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COUNSEL TO FUJIFILM DIOSYNTH  
BIOTECHNOLOGIES USA, INC.

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

**In re:** § **Chapter 11**  
§  
**EIGER BIOPHARMACEUTICALS,** § **Case No. 24-80040-sgj**  
**INC.,<sup>1</sup>** §  
§  
**Debtor.** §

**FUJIFILM DIOSYNTH BIOTECHNOLOGIES, U.S.A., INC.’S OBJECTION AND  
RESERVATION OF RIGHTS REGARDING DEBTORS’ NOTICE OF CURE  
AMOUNTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE  
REMAINING ASSET SALE TRANSACTION(S)**

Fujifilm Diosynth Biotechnologies, U.S.A., Inc. (“**Fujifilm**”), by and through their undersigned counsel, files this Objection and Reservation of Rights with respect to the Debtors’ *Notice of Cure Amounts and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Remaining Asset Sale Transaction(s)* [Dkt. No. 313], (“**Remaining Sale Cure Notice**”), and states as follows:

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<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 94306.



## BACKGROUND

1. Eiger Biopharmaceuticals, Inc. and the related debtors (the “**Debtors**”) filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (the “**Bankruptcy Code**”) on April 1, 2024 (the “**Petition Date**”).

2. Fujifilm is party to a Master Bioprocessing Services Agreement with Debtor Eiger Biopharmaceuticals, Inc. dated September 22, 2016 (“**Master Agreement**”).

3. On April 5, 2024, the Court entered its *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentyln Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if Any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief* [Dkt. No. 94] (“**Bid Procedures Order**”).

4. On June 4, 2024, pursuant to the Bid Procedures Order, the Debtors filed the Remaining Sale Cure Notice identifying certain contracts and leases the Debtors intend to potentially assume and assign in connection with potential remaining asset transaction(s).

5. The Remaining Sale Cure Notice includes forty-four (44) “Contracts” between the Debtors and Fujifilm, itemized as Numbers 455 through 494 as Exhibit A to the Remaining Sale Cure Notice. All the Debtors’ designations regarding Fujifilm show “Lambda” as the “Related Asset” with a proposed collective cure amount of \$25,000 (“**Proposed Cure Amount**”). None of

the entries on Exhibit A refer to the Master Agreement, but instead, describe specific “Scopes of Work” and “Change Orders,” which are defined terms under the Master Agreement.

### **OBJECTION**

#### **I. The Proposed Cure Amount is Incorrect**

6. Fujifilm objects to the Remaining Sale Cure Notice based upon its failure to comply with 11 U.S.C. § 365, which governs the assumption and assignment of unexpired leases and executory contracts.

7. Pursuant to section 365 of the Bankruptcy Code, the Debtors must cure, or provide adequate assurance that they will promptly cure, all outstanding amounts owed under the Master Agreement before they can be assumed and certainly before they can be assigned.

8. Debtors’ unpaid cure obligations to Fujifilm are set forth in **Exhibit A** attached hereto, which demonstrates a minimum necessary cure amount of \$202,280. Without limitation, the calculations shown on Exhibit A include Program Termination Fees and other fees charged under Section 2.1(e) of the Master Agreement.

9. As a condition to assumption and assignment of the Master Agreement, all unpaid prepetition and postpetition amounts due and owing to Fujifilm must be paid. The Debtors should not be relieved of liability for cure costs unless and until they are paid by the Buyer.

#### **II. Fujifilm is Entitled to Adequate Assurance of Future Performance**

10. Section 23 of the Master Agreement requires the prior consent of Fujifilm to any assignment thereof, and any buyer must be a party with whom Fujifilm is willing and able to do business.

11. Fujifilm must receive, and is entitled to, sufficient information from a buyer that would allow Fujifilm to determine whether such buyer qualifies as an assignee under the Master

Agreement, and Fujifilm to object to approval of any sale to an entity that has not provided such information or to an entity that has provided the information but who falls short on its ability to provide adequate assurance of future performance.

