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*Counsel to 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.*<sup>1</sup>, § 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**

<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.



Appellant, Innovatus Life Sciences Lending Fund I, LP (“Appellant”, or “Innovatus”), as set forth in the *Notice of Appeal of Order Denying 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. 298] appeals the *Order Denying United States Trustee’s Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. §§ 1406 and 1408 and Federal Rule of Bankruptcy Procedure 1014(a)(2)* [Docket No. 260] (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-01309.

#### **STATEMENT OF THE ISSUES ON APPEAL**

I. Did the Bankruptcy Court err as a matter of law by finding that venue is proper in the Northern District of Texas.

II. Did the Bankruptcy Court err as a matter of law and fact in premising venue in the Northern District of Texas on the alleged interest of certain foreign debtors in retainers paid to counsel that they did not fund.

III. Did the Bankruptcy Court err as a matter of law and fact in holding that the Bankruptcy Court may retain a case where venue is improper and by holding that it is not mandatory for the Court to either transfer or dismiss a case filed in an improper venue, as discussed in the *Transcript Regarding Hearing held May 7, 2024* [Docket No. 251].

IV. Did the Bankruptcy Court err as a matter of law when it refused to transfer venue to either the Northern District of California or the District of Delaware when it entered the *Order Denying United States Trustee’s Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. §§ 1406 and 1408 and Federal Rule of Bankruptcy Procedure 1014(a)(2)* [Docket No. 260].

**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 Order Denying 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. 298].*

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

- a. *Order Denying United States Trustee’s Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. §§ 1406 and 1408 and Federal Rule of Bankruptcy Procedure 1014(a)(2) [Docket No. 260].*

**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. *Order Denying United States Trustee’s Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. §§ 1406 and 1408 and Federal Rule of Bankruptcy Procedure 1014(a)(2) [Docket No. 260].*
- 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	1	Eiger Biopharmaceuticals, Inc. – Voluntary Petition for Non-Individuals Filing for Bankruptcy
04/11/2024	111	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).
04/23/2024	155	Debtor’s Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys

<b>Date of Electronic Filing</b>	<b>Docket No.</b>	<b>Description</b>
		for the Debtors and Debtors in Possession Effective as of the Petition Date.
05/02/2024	200	Debtor's Objection to United States Trustee's Emergency Motion to Transfer Venue or Dismiss Under 28 U.S.C. §§ 1406 and 1408 and Fed. R. Bankr. P. 1014(a)(2).
05/05/2024	219	Joinder of Innovatus Life Sciences Lending Fund I, LP to United States Trustee's Emergency Motion to Transfer Venue or Dismiss Under 28 U.S.C. §§ 1406 and 1408 and Fed. R. Bankr. P. 1014(a)(2).
05/13/2024	256	Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession Effective as of the Petition Date.

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

<b>Date of Electronic Filing</b>	<b>Docket No.</b>	<b>Description</b>
05/03/2024	201	Debtors' 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)
05/03/2024	201 - 1	Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings.
05/03/2024	201 - 2	Alvarez & Marsal North America, LLC Engagement Letter.
05/03/2024	201 - 3	Declaration of Douglas Staut in Support of Debtors' Application for Entry of an Order Authorizing (I) the Retention of Alvarez & Marsal North America, LLC to Provide the Debtors a Chief Restructuring Officer and Certain Additional Personnel and (II) Designating Douglas Staut as Chief Restructuring Officer for the Debtors Effective as of the Petition Date.
05/03/2024	201 - 4	Sidley Austin Engagement Letter.
05/03/2024	201 - 5	Declaration of Thomas R. Califano in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession Effective as of the Petition Date.

Date of Electronic Filing	Docket No.	Description
05/03/2024	201 - 6	Declaration of Douglas Staut in Support of the Debtors' Application for Entry of an Order Authorizing the Retention and Employment of Sidley Austin LLP as Attorneys for the Debtors and Debtors in Possession Effective as of the Petition Date.
05/03/2024	201 - 7	SSG Capital Advisors, LLC Engagement Agreement
05/03/2024	201 - 8	Declaration of J. Scott Victor in Support of the Debtor's Application for Entry of an Order Authorizing Employment and Retention of SSG Capital Advisors, LLC as Investment Banker to the Debtors Effective as of the Petition Date.
05/06/2024	220	Agenda for Hearing Scheduled for May 7, 2024 at 1:30 p.m. (Prevailing Central Time).
05/06/2024	225	United States Trustee's Witness and Exhibit List on 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) (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).
05/06/2024	225 - 1	Voluntary Petition for Eiger Biopharmaceuticals, Inc. Case no. 24-80040-11
05/06/2024	225 - 2	Voluntary Petition for EB Pharma, Inc. Case no. 24-80042-11
05/06/2024	225 - 3	Voluntary Petition for EBPI Merger, Inc. Case no. 24-80041-11
05/06/2024	225 - 4	Voluntary Petition for Eiger Biopharmaceuticals Europe Limited, Inc. Case no. 24-80043-11
05/06/2024	225 - 5	Voluntary Petition for Eigerbio Europe Limited Case no. 24-80044-11
05/06/2024	225 - 6	2155 Park Blvd., Palo Alto, California; Google Maps
05/06/2024	225 - 7	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), filed on April 11, 2024
05/06/2024	225 - 8	Objection to United States Trustees Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. 1406 and 1408 and Fed. R. Bankr. P. 1014(a)(2), filed on May 2, 2024
05/06/2024	225 - 9	Notice of Debtors' Change of Address, filed in Case No. 24-80040-sjg-11
05/06/2024	225 - 10	Silicon Valley Bank Statement for Eiger Biopharmaceuticals, Inc., Acct ending in 5537, March 2024 (Redacted)

<b>Date of Electronic Filing</b>	<b>Docket No.</b>	<b>Description</b>
05/06/2024	225 - 11	Exhibits C and D to the Debtors' Cash Management Motion
05/06/2024	226	Joint Stipulation of Facts
05/07/2024	229	Joint Stipulation of Facts
05/07/2024	233	Court admitted exhibits date of hearing May 7, 2024 (see Docket No. 225 for copies of the exhibits)
05/13/2024	251	Transcript Regarding Hearing held May 7, 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: June 11, 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 11th day of June 2024.

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