

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

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

**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 ASSETS SALE TRANSACTION(S)**

Thermo Fisher Scientific, Inc. (“TFS”), Fisher Bioservices, Inc. (“FBS”), PPD Development L.P. (“PPD”), Patheon Inc. (“Patheon”), Patheon UK Limited (“Patheon UK”), and Patheon Manufacturing Services LLC (“Patheon MS,” and together with TFS, FBS, PPD, Patheon and Patheon UK, the “TFS Entities”), by and through their undersigned counsel, file 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 Assets Sale Transaction(s)* (“Cure Notice”), [Doc. No. 313], and state as follows:

BACKGROUND

1. Eiger Biopharmaceuticals, Inc. and 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”).

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 2155 Park Boulevard, Palo Alto, California 94306.



2. The TFS Entities and certain of the Debtors are parties to certain supply, service, and purchase agreements (collectively the “**TFS Agreements**”).

3. On April 5, 2024, the Court entered its *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl 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* the (“**Bid Procedures Order**”). [Doc. No. 94.]

4. Pursuant to the Bid Procedures Order, and in connection with the Remaining Asset Sale, on June 4, 2024 the Debtors filed and served the Cure Notice identifying certain contracts and leases the Debtors intend to potentially assume and assign in connection with the Remaining Assets Sale Transaction(s), as defined in the Bid Procedures Order. [Doc. No. 313.]

5. Certain TFS Agreements are included in Exhibit A of the Cure Notice.

OBJECTION

I. The Cure Amounts for FBS, Patheon, and Patheon MS are Incorrect.

10. The TFS Entities object to the proposed Cure Notice based upon its failure to comply with section 365 of the Bankruptcy Code, which governs the assumption and assignment of unexpired leases and executory contracts. 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 TFS Agreements before they can be assumed and certainly before they can be assigned.

11. The Cure Amounts provided in the Cure Notice are incorrect for FBS, Patheon, and Patheon MS.

12. The Cure Amount included in the Cure Notice for FBS is \$0.00. [Doc. No. 313, Exhibit A, p. 12.] This amount is incorrect. Debtors' unpaid cure obligation to FBS is \$7,932.46.

13. The Cure Amount included in the Cure Notice for certain contracts with Patheon is \$68,895.30, and for certain other contracts is \$0.00. [Doc. No. 313, Exhibit A, pp. 28-30.] This amount is incorrect, as the Debtors' unpaid cure obligation owed to Patheon Inc. is \$155,156.20.

14. The Cure Amount included in the Cure Notice for certain contracts with Patheon MS is \$111,092.41. [Doc. No. 313, Exhibit A, pp. 28-30.] This amount is incorrect, as the Debtors' unpaid cure obligation owed to Patheon Inc. is \$135,828.41.

15. The Debtors may also owe unpaid postpetition obligations to the TFS Entities.

16. As a condition to assumption and assignment of the executory contracts with the TFS Entities, all unpaid prepetition and postpetition amounts due and owing to FBS, Patheon and Patheon MS must be paid.

17. Certain TFS Agreements require the prior consent of TFS Entities to any assignment thereof, and purchaser must be a party with whom the applicable TFS Entity is willing and able to do business.

II. Expired Agreements Cannot Be Assigned and A Successful Bidder must provide the TFS Entities (or any of them) Adequate Assurance of Regulatory and Fiscal / Financial Performance

17. The TFS Entities also object to the potential assumption and assignment of certain TFS Agreements with the Debtors which have expired and accordingly cannot be assigned.

18. Regarding any TFS Agreements with the Debtors which have not expired and may be assigned, TFS Entities require adequate assurance of the Stalking Horse Purchaser's fiscal and regulatory performance under the TFS Agreements.

19. The TFS Entities are entitled to be provided information from a successful bidder to enable any TFS Entity to determine whether the successful bidder qualifies as an assignee under the applicable TFS Agreement. The TFS Entities 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. That means on both a financial basis and an operational basis with respect to compliance with applicable laws, regulations and licensing requirements, including for example, the Foreign Corrupt Practices Act, the Federal Food, Drug and Cosmetic Act, the FDA Current Good Manufacturing Practice (CGMP) regulations, or any other regulatory or legal requirements of any governmental entity (for example, the FDA, HHS, CMS or DEA).

RESERVATION OF RIGHTS

18. The TFS Entities reserve all of their rights including under the TFS Agreements, including the right to receipt of a proper cure amount pursuant to 11 U.S.C. § 365. The TFS Entities reserve all of their rights with respect to the TFS Agreements to any purported assumption and assignment or any other transfer of any portion of the TFS Agreements in connection with any proposed sale including regulatory and/or financial adequate assurance of future performance.

19. The TFS Entities reserve all rights and claims with respect to any claims or executory contracts unrelated to, or allegedly unrelated to, the Remaining Assets Sale Transaction(s) and / or the Zokinvy Sale.

20. The TFS Entities reserve their rights with respect to payment owed for both prepetition and post petition 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 their rights and remedies under applicable law, or as otherwise authorized by the Court.

21. The TFS Entities reserve the 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.

WHEREFORE, the TFS Entities respectfully request that authorization to assume the TFS Agreements be conditioned upon the satisfaction of the cure obligations and providing adequate assurance of future performance as set forth herein and for such additional relief as the Court deems just and proper.

Dated: June 11, 2024

Respectfully Submitted,

/s/ Beverly Weiss Manne
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Manufacturing Services LLC*

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CERTIFICATE OF SERVICE

I certify that, on the 12th day of June 2024, I served or caused to be served a true and correct copy of the TFS Entities' *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)* via the Court's CM/ECF notification system to all parties registered to receive such notifications in this case and via email upon the following parties below.

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Dated: June 12, 2024

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