ -	\$ (5,643)
Accounts Payable and Deposits	-	-	-	(10)	-	-	-	-	-	-	-	-	-	10	-
<b>Total Restructuring Expenses</b>	<b>\$ -</b>	<b>\$ (125)</b>	<b>\$ -</b>	<b>\$ (157)</b>	<b>\$ (21)</b>	<b>\$ (242)</b>	<b>\$ (1,106)</b>	<b>\$ -</b>	<b>\$ (21)</b>	<b>\$ -</b>	<b>\$ (860)</b>	<b>\$ -</b>	<b>\$ (112)</b>	<b>\$ -</b>	<b>\$ (5,643)</b>
<b>Total Net Cash Flow</b>	<b>\$ 195</b>	<b>\$ 35,624</b>	<b>\$ 897</b>	<b>\$ (318)</b>	<b>\$ (65)</b>	<b>\$ (27)</b>	<b>\$ (1,371)</b>	<b>\$ (410)</b>	<b>\$ (315)</b>	<b>\$ (294)</b>	<b>\$ (1,176)</b>	<b>\$ (119)</b>	<b>\$ (348)</b>	<b>\$ (1,289)</b>	<b>\$ (27,753)</b>
Debt Repayment	\$ -	\$ -	\$ (15,000)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (15,000)
<b>Net Cash Flow After Debt Repayment</b>	<b>\$ 195</b>	<b>\$ 35,624</b>	<b>\$ (14,103)</b>	<b>\$ (318)</b>	<b>\$ (65)</b>	<b>\$ (27)</b>	<b>\$ (1,371)</b>	<b>\$ (410)</b>	<b>\$ (315)</b>	<b>\$ (294)</b>	<b>\$ (1,176)</b>	<b>\$ (119)</b>	<b>\$ (348)</b>	<b>\$ (1,289)</b>	<b>\$ (12,753)</b>
<b>Starting Cash</b>	<b>\$ 12,258</b>	<b>\$ 12,454</b>	<b>\$ 48,078</b>	<b>\$ 33,975</b>	<b>\$ 33,657</b>	<b>\$ 33,592</b>	<b>\$ 33,565</b>	<b>\$ 32,194</b>	<b>\$ 31,784</b>	<b>\$ 31,469</b>	<b>\$ 31,176</b>	<b>\$ 30,000</b>	<b>\$ 29,881</b>	<b>\$ 29,534</b>	<b>\$ 28,245</b>
<b>Change in Cash</b>	<b>195</b>	<b>35,624</b>	<b>(14,103)</b>	<b>(318)</b>	<b>(65)</b>	<b>(27)</b>	<b>(1,371)</b>	<b>(410)</b>	<b>(315)</b>	<b>(294)</b>	<b>(1,176)</b>	<b>(119)</b>	<b>(348)</b>	<b>(1,289)</b>	<b>(3,233)</b>
<b>Ending Cash</b>	<b>\$ 12,454</b>	<b>\$ 48,078</b>	<b>\$ 33,975</b>	<b>\$ 33,657</b>	<b>\$ 33,592</b>	<b>\$ 33,565</b>	<b>\$ 32,194</b>	<b>\$ 31,784</b>	<b>\$ 31,469</b>	<b>\$ 31,176</b>	<b>\$ 30,000</b>	<b>\$ 29,881</b>	<b>\$ 29,534</b>	<b>\$ 28,245</b>	<b>\$ 25,012</b>
Starting Debt	\$ 41,685	\$ 41,685	\$ 41,685	\$ 27,188	\$ 27,188	\$ 27,188	\$ 27,188	\$ 27,693	\$ 27,693	\$ 27,693	\$ 27,693	\$ 28,203	\$ 28,203	\$ 28,203	\$ 28,203
Debt Repayment	-	-	(15,000)	-	-	-	-	-	-	-	-	-	-	-	(15,000)
Cash Interest Accrued	-	-	425	-	426	-	426	-	431	-	431	-	436	-	1,717
PLI Interest Accrued	-	-	78	-	79	-	79	-	80	-	80	-	81	-	318
Ending Debt	\$ 41,685	\$ 41,685	\$ 27,188	\$ 27,188	\$ 27,188	\$ 27,188	\$ 27,693	\$ 27,693	\$ 27,693	\$ 28,203	\$ 28,203	\$ 28,203	\$ 28,203	\$ 28,203	\$ 28,720
<b>Accrued but unpaid professional fees</b>	<b>\$ 1,092</b>	<b>\$ 1,384</b>	<b>\$ 1,607</b>	<b>\$ 1,669</b>	<b>\$ 1,858</b>	<b>\$ 1,863</b>	<b>\$ 1,149</b>	<b>\$ 1,302</b>	<b>\$ 1,434</b>	<b>\$ 1,587</b>	<b>\$ 964</b>	<b>\$ 1,117</b>	<b>\$ 1,344</b>	<b>\$ 1,686</b>	<b>\$ -</b>

**Exhibit 2**

**Milestones**

### **Milestones**

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

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

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

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

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

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

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

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

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