### **III. The Entire Master Agreement Must be Assumed and Assigned**

12. Although the Debtors have described its contract with Fujifilm as “Scopes of Work” and “Change Orders,” the executory contract between the parties is the Master Agreement.

13. Accordingly, the Master Agreement must be assumed and assigned in whole, and the Debtors cannot choose to assume and assign individual “Scopes of Work” under the Master Agreement, while rejecting others. *See, e.g., Stewart Title Guar. Co. v. Old Republic Nat. Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (“It is well established that as a general proposition an executory contract must be assumed or rejected in its entirety.”)

### **RESERVATION OF RIGHTS**

14. Fujifilm reserves all of its rights under the Master Agreement, including the right to receipt of a proper cure amount pursuant to 11 U.S.C. § 365. Fujifilm reserves all of its rights with respect to the Master Agreement to any purported assumption and assignment or any other transfer of any portion of the Master Agreement in connection with any proposed sale.

15. Fujifilm reserves all of its rights with respect to payment owed for both prepetition and postpetition goods and services, and with respect to any executory contracts with the Debtors, including with respect to any cure or damages for rejection thereof and/or to enforce its rights and remedies under applicable law, or as otherwise authorized by the Court.

16. Fujifilm reserves its right to amend or supplement the foregoing objections, to join in other objections filed and to further revise and/or amend the foregoing, or to enforce other

rights and remedies under applicable law, or as otherwise authorized by the Court.

Dated: June 12, 2024.

Respectfully submitted,

POLSINELLI PC

By: /s/ Trinitee G. Green

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*COUNSEL FOR*  
FUJIFILM DIOSYNTH  
BIOTECHNOLOGIES USA, INC.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on June 12, 2024, she caused CM/ECF participants registered to receive ECF service in the above-captioned cases to be served with the foregoing Objection. Additionally, the undersigned counsel certifies that she caused her office to email a copy of the Objection as follows:

Proposed Debtors' Counsel

Sidley Austin LLP

Thomas R. Califano (tom.califano@sidley.com)

William E. Curtin (wcurtin@sidley.com)

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Office of the United States Trustee

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Attn: Elizabeth A. Young (elizabeth.a.young@usdoj.gov)

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Official Committee of Unsecured Creditors<sup>2</sup>

Rob Howey (rob.howey@connorgp.com)

Brian Chaiken (bchaiken@biorasi.com)

By: /s/ Trinitee G. Green

Trinitee G. Green

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<sup>2</sup> The Official Committee of Unsecured Creditors was first appointed on June 10, 2024 (Docket No. 322), and has not yet filed an application to appear through and retain counsel.

**EXHIBIT A**

EXHIBIT A TO CURE OBJECTION OF FUJIFILM DIOSYNTH BIOTECHNOLOGIES U.S.A., INC.

SOW / CO	Stage #	Stage Description	Invoice No	Amount Unpaid Invoices Due (\$)	Amount Contracted Due Not Invoiced (\$)	Amount Owed for Services Performed Not Contracted due to Cancellation (\$)	Amount Owed for Cancellation Fee (\$)	Amount remaining if work continues (For Information Purposes) (\$)
SOW 5	Stage 1	DS Stability Protocol DS-1 Lot 14PY5040002 Stability Closure	2080014598	10,000	-	-	-	-
SOW 6	Stage 1	DS Stability STAB-PY117DS-3 Lot PY5040002 Protocol Revision Completed due to Cancellation  Unsigned SOW 6 CO 1			-	10,000	-	-
SOW 6	Stage 1	DS Stability STAB-PY117DS-3 Lot PY5040002 36M 50% Cancellation  Unsigned SOW 6 CO 1			-	-	19,625	-
SOW 14	Stage 1	DP Stability Protocol STAB-PY117DP-2 Lot 0002 Stability Closure	2080015228	5,000	-	-	-	-
SOW 14	Stage 1	DP Stability Protocol STAB-PY117DP-2 Lot 0002 Protocol Revision Completed due to Cancellation  Unsigned SOW 14 CO 2				10,000	-	-
SOW 14 CO 1	Stage 1b	DP Stability Protocol STAB-PY117DP-4 Lot 00004 Stability Closure	2080014171	10,000	-	-	-	-
SOW 14 CO 1	Stage 1a	DP Stability STAB-PY117DP-3 Lot 00003  Customer had originally requested at the notice of Cancellation Dec 2023 to continue this Study			-	-	-	95,000



SOW / CO	Stage #	Stage Description	Invoice No	Amount Unpaid Invoices Due (\$)	Amount Contracted Due Not Invoiced (\$)	Amount Owed for Services Performed Not Contracted due to Cancellation (\$)	Amount Owed for Cancellation Fee (\$)	Amount remaining if work continues (For Information Purposes) (\$)
SOW 14 CO 1	Stage 1b	DP Stability Protocol STAB-PY117DP-4 Lot 00004 Protocol Revision Completed due to Cancellation  Unsigned SOW 14 CO 2			-	10,000	-	-
SOW 14 CO 1	Stage 1b	DP Stability Protocol STAB-PY117DP-4 Lot 00004 24M 50% Cancellation  Unsigned SOW 14 CO 2			-	-	15,000	-
SOW 14 CO 1	Stage 1d	DP-6 (Lot TBD) Credit Note to be Issued Back under Unsigned SOW 14 CO 2. As Invoice Paid but No Service Provided	PAID		(10,000)	-	-	-
SOW 14 CO 1	Stage 1e	DP-7 (Lot TBD) Credit Note to be Issued Back under Unsigned SOW 14 CO 2. As Invoice Paid but No Service Provided	PAID		(10,000)	-	-	-
SOW 14 CO 1	Stage 1f	DP-8 (Lot TBD) Credit Note to be Issued Back under Unsigned SOW 14 CO 2. As Invoice Paid but No Service Provided	PAID		(10,000)	-	-	-
SOW 15	Stage 3	DS Stability STAB-PY117DS-4 Lot 14PY5040003 Protocol Revision Completed due to Cancellation  Unsigned SOW 15 CO 1			-	10,000	-	-
SOW 15	Stage 4	DS Stability STAB-PY117DS-5 Lot 14PY5040004 Protocol Revision Completed due to Cancellation  Unsigned SOW 15 CO 1			-	10,000	-	-
SOW 15	Stage 5	DS Stability STAB-PY117DS-6 Lot PY5040003 Protocol Revision Completed due to Cancellation  Unsigned SOW 15 CO 1			-	10,000	-	-
SOW 15	Stage 5	DS Stability STAB-PY117DS-6 Lot PY5040003 18M 50% Cancellation  Unsigned SOW 15 CO 1			-	-	21,000	-

SOW / CO	Stage #	Stage Description	Invoice No	Amount Unpaid Invoices Due (\$)	Amount Contracted Due Not Invoiced (\$)	Amount Owed for Services Performed Not Contracted due to Cancellation (\$)	Amount Owed for Cancellation Fee (\$)	Amount remaining if work continues (For Information Purposes) (\$)
SOW 15	Stage 6	DS Stability STAB-PY117DS-7 Lot PY5040004 Protocol Revision Completed due to Cancellation			-	10,000	-	-
SOW 15	Stage 6	Unsigned SOW 15 CO 1 DS Stability STAB-PY117DS-7 Lot PY5040004 9M 50% Cancellation			-	-	24,650	-
		Consumables Passthrough Invoiced May 2024	2080016567	8,299	-	-		-
		Consumables Passthrough Invoiced Apr 2024	2080015775	4,848	-	-		-
		Consumables Passthrough Invoiced Apr 2024	2080015774	35,060	-	-		-
		Consumables Passthrough Invoiced Apr 2024	2080015770	2,922	-	-		-
		Consumables Passthrough To Be Invoiced				5,876		-
<b>TOTALS:</b>				<b>76,129</b>	<b>(30,000)</b>	<b>75,876</b>	<b>80,275</b>	<b>95,000</b>
<b>GRAND TOTAL:</b>				<b>202,280</b>				