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*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)

**DEBTORS' MOTION TO MODIFY
ORDER APPROVING NOTIFICATION AND
HEARING PROCEDURES FOR CERTAIN TRANSFERS OF AND
DECLARATIONS OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txnb.uscourts.gov> at least **two (2) business days** before the start of the hearing. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk and filed on the docket at least **two (2) business days** before the start of the hearing. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on July 29, 2024 at 9:30 a.m. prevailing Central Time in Courtroom #1, Floor 14, 1100 Commerce Street, Room 1421, Dallas, TX 75242-1496.

You may participate in the hearing either in person or by an audio and video connection. Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1.650.479.3207.

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, Texas 75201.



The access code is 2304-154-2638. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan's home page. The meeting code is 2304-154-2638. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jernigan's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Revised Order"), modifying the relief granted in the *Order Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. 82] (the "NOL Order")² to shorten the Debtors' period of time in which to object to (i) any Declaration of Proposed Transfer from thirty (30) calendar days to seven (7) calendar days and (ii) any Declaration of Intent to Claim a Worthless Stock Deduction from twenty (20) calendar days to seven (7) calendar days. In support of this motion (this "Motion"), the Debtors respectfully state as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Northern District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the Court's entry of a final order in connection with this motion.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the NOL Order.

Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”).

Background

4. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

5. On April 1, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these cases.

6. On June 10, 2024, the United States Trustee (the “U.S. Trustee”) filed the notice of the *Appointment of the Official Unsecured Creditors’ Committee* [Docket No. 322], by which a committee of unsecured creditors was formed (the “Committee”). On June 26, 2024, the U.S. Trustee filed the notice of the *Appointment of the Official Equity Security Holders’ Committee* [Docket No. 359], by which a committee of equity security holders was formed (the “Equity Committee”).

The NOL Order

7. On April 5, 2024, the Court entered the NOL Order, approving the Debtors’ procedures for certain transfers of and declarations of worthlessness with respect to common stock. The NOL Order outlines certain procedures holders of Common must comply with, including (i) filing a Declaration of Proposed Transfer if a Substantial Shareholder intends to accumulate or reduce the amount of Common Stock owned such that the individual or entity would become or

cease to become a Substantial Shareholder and (ii) filing a Declaration of Intent to Claim a Worthless Stock Deduction if a 50-Percent Shareholder intends to claim any deduction for worthless for a taxable year ending before the Debtors' emergency from chapter 11 protection.

8. In connection with any Declaration of Proposed Transfer, the Debtors currently have thirty (30) calendar days in which to object to any Declaration of Proposed Transfer. Specifically, paragraph (d) of Exhibit 1 to the NOL Order provides:

The Debtors shall have thirty (30) calendar days after receipt of a Declaration of Proposed Transfer to file with the Court and serve on such Substantial Shareholder or potential Substantial Shareholder an objection to any proposed transfer of Beneficial Ownership of Common Stock, described in the Declaration of Proposed Transfer on the grounds that such transfer might adversely affect the Debtors' ability to utilize their Tax Attributes. If the Debtors file an objection, such transaction will remain ineffective unless such objection is withdrawn by the Debtors, or such transaction is approved by a final and non-appealable order of the Court. If the Debtors do not object within such thirty-day period, such transaction can proceed solely as set forth in the Declaration of Proposed Transfer. Further transactions within the scope of this paragraph must be the subject of additional notices in accordance with the procedures set forth herein, with an additional thirty-day (30-day) waiting period for each Declaration of Proposed Transfer. To the extent that the Debtors receive an appropriate Declaration of Proposed Transfer and determine in their business judgment not to object, they shall provide notice of that decision as soon as is reasonably practicable to any statutory committee(s) appointed in these chapter 11 cases.

See NOL Order, Exhibit 1.

9. In connection with any Declaration of Intent to Claim a Worthless Stock Deduction, the Debtors currently have twenty (20) calendar days in which to object to a Declaration of Intent to Claim a Worthless Stock Deduction. Specifically, paragraph (b)(i) of Exhibit 1 to the NOL provides:

The Debtors and the other Notice Parties shall have twenty (20) calendar days after receipt of a Declaration of Intent to Claim a Worthless Stock Deduction to file with the Court and serve on such 50-Percent Shareholder an objection to any proposed claim of worthlessness described in the Declaration of Intent to Claim a Worthless Stock Deduction on the grounds that such claim might adversely affect the Debtors' ability to utilize their Tax Attributes.

See NOL Order, Exhibit 1.

Relief Requested

10. By this Motion, the Debtors request entry of the Revised Order, which modifies the relief granted in the NOL Order. Specifically, the Debtors seek authority to amend the NOL Order to (i) shorten the period in which the Debtors can object to a Declaration of Proposed Transfer from thirty (30) calendar days to seven (7) calendar days and (ii) shorten the period in which the Debtors can object to a Declaration of Intent to Claim a Worthless Stock Deduction from twenty (20) calendar days to seven (7) calendar days.

11. The Debtors further request that, except as otherwise expressly provided in the Revised Order, all other provisions of the NOL Order remain unaffected and in full force and effect in these chapter 11 cases.

Basis for Relief Requested

12. Circumstances in the Debtors' cases have changed drastically since the NOL Order was entered. The Debtors' equity security holders are now expected to receive a recovery on account of their shares, and therefore would benefit from a shortened time period relating to objections to allow for more expedient trading decisions.

13. Further, the Debtors recently received a request from the U.S. Trustee and counsel to the U.S. Securities and Exchange Commission to shorten the period in which the Debtors can object to a Declaration of Proposed Transfer or a Declaration of Intent to Claim a Worthless Stock Deduction, and file this Motion to address that request .

Reservation of Rights

14. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy

law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

NOTICE

15. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for the states in which the Debtors conduct business; (i) holders of 4.5 percent or more of Beneficial Ownership of outstanding Common Stock; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

[Remainder of page intentionally left blank.]

The Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto, granting the relief requested herein and granting such other relief as the Court deems appropriate under the circumstances.

Dated: July 15, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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Attorneys for the Debtors and Debtors in Possession

Certificate of Service

I certify that on July 15, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas.

/s/ Thomas R. Califano
Thomas R. Califano

Exhibit A

Proposed Order

**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)

**REVISED ORDER APPROVING
NOTIFICATION AND HEARING PROCEDURES
FOR CERTAIN TRANSFERS OF AND DECLARATIONS
OF WORTHLESSNESS WITH RESPECT TO COMMON STOCK**

Upon the motion (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), for entry of an order (this “Revised Order”) modifying the Procedures related to transfers of, and declarations of worthlessness with

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² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion or the NOL Order, as applicable.

respect to, Beneficial Ownership of Common Stock, as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on a final basis as set forth herein.
2. The *Order Approving the Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock* [Docket No. 82] (the "NOL Order") shall be modified to shorten the Debtors' period of time in which to object to (i) any Declaration of Proposed Transfer from thirty (30) calendar days to seven (7) calendar days and (ii) any Declaration of Intent to Claim a Worthless Stock Deduction from twenty (20) calendar days to seven (7) calendar days.
3. Except as expressly set forth in this Revised Order, all other provisions of the NOL Order shall remain unaffected and in full force and effect in these chapter 11 cases.
4. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Revised Order.

END OF ORDER

Submitted By:

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