

Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242
(214) 767-8967

Elizabeth Ziegler Young
for the United States Trustee
elizabeth.a.young@usdoj.gov

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

In re: § **Case No. 24-80040-sgj11**
§ **Chapter 11**
Eiger BioPharmaceuticals, Inc., et al.¹, § **(Jointly Administered)**
§
Debtors. §

**WITNESS AND EXHIBIT LIST ON THE UNITED STATES TRUSTEE’S OBJECTION
TO CONFIRMATION OF AMENDED JOINT PLAN OF LIQUIDATION OF EIGER
BIOPHARMACEUTICALS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO
CHAPTER 11 OF THE BANKRUPTCY CODE**

TO THE HONORABLE STACEY J. JERNIGAN, CHIEF U.S. BANKRUPTCY JUDGE:

The United States Trustee for Region 6 files this Witness and Exhibit List in connection with his *United States Trustee’s Objection to Confirmation of Third Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 587]

Witnesses

1. Dr. David Apelian.
2. Any other witness designated by any other party.

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.



Exhibits

Exhibit Number	Description	Admitted
UST-A	Third Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (ECF No. 571]	
UST-B	<i>In re Ebix, Inc. et al</i> , Transcript of Ruling on Amended Chapter 11 Plan, before the Honorable Scott W. Everett held on August 2, 2024, Case No. 24-80004-SWE-11, United States Bankruptcy Court for the Northern District of Texas	
UST-C	<i>In re 4 West Holdings, Inc.</i> , Transcript of Proceedings before the Honorable Scott W. Everett held on October 18, 2022, on Motion to Enforce Confirmation Order and Releases and Injunctions Thereunder, Case No. 18-30777-SWE-11, United States Bankruptcy Court for the Northern District of Texas, Docket Entry No. 2086	

The United States Trustee also designates all exhibits referenced in any witness and exhibit lists filed by any other party. The United States Trustee reserves the right to use testimony and documents offered into evidence by other parties. The United States Trustee also reserves the right to introduce any other pleading filed of record in this case and to offer into evidence such additional documents as may be appropriate for impeachment purposes. Copies of the United States Trustee’s Exhibits are attached at the end of this document.

DATED: September 3, 2024

Respectfully submitted,

KEVIN M. EPSTEIN
UNITED STATES TRUSTEE

/s/ Elizabeth Ziegler Young
Elizabeth Ziegler Young
Texas State Bar No. 24086345 (Also by New York)
Office of the United States Trustee
1100 Commerce Street, Room 976
Dallas, Texas 75242

Certificate of Service

The undersigned counsel certifies that copies of the foregoing document were served on September 3, 2024 via ECF to those parties requesting service via ECF in this case.

/s/ Elizabeth Ziegler Young
Elizabeth Ziegler Young

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)

NOTICE OF FILING OF THIRD AMENDED PLAN

PLEASE TAKE NOTICE that on July 15, 2024, the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) filed the *Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 424] (the “Plan”) with the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

PLEASE TAKE FURTHER NOTICE that on July 28, 2024, the Debtors filed the *Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 455-1] (the “Amended Plan”) with the Court.

PLEASE TAKE FURTHER NOTICE that on July 30, 2024, the Debtors filed the solicitation version of the Amended Plan [Docket No. 475-1] with the Court.

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.

PLEASE TAKE FURTHER NOTICE that on August 15, 2024, the Debtors filed the *Second Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 517-1] (the “Second Amended Plan”) with the Court.

PLEASE TAKE FURTHER NOTICE that the Debtors hereby file the *Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (the “Third Amended Plan”), attached hereto as **Exhibit A**.²

PLEASE TAKE FURTHER NOTICE that, for convenience of the Court and parties in interest, a redline reflecting the changes made in the Third Amended Plan from the Second Amended Plan is attached hereto as **Exhibit B**. The Debtors reserve the right to further amend, supplement, or modify the Third Amended Plan.

PLEASE TAKE FURTHER NOTICE that a hearing to consider confirmation of the Third Amended Plan (the “Combined Hearing”) will be held on **September 5, 2024 at 9:30 a.m. (prevailing Central Time)** in Courtroom #1, 14th Floor, 1100 Commerce Street, Dallas, Texas, 75242 before the Honorable Stacey G. C. Jernigan.

PLEASE TAKE FURTHER NOTICE parties may participate in the Combined Hearing either in person or by an audio and video connection. Audio communication will be by use of the Court’s dial-in facility. Parties may access the facility at (650) 479-3207. Video communication will be by the 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.

[Remainder of page intentionally left blank]

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Third Amended Plan.

Dated: August 28, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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

and

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

Certificate of Service

I certify that on August 28, 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

Third Amended Plan

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)

**THIRD AMENDED JOINT PLAN OF LIQUIDATION OF
EIGER BIOPHARMACEUTICALS, INC. AND ITS DEBTOR
AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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.

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INTRODUCTION

The Debtors propose this Plan under section 1121 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement Filed contemporaneously with this Plan for a discussion of the Debtors' history, business, prepetition capital structure, and Liquidation Analysis, as well as a summary and analysis of the Plan and certain related matters, including distributions to be made under this Plan.

Supplemental agreements and documents referenced in this Plan and the Disclosure Statement are available for review on both the Bankruptcy Court's docket and on the Debtors' case information website: <https://veritaglobal.net/eiger>.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A. Defined Terms

“Administrative Claim” means a Claim of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (1) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating Debtors' business; (2) Allowed Professional Compensation Claims; (3) Statutory Fees; and (4) 503(b)(9) Claims.

“Administrative Claims Bar Date” means 5:00 p.m. prevailing Central Time on the date that is 30 days after the Effective Date and is the deadline by which a claimant must file a request for payment of any Administrative Claim (excluding Professional Compensation Claims) arising on or after the Petition Date, through and including the Effective Date.

“Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code as if the reference Entity was a debtor in a case under the Bankruptcy Code.

“Aggregate Allowed Prepetition Term Loan Claims Amount” has the meaning set forth in Article III.B.3 of the Plan.

“Allowed” means, with respect to any Claim or Interest, except as otherwise provided herein: (1) a Claim or Interest in a liquidated amount as to which no objection has been Filed prior to the applicable claims objection deadline and that is evidenced by a Proof of Claim timely Filed by the applicable Bar Date or that is not required to be evidenced by a Filed Proof of Claim under the Plan, the Bankruptcy Code, or a Final Order; (2) a Claim or Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and for which no Proof of Claim has been timely Filed in an unliquidated or a different amount; (3) a Claim or Interest that is upheld or

otherwise Allowed (a) pursuant to the Plan (including any Claim or Interest that is upheld or otherwise Allowed pursuant to a settlement executed by a Debtor or a Wind-Down Debtor in accordance with the Plan), (b) in any stipulation that is approved by the Bankruptcy Court, (c) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith, or (d) by Final Order (including any such Claim to which the Debtors had objected or which the Bankruptcy Court had disallowed prior to such Final Order); *provided* that with respect to a Claim or Interest described in clauses (1) through (3) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been or, in the Debtors' or the Wind-Down Debtors' reasonable good faith judgment, may be interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim or Interest, as applicable, shall have been allowed by a Final Order; *provided, further*, that no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor. A Proof of Claim Filed after the Bar Date is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. "Allow," "Allowing," and "Allowance" shall have correlative meanings.

"Asset Purchase Agreements" means, collectively, (1) the Avexitide Asset Purchase Agreement, (2) the Zokinvy Asset Purchase Agreement, (3) the Lonafarnib Asset Purchase Agreement, (4) the Lambda Asset Purchase Agreement, or (5) any other asset purchase agreement approved by the Sale Orders.

"Avexitide Asset Purchase Agreement" means that certain *Asset Purchase Agreement by and between Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of June 21, 2024* [Docket No. 350, Ex. A] and as from time to time amended in accordance with the Avexitide Sale Order or further order of this Court.

"Avexitide Assets" means the assets related to the Avexitide Asset Purchase Agreement.

"Avexitide Sale Order" means the *Order (I) Approving the Sale of the Debtors' Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376].

"Avoidance Actions" means any and all claims and Causes of Action which any of the Debtors, the Estates, or any other appropriate party in interest has asserted or may assert under sections 502, 510, 542, 544, 545, or 547 through 553 of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

"Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas.

“Bankruptcy Rules” means Federal Rules of Bankruptcy Procedure.

“Bar Date” means, with respect to any particular Claim, the applicable date set by the Bankruptcy Court as the last day for Filing Proofs of Claim or requesting allowance of Administrative Claims in the Chapter 11 Cases for such Claim, whether pursuant to the Confirmation Order, the Plan, the *Order (I) Setting Bar Dates for Filing Proofs of Claim; (II) Approving Form and Manner for Filing Proofs of Claim; and (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests Notice of Bar Dates* [Docket No. 375], or any other applicable order of the Bankruptcy Court.

“Bid Procedures Order” means that certain *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* [Docket No. 94] entered in the Chapter 11 Cases.

“Business Day” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of Texas.

“Cash” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

“Cash Collateral Order” means that certain *Final Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; and (III) Modifying Automatic Stay* [Docket No. 161] entered in the Chapter 11 Cases or such further interim or final order authorizing the Debtors’ use of cash collateral, as applicable.

“Causes of Action” means without limitation, any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include the following: (1) Avoidance Actions; (2) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (3) the right to object to or otherwise contest Claims or Interests; (4) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (5) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Chapter 11 Cases” means those certain chapter 11 bankruptcy cases of the Debtors jointly administered under the caption *In re Eiger BioPharmaceuticals, Inc., et al.*, Case No. 24-80040 (SGJ) (Bankr. N.D. Tex. 2024).

“Claim” means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

“Claims Objection” means an objection to the allowance of a claim as set forth in section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and/or any Bankruptcy Court order regarding omnibus claims objections.

“Claims Objection Bar Date” means 5:00 p.m. Central Time on the date that is sixty (60) days after the Effective Date and is the deadline by which a Claims Objection must be made; *provided* that the Claims Objection Bar may be extended upon presentment of an order to the Bankruptcy Court by the Plan Administrator or Liquidating Trustee, as applicable.

“Claims Register” means the register managed by the Notice and Claims Agent reflecting Filed Proofs of Claim.

“Class” means a category of Holders of Claims or Interests pursuant to section 1122(a) of the Bankruptcy Code.

“Combined Hearing” means the hearing(s) conducted by the Bankruptcy Court to consider (1) final approval of the adequacy of the Disclosure Statement under section 1125 of the Bankruptcy Code and (2) confirmation of the proposed Plan under section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

“Conditions Precedent to the Effective Date” means the conditions set forth in Article VIII.A of this Plan.

“Confirmation” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Date” means the date on which Confirmation occurs.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code.

“Consummation” means the occurrence of the Effective Date.

“Cure” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed or assumed and assigned by such Debtor under section 365 of the Bankruptcy Code amounts, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

“D&O Liability Insurance Policies” means, collectively, each director and officer liability insurance policy and any “tail policy” to which any of the Debtors are a party as of the Effective Date.

“Debtor Releases” means the releases set forth in Article IX.A herein.

“Debtors” means, collectively, Eiger BioPharmaceuticals, Inc., EBPI Merger Inc., EB Pharma LLC, Eiger BioPharmaceuticals Europe Limited, and EigerBio Europe Limited.

“Definitive Documents” means this Plan (including, for the avoidance of doubt, the Plan Supplement and any and all exhibits, supplements, appendices, and schedules hereto and thereto), the Confirmation Order, the Disclosure Statement Order (including all exhibits, supplements, appendices, and schedules thereto), the Solicitation Materials, including the Disclosure Statement, and any such other agreements, instruments, and documents as may be necessary or reasonably desirable to consummate and document the Liquidation Transactions.

“Disallowed” means all or that portion, as applicable, of any Claim or Interest which: (1) has been disallowed under the Plan, the Bankruptcy Code, applicable law or by a Final Order; (2) is scheduled by the Debtors as being in an amount of zero dollars (\$0.00) or as contingent, disputed, or unliquidated and as to which no Proof of Claim was timely filed or deemed timely filed prior to the applicable Bar Date pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court, including the order approving the Bar Date, or otherwise deemed timely filed under applicable law; or (3) is not scheduled by the Debtors and as to which no Proof of Claim or request for allowance of an Administrative Claim (as applicable) has been timely filed or deemed timely filed prior to the applicable Bar Date pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

“Disbursing Agent” means the Debtors, the Wind-Down Debtors, or the Liquidating Trustee or the Person or Entit(ies) selected by the Liquidating Trustee, as applicable, to make or to facilitate distributions under the Plan, which Entity may include the Notice and Claims Agent.

“Disclosure Statement” means the related disclosure statement with respect to the Plan, as the same may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

“Disclosure Statement Motion” means the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 426].

“Disclosure Statement Order” means the order approving the Disclosure Statement.

“Disputed” means, with respect to any Claim or Interest, any Claim or Interest or any portion thereof that is not yet Allowed or Disallowed.

“Distributable Cash” means the Cash on hand of the Debtors or, after the Effective Date, the Liquidating Trust available for distribution as of the Effective Date or such applicable later date pursuant to the terms of the Plan.

“Distribution Record Date” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in a Final Order of the Bankruptcy Court.

“Effective Date” means the date that is the first Business Day after the Confirmation Date on which (1) all Conditions Precedent to the Effective Date have been satisfied or waived in accordance with the Plan and (2) no stay of the Confirmation Order is in effect. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

“Eiger Conversion” has the meaning set forth in Article IV.C.1 of the Plan.

“Employment Agreement” means any agreement relating to the employment of any of the Debtors’ current employees.

“Entity” has the meaning as defined in section 101(15) of the Bankruptcy Code.

“Equity Committee” means the official committee of equity security holders appointed by the U.S. Trustee under section 1102(b) of the Bankruptcy Code in these Chapter 11 Cases on June 25, 2024 [Docket No. 359, as amended, Docket No. 438].

“Estate” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

“Exculpated Parties” means collectively, (1) the Debtors and the Wind-Down Debtors, (2) any Statutory Committee and each of its members, (3) the Debtors’ Professionals, including Sidley Austin LLP, SSG Advisors, LLC, Alvarez & Marsal North America, LLC, Neligan LLP, and Verita Global f/k/a Kurtzman Carson Consultants, LLC, (4) the Professionals of any Statutory Committee, and (5) any directors and officers of the Debtors as of the Petition Date.

“Executory Contract” means a contract to which any of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Existing Equity Interest Recovery Pool” means all Distributable Cash of the Debtors or the Wind-Down Debtors (as applicable) less (1) an amount of Cash required to pay Administrative Claims and Priority Tax Claims Allowed as of the Effective Date, (2) an amount of Cash required to fund the Wind-Down Budget, (3) an amount of Cash required to fund the Professional Fee Reserve Account in accordance with the Plan, (4) an amount of Cash required to satisfy the Other Secured Claims and the Other Priority Claims pursuant to the Plan, (5) an amount of Cash required to fund the Prepetition Term Loan Claims Escrow Account, and (6) an amount of Cash required to satisfy the General Unsecured Claims pursuant to the Plan; *provided* that should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool as soon as practicable after the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

“Existing Equity Interests” means an Interest in a Debtor existing as of the Petition Date.

“Federal Judgment Rate” means the interest rate provided under 28 U.S.C. 1961(a), calculated as of the Petition Date.

“File,” “Filed,” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“Final Order” means an order or judgment of the Bankruptcy Court or court of competent jurisdiction with respect to the subject matter that has not been reversed, stayed, modified, or amended, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing will have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous Bankruptcy Rule (or analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code, may be Filed with respect to such order or judgment.

“General Unsecured Claim” means any Claim that is not an Administrative Claim (including a Professional Compensation Claim), a Priority Tax Claim, an Other Secured Claim, an Other Priority Claim, a Prepetition Term Loan Claim, or an Intercompany Claim.

“Governmental Unit” means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

“Holder” means any Entity that holds a Claim or Interest, as applicable.

“Impaired” means with respect to any Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Indemnification Obligations” means, collectively, each of the Debtors’ indemnification obligations (whether arising from charters, bylaws, limited liability company agreements, other organizational documents, or contracts) in place as of the Effective Date to indemnify the Debtors’ officers, directors, agents, or employees serving in such roles as of the Petition Date with respect to all present and future actions, suits, and proceedings against the Debtors or such officers, directors, agents, or employees based upon any act or omission for or on behalf of the Debtors.

“Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtors and all agreements, documents, or instruments relating thereto; *provided* that “Insurance Policies” does not include any such policies that are, or have been, assumed and assigned to the Purchaser on or before the Effective Date pursuant to the Asset Purchase Agreements, the Sale Orders, and section 365 of the Bankruptcy Code.

“Intercompany Claim” means a Claim held by a Debtor against a Debtor.

“Intercompany Interests” means all interests of any Debtor in any other Debtor.

“Interest(s)” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

“IRS Form” means IRS Form W-9, W-8BEN, any acceptable substitute, or any other tax information form that the Debtors or the Liquidating Trustee may require from a Holder of a Claim for a distribution under the Plan.

“Lambda Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024*, annexed as Exhibit B to the Lonafarnib and Lambda Sale Order and as from time to time amended in accordance with the Lonafarnib and Lambda Sale Order or further order of this Court.

“Lambda Assets” means the assets related to the Lambda Asset Purchase Agreement.

“Law” means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

“Lien” means a lien as defined in section 101(37) of the Bankruptcy Code.

“Liquidation” means the liquidation of the Debtors through the Liquidation Transactions in accordance with the terms of this Plan.

“Liquidation Analysis” means the analysis of a liquidation scenario under chapter 7 of the Bankruptcy Code for these Debtors, to be filed as part of the Plan Supplement.

“Liquidation Transactions” means the transactions described in Article IV of the Plan.

“Liquidating Trust Agreement” means the liquidating trust agreement included in the Plan Supplement, as the same may be amended, modified, or supplemented from time to time.

“Liquidating Trust Assets” means all property and Cash of the Estates, net of the Wind-Down Budget and the Professional Fee Reserve Account, which shall vest in and be administered by the Plan Administrator, and the Prepetition Term Loan Claims Escrow Account, to be administered as provided herein.

“Liquidating Trust” means the vehicle created pursuant to this Plan and the Liquidating Trust Agreement to take the following actions: (1) administer the Liquidating Trust Assets; (2) File and prosecute objections and/or settlements of disputed Claims; (3) upon resolution of

disputed Claims, make distributions as appropriate; and (4) exercise discretion to evaluate and prosecute Retained Causes of Action, all as set forth more particularly in Article IV of this Plan and in the Liquidating Trust Agreement.

“Liquidating Trustee” means the Person or Entity appointed, with the consent of the Debtors, the Unsecured Creditors’ Committee, and the Equity Committee, on the Effective Date to administer the Liquidating Trust in accordance with this Plan and the Liquidating Trust Agreement.

“Liquidating Trust Oversight Committee” means the Persons or Entities appointed, pursuant to Article IV of this Plan, on the Effective Date to supervise the Liquidating Trustee in the discharge of the Liquidating Trustee’s duties as set forth in this Plan and the Liquidating Trust Agreement.

“Lonafarnib and Lambda Sale Order” means the *Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 558].

“Lonafarnib Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024*, annexed as Exhibit A to the Lonafarnib and Lambda Sale Order and as from time to time amended in accordance with the Lonafarnib and Lambda Sale Order or further order of this Court.

“Lonafarnib Assets” means the assets related to the Lonafarnib Asset Purchase Agreement.

“Marketing Process” means the process for the marketing and sale of all or substantially all of the Debtors’ assets, or any combination thereof, pursuant to the Bid Procedures Order.

“Merck License” means that certain License Agreement dated September 3, 2010 by and between Debtor Eiger BioPharmaceuticals, Inc. and Merck Sharp & Dohme LLC (as successor in interest to Merck Sharp & Dome Corp., as successor in interest to Schering Corporation) as amended.

“Merck Side Letters” means, collectively, each “Merck Side Letter” as defined in, respectively, the Zokinvy Asset Purchase Agreement and the Lonafarnib Asset Purchase Agreement.

“Notice and Claims Agent” means Verita Global f/k/a Kurtzman Carson Consultants, LLC, in its capacity as noticing, claims, and solicitation agent for the Debtors.

“OCP” means an ordinary course professional whose retention and compensation has been authorized by the Bankruptcy Court pursuant to the OCP Order.

“OCP Order” means the order entered by the Bankruptcy Court approving the Debtors’ motion or motions to retain and compensate certain OCPs in the ordinary course of business [Docket No. 254].

“Other Priority Claim” means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

“Other Secured Claim” means any Secured Claim other than a Prepetition Term Loan Claim.

“Person” means a “person” as defined in section 101(41) of the Bankruptcy Code.

“Petition Date” the date on which each of the Debtors Filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing these Chapter 11 Cases, or April 1, 2024.

“Plan” means this plan under chapter 11 of the Bankruptcy Code, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or the terms hereof, as the case may be, including the Plan Supplement, which is incorporated herein by reference, including any and all exhibits, supplements, appendices, and schedules hereto and thereto.

“Plan Administrator” means the Person or Entity appointed by the Debtors, in consultation with the Unsecured Creditors’ Committee and Equity Committee, on the Effective Date to administer and wind down the Debtor’s remaining business operations including (1) transition services and obligations required under the Asset Purchase Agreements, including maintaining necessary licensures and government approvals, to the extent required thereunder, all as approved pursuant to the Sale Orders, (2) transition services required under any other asset purchase agreement(s) entered into by the Debtors and any third party and approved by the Bankruptcy Court prior to the Effective Date, (3) administer employee termination and wind-down matters, (4) maintain and distribute the Professional Fee Reserve Account, (5) file any and all tax returns (other than any Liquidating Trust’s tax return), (6) in consultation and cooperation with the Liquidating Trustee, close these Chapter 11 Cases, as described in more detail in Article IV herein, and (7) any other duties or responsibilities set forth herein.

“Plan Distribution” means a payment or distribution to Holders of Allowed Claims or other eligible Entities under this Plan.

“Plan Objection Deadline” means the deadline to file objections to the adequacy of the Disclosure Statement and confirmation of the Plan pursuant to the Disclosure Statement Order.

“Plan Supplement” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may be altered, amended, modified, or supplemented from time to time through the Effective Date in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed two (2) weeks prior to the Plan Objection Deadline by the Debtors, including the following: (1) the Schedule of Assumed Executory Contracts and Unexpired Leases; (2) the Schedule of Retained Causes of Action; and (3) the Liquidating Trust Agreement.

“Prepetition Term Loan Agent” means Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto).

“Prepetition Term Loan Claims” meaning any Claim on account of the Prepetition Term Loan Documents.

“Prepetition Term Loan Claims Escrow Account” has the meaning set forth in Article III.B.3 of the Plan.

“Prepetition Term Loan Claims Escrow Amount” has the meaning set forth in Article III.B.3 of the Plan.

“Prepetition Term Loan Credit Agreement” means that certain Loan and Security Agreement, dated as of June 1, 2022 (as amended, restated, or otherwise modified from time to time).

“Prepetition Term Loan Documents” means the Prepetition Term Loan Credit Agreement and, together with all other documentation executed in connection therewith, including without limitation, the Loan Documents (as defined in the Prepetition Term Loan Credit Agreement) executed in connection therewith, as amended, restated, or otherwise modified from time to time.

“Prepetition Term Loan Secured Parties” means, collectively, the Prepetition Term Loan Agent and the lenders from time to time party to the Prepetition Term Loan Credit Agreement.

“Priority Tax Claim” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“Professional” means a Person or Entity employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, 363, or 331 of the Bankruptcy Code, excluding any ordinary course professional retained pursuant to a Bankruptcy Court order.

“Professional Compensation Claim” means a Claim against a Debtor for professional services rendered and costs incurred between the Petition Date and the Effective Date by a Professional, including estimates through the Effective Date, in connection with the Chapter 11 Cases.

“Professional Fee Reserve Account” means that certain account held by the Debtors for the benefit of Professionals, as more fully described in Paragraph 3(d) of the Cash Collateral Order.

“Proof of Claim” means a proof of claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date.

“Purchaser” means, collectively: (1) Sentyln Therapeutics, Inc., in its capacity as purchaser of the Zokinvy Assets; (2) Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, in its capacity as purchaser of the Avexitide Assets; (3) Eiger InnoTherapeutics, Inc., in its capacity

as purchaser of the Lonafarnib Assets and Lambda Assets; and (4) any purchaser of other of the Debtors' assets pursuant to section 363 of the Bankruptcy Code.

"Related Party" means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person's or Entity's respective heirs, executors, estates, and nominees.

"Released Party" means each of, and in each case in its capacity as such: (1) each Debtor and its Estate; (2) each Wind-Down Debtor and its Estate; (3) each Related Party of each Entity in clause (1) and (2); *provided* that in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases contained in Article IX.A or Article IX.B of the Plan or (y) timely objects to the releases contained in Article IX.A or Article IX.B of the Plan and such objection is not resolved before Confirmation.

"Releasing Party" means each of, and in each case in its capacity as such: (1) each Debtor and its Estate; (2) each Wind-Down Debtor and its Estate; (3) any Statutory Committee and each of its members; (4) the Holders of all Claims or Interests who vote to accept the Plan; (5) the Holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of granting the releases set forth in Article IX.A or Article IX.B of the Plan; (6) the Holders of all Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth in Article IX.A or Article IX.B of the Plan; (7) each current and former Affiliate of each Entity in clauses (1) through (6) and the following clause (8); and (8) each Related Party of each Entity in clause (1) through this clause (8), solely to the extent such Related Party may assert Claims or Causes of Action on behalf of or in a derivative capacity by or through an Entity in clause (1) through clause (7); *provided* that in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in Article IX.A or