

Your claim can be filed electronically on Verita's website at <https://epoc.veritaglobal.net/Eiger>

United States Bankruptcy Court for the Northern District of Texas		
Indicate Debtor against which you assert a claim by checking the appropriate box below. (Check only one Debtor per claim form.)		
<input checked="" type="checkbox"/> Eiger BioPharmaceuticals, Inc. (Case No. 24-80040)	<input type="checkbox"/> EB Pharma LLC (Case No. 24-80042)	<input type="checkbox"/> EigerBio Europe Limited (Case No. 24-80044)
<input type="checkbox"/> EBPI Merger Inc. (Case No. 24-80041)	<input type="checkbox"/> Eiger BioPharmaceuticals Europe Limited (Case No. 24-80043)	

Modified Official Form 410 Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Other than a claim under 11 U.S.C. § 503(b)(9), this form should not be used to make a claim for an administrative expense arising after the commencement of the case.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed.

Part 1: Identify the Claim			
1. Who is the current creditor?	<p>Fujifilm Diosynth Biotechnologies, U.S.A, Inc. _____</p> <p style="font-size: small;">Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>		
2. Has this claim been acquired from someone else?	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>		
3. Where should notices and payments to the creditor be sent?	<table style="width: 100%; border: none;"> <tr> <td style="width: 60%; border: none; vertical-align: top;"> <p>Where should notices to the creditor be sent?</p> <p>c/o Michael L. Schuster, Polsinelli PC</p> <p>Name _____</p> <p>1401 Lawrence Street, Suite 2300</p> <p>Number Street _____</p> <p>Denver, CO 80231</p> <p>City State ZIP Code _____</p> <p>USA</p> <p>Country _____</p> <p>Contact phone 720-931-1188</p> <p>Contact email mschuster@polsinelli.com</p> </td> <td style="width: 40%; border: none; vertical-align: top;"> <p>Where should payments to the creditor be sent? (if different)</p> <p>Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Country _____</p> <p>Contact phone _____</p> <p>Contact email _____</p> </td> </tr> </table> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>	<p>Where should notices to the creditor be sent?</p> <p>c/o Michael L. Schuster, Polsinelli PC</p> <p>Name _____</p> <p>1401 Lawrence Street, Suite 2300</p> <p>Number Street _____</p> <p>Denver, CO 80231</p> <p>City State ZIP Code _____</p> <p>USA</p> <p>Country _____</p> <p>Contact phone 720-931-1188</p> <p>Contact email mschuster@polsinelli.com</p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Name _____</p> <p>Number Street _____</p> <p>City State ZIP Code _____</p> <p>Country _____</p> <p>Contact phone _____</p> <p>Contact email _____</p>
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4. Does this claim amend one already filed?	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____</p> <p style="text-align: right; font-size: small;">MM / DD / YYYY</p>		
5. Do you know if anyone else has filed a proof of claim for this claim?	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>		



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 202,280.00 Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
 Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
 Limit disclosing information that is entitled to privacy, such as health care information.

Master Bioprocessing Services Agreement
Protective Claim being filed pending assumption or rejection of executory contract. All rights reserved. See attached cure objection incorporated herein by reference.

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate: If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____

Basis for perfection: _____
 Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____%
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes . Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)? No Yes. Check all that apply:

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)? No Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- I am the creditor.
- I am the creditor's attorney or authorized agent.
- I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 7/22/2024
MM / DD / YYYY

/s/ Michael L. Schuster, Esq.
Signature

Print the name of the person who is completing and signing this claim:

Name Michael L. Schuster
First name Middle name Last name

Title Counsel

Company Polsinelli PC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1401 Lawrence Street Suite 2300
Number Street
Denver, CO 80231 USA
City State ZIP Code Country

Contact phone 720-931-1188 Email mschuster@polsinelli.com

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mschuster@polsinelli.com

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.,¹ §
§
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:

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.



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 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* [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

Trinitee G. Green, Texas Bar No. 24081320

P. Kyle Cheves, Texas Bar No. 24126723

2950 N. Harwood, Suite 2100

Dallas, TX 75201

Phone: 214.397.0030

Email: tggreen@polsinelli.com

kcheves@polsinelli.com

By: /s/ Michael L. Schuster

Michael L. Schuster, *pro hac vice* forthcoming

1401 Lawrence Street, Suite 2300

Denver, CO 80202

Phone: (720) 931-1188

Email: mschuster@polsinelli.com

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)
Anne G. Wallice (anne.wallice@sidley.com)

Office of the United States Trustee

1100 Commerce Street, Room 976
Dallas, TX 75242
Attn: Elizabeth A. Young (elizabeth.a.young@usdoj.gov)

Counsel to Innovatus

Bradley Arant Boult Cummings LLP
Roger Jones (rjones@bradley.com)
Jay Bender (jbender@bradley.com)

Official Committee of Unsecured Creditors²

Rob Howey (rob.howey@connorgp.com)
Brian Chaiken (bchaiken@biorasi.com)

By: /s/ Trinitee G. Green
Trinitee G. Green

² 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		-
TOTALS:				76,129	(30,000)	75,876	80,275	95,000
GRAND TOTAL:				202,280				