

SIDLEY AUSTIN LLP
Thomas R. Califano (TX Bar No. 24122825)
William E. Curtin (admitted *pro hac vice*)
Anne G. Wallace (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.wallace@sidley.com

SIDLEY AUSTIN LLP
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

*Attorneys for the Debtors
and Debtors in Possession*

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

Related Docket Nos. 13, 94, 331, 350

**DECLARATION OF CRAIG D. WARZNAK
IN SUPPORT OF THE DEBTORS' MOTION FOR
THE SALE OF THE AVEXITIDE 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**

Pursuant to 28 U.S.C. § 1746, I, Craig D. Warznak, hereby declare under penalty of perjury that the following is true and correct to the best of my information, knowledge, and belief:

1. I am a Senior Vice President at SSG Advisors, LLC (“SSG”), an investment banking firm that maintains offices at Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West

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 Avenue, Dallas TX 75201.



Conshohocken, PA 19428, and I am duly authorized to make this declaration on behalf of SSG. I have over ten (10) years of experience in the restructuring industry and extensive experience: (i) marketing companies or their assets for sale, including experience marketing companies in distress and debtors in bankruptcy cases; (ii) raising capital for special situation transactions; and (iii) restructuring companies' balance sheets both in court and out of court. SSG was engaged by the Debtors in March 2024 to aid in the effectuation of a marketing and sale process.

2. On April 1, 2024, J. Scott Victor, a managing director at SSG, submitted a declaration [Docket No. 24] (the "Victor Declaration")² in support of the *Debtors' Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the 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 Motion") [Docket No. 13]. On April 5, 2024, the Court entered an order approving the Bid Procedures Motion (the "Bid Procedures Order") [Docket No. 94].

3. On June 12, 2024, the Debtors filed the *Revised Notice of Sale, Bid Procedures, Auction, and Sale Hearing* [Docket No. 331], which included revised dates and deadlines for the Bid Deadline, Auction, and Sale Hearing for the Avexitide Sale Transaction (the "Revised Bid Procedures").

² Capitalized terms used but not defined herein shall have the meanings given to them in the Victor Declaration, Bid Procedures Order, Revised Bid Procedures, Proposed Avexitide Sale Order, and Avexitide APA.

4. I submit this declaration (the “Warznak Declaration”) in support of the entry of the Debtors’ proposed order approving the Avexitide Sale Transaction (the “Proposed Avexitide Sale Order”).

5. I am authorized to execute this Declaration on the Debtors’ behalf in support of the relief requested in the Proposed Avexitide Sale Order. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge or opinion, information learned from my review of relevant documents, and information I received from the Debtors representatives and professionals. If I were called to testify, I could and would testify to the facts set forth herein.

Avexitide Sale Transaction

6. Based on SSG’s diligence and conversations with the Debtors and their advisors, I believe that the prepetition and postpetition engagement with other interested parties appropriately identified potential bidders for the Avexitide Assets and that entry into the stalking horse purchase agreement (the “Stalking Horse APA”) for \$10,000,000 with Spruce Bioscience, Inc. (the “Stalking Horse Purchaser”) for the Avexitide Assets as set forth in the *Notice of Selection of Stalking Horse Bidder* [Docket No. 333] was the best means to achieve the best available value of the Debtors’ estates for all stakeholders.

7. Throughout the process, SSG continued to interface with potential bidders for the Avexitide Assets to solicit higher or otherwise better proposals from third parties and to facilitate an auction for the Avexitide Assets, as necessary. During the postpetition period, SSG continued to progress discussions with parties and successfully solicited interest from additional potential parties that did not exhibit interest during the prepetition outreach process. This process enabled

the Debtors to secure, in addition to the Stalking Horse APA, a Qualified Bid from a third party and conduct the Avexitide Auction.

8. In accordance with the Revised Bid Procedures, on June 17, 2024, the Debtors conducted an auction via Zoom for the sale of the Avexitide Assets with 122 rounds of bidding over three (3) hours. Following the conclusion of the Avexitide Auction, as set forth in the *Notice of Selection of Winning Bid* [Docket No. 350], the Debtors selected Amylyx Pharmaceuticals, Inc. (the “Purchaser”) as the Winning Bidder with a Purchase Price of \$35,100,000 *plus* the aggregate amount of Determined Cure Costs and Assumed Liabilities (the “Winning Bid”) with Spruce Bioscience, Inc. as the Back-Up Bidder at \$35,000,000 *plus* the aggregate amount of Determined Cure Costs and Assumed Liabilities. I believe that the Purchaser is willing and able to consummate the transaction contemplated by the Purchaser’s asset purchase agreement (the “Avexitide APA”) on the terms set forth therein and the Debtors intend to consummate this value-maximizing transaction therein (the “Avexitide Sale Transaction”).

9. I believe that the Debtors, with the assistance of their advisors, conducted the marketing, sale process, and auction for the Avexitide Assets in a manner that was thorough, fair, designed to achieve the best available value for the Debtors’ estates for all stakeholders and in compliance with the Bid Procedures Order and the Revised Bid Procedures in all material respects.

10. All parties that expressed a potential interest in the Avexitide Assets were afforded a full and equal opportunity to conduct diligence and submit offers for the Avexitide Assets and to object or otherwise be heard with respect to the sale process. I believe that at all times, the Debtors’ negotiations and discussions with the potential bidders, including the Debtors’ negotiations and discussions with the Purchaser, for the Avexitide Assets were conducted in good

faith, without collusion, and at arm's length and by parties who were represented by their own counsel and advisors.

11. I believe that the Purchaser, SSG, the Debtors, and the Debtors' other professionals acted in good faith throughout the sale process. I am not aware of any communications or collusion between the Purchaser and any other potential bidders for the Avexitide Assets.

12. Additionally, I believe that the sale of the Avexitide Assets to the Purchaser pursuant to the terms of the Avexitide APA, is in the best interest of the Debtors, their estates, and their creditors because the Winning Bid is the highest or otherwise best offer available for the Avexitide Assets and will result in the best available recoveries for the Debtors' creditors. I believe that the Back-Up Bid, submitted by Spruce Biosciences, Inc., is the second highest and best offer available.

13. The Avexitide APA was not entered into for the purpose of hindering, delaying, or defrauding creditors. Neither the Debtors nor the Purchaser entered into the Avexitide APA or are consummating the Avexitide Sale Transaction with any fraudulent or otherwise improper purpose.

14. The Purchaser and the Debtors are not affiliates of each other, and no common identity of incorporators, directors, or controlling shareholders exists between the Purchaser and Debtors.

15. In light of the Debtors' comprehensive sale and marketing process pre- and postpetition, I do not believe that further marketing of the Avexitide Assets or an extension of the Avexitide Bid Deadline would have resulted in higher or otherwise better offers for the Avexitide Assets, and I believe that the Avexitide Assets were properly exposed to the market. Based on the foregoing, I believe that the Debtors have a sound business justification for entering into the Avexitide APA and consummating the sale of the Avexitide Assets to the Purchaser.

16. Furthermore, to ensure the seamless transfer of the Avexitide Assets, and thereby maximize their value, I believe that time is of the essence in consummating the Avexitide Sale Transaction. As such, I believe the stay established by Bankruptcy Rules 6004 and 6006 should be lifted to allow for a speedy transfer.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true correct to the best of my knowledge, information and belief.

Date: June 25, 2024

/s/ Craig D. Warznak
Craig D. Warznak
Senior Vice President