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Counsel Innovatus Life Sciences Lending Fund I, LP

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

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

**APPELLANT’S STATEMENT OF ISSUES TO BE PRESENTED AND
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant, Innovatus Life Sciences Lending Fund I, LP (“Appellant”, or “Innovatus”), as set forth in the *Notice of Appeal of Final Order (I) Authorizing the Debtors to Use Cash Collateral*;

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



(II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; and (III) Modifying Automatic Stay [Docket No. 245] and the *Amended Notice of Appeal* [Docket No. 274], appeals the *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* [Docket No. 161] (the “Order”). Pursuant to Federal Rule of Bankruptcy Procedure 8009, Appellant respectfully submits this statement of the issues to be presented and designation of items to be included in the record on appeal with respect to Innovatus’s appeal pending before the United States District Court for the Northern District of Texas: Case No. 24-cv-01195.

STATEMENT OF THE ISSUES ON APPEAL

I. Did the Bankruptcy Court err as a matter of law by subordinating, in all respects, Appellants’ liens, security interests, and claims, against the Debtors and the Debtors’ assets, including, without limitation, all liens and securities interests against any cash, cash collateral, and, or, the proceeds of any of the Debtors’ assets, to the fees and expenses enumerated in paragraph 5 of the *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* [Docket No. 161].

II. Did the Bankruptcy Court err as a matter of law, and as a matter of fact, by finding that Appellant is adequately protected due to an “equity cushion”, and that Appellant’s liens, security interests, and other interests in the Debtors’ assets, including, without limitation, all liens and security interests against any cash, cash collateral, and, or, the proceeds of the Debtors’ assets are adequately protected due to an “equity cushion”.

III. Did the Bankruptcy Court err as a matter of law, and as a matter of fact, by finding that the conditions set forth in the *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 [Docket No. 161] provide Appellant with adequate protection with respect to Appellant's liens, security interests, and other interests in the Debtors' assets, including, without limitation, all liens and security interests against any cash, cash collateral, and, or, the proceeds of the Debtors' assets.

DESIGNATION OF RECORD ON APPEAL

Innovatus designates each of the following items for inclusion in the record on appeal (including any exhibit, annex, appendix, addendum, or schedule thereto):

1. Notice of Appeal:

- a. *Notice of Appeal of 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* [Docket No. 245].
- b. *Amended Notice of Appeal* [Docket No. 274].

2. The Judgment, Order, or Decree Appealed From:

- a. *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* [Docket No. 161].

3. Any Opinion, Findings of Fact, and Conclusions of Law of the Bankruptcy Court:

- a. The opinions, findings of fact, and conclusions of law included in, or underlying, the following documents
 - i. *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* [Docket No. 161].
 - ii. Transcript regarding hearing held on April 23, 2024.
- b. The opinions, findings of fact, and conclusions of law to the extent included in, or underlying, the documents identified in part 5 and part 6 herein.

4. The Docket Sheet for Case No. 24-80040 (SGJ) (Bankr. N.D. Texas)

5. Additional Items (filed in Case No. 24-80040 (SGJ) (Bankr. N.D. Texas))

| Date of Electronic Filing | Docket No. | Description |
|----------------------------------|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/01/2024 | 16 | Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; And (IV) Scheduling a Final Hearing |
| 04/02/2024 | 34 | Consolidated Limited Objections to Certain First Day Motions |
| 04/02/2024 | 35 | Preliminary Objection to Debtors' Motion for Authorization to Use Cash Collateral |
| 04/05/2024 | 93 | Interim Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; And (IV) Scheduling a Final Hearing |
| 04/20/2024 | 136 | Notice of Consent to Debtors' Use of Cash Collateral |
| 04/22/24 | 142 | Debtors' Reply in Support of Entry of the Final Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; And (III) Modifying the Automatic Stay |
| 04/22/2024 | 146 | United States Trustee's Comment to Motion to Use Cash Collateral and Motion to Sell Zokinvy Assets |

6. Transcripts and Exhibits (as described in the Docket Sheet for Case No. 24-80040 (SGJ) (Bankr. N.D. Texas))

| Date of Electronic Filing | Docket No. | Description |
|----------------------------------|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 04/03/2024 | 43 | Debtors' Witness and Exhibit List (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6) |
| 04/03/2024 | 43-1 | Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings |
| 04/03/2024 | 43-2 | Declaration of Paul Rundell, Managing Director of Alvarez & Marsal North America, LLC, in Support of the Debtors Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting |

| Date of Electronic Filing | Docket No. | Description |
|---------------------------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; And (IV) Scheduling a Final Hearing |
| 04/03/2024 | 43-5 | Initial Approved Budget |
| 04/03/2024 | 43-6 | Proposed Final budget |
| 04/03/2024 | 109 | Court admitted exhibits date of hearing April 3, 2024 |
| 04/08/2024 | 108 | Transcript regarding Hearing Held on April 3, 2024 |
| 04/22/2024 | 149 | Debtors' Amended Witness and Exhibit List (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13) |
| 04/22/2024 | 149-1 | Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings |
| 04/22/2024 | 149-2 | Declaration of Paul Rundell, Managing Director of Alvarez & Marsal North America, LLC, in Support of the Debtors Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; And (IV) Scheduling a Final Hearing |
| 04/22/2024 | 149-6 | Declaration of Douglas Staut, Proposed Chief Restructuring Officer of Eiger BioPharmaceuticals Inc., in Support of the Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; (III) Modifying Automatic Stay; And (IV) Scheduling a Final Hearing |
| 04/22/2024 | 149-8 | Supplemental Declaration of J. Scott Victor in Support of the Debtors' Motion for the Sale of the Zokinvy Assets and Motion for Entry of the Final Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; And (III) Modifying the Automatic Stay |
| 04/22/2024 | 149-9 | Cash Collateral Budget |
| 04/22/2024 | 149-10 | Proposed Final Cash Collateral Order |
| 04/23/2024 | 160 | Court admitted exhibits date of hearing April 23, 2024 |
| 04/30/2024 | 177 | Transcript regarding Hearing Held on April 23, 2024 |

CERTIFICATION REGARDING TRANSCRIPTS

Pursuant to Rule 8009(b)(1) of the Federal Rule of Bankruptcy Procedure, Appellant hereby certifies that it is not ordering any transcripts. All transcripts have been prepared, are on the docket, and are designated in the foregoing designation of the record.

STATEMENT OF THE ISSUES ON APPEAL

Innovatus expressly reserves, and does not waive, its right to supplement this statement. This filing is made expressly subject to, and without waiver of any and all rights, remedies, challenges, and objections.

Dated: May 22, 2024

Respectfully submitted,

/s/ Jeff P. Prostok
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**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 parties and counsel of record via the Court's CM/ECF on this 22nd day of May 2024.

/s/ Jeff P. Prostok _____

Jeff P. Prostok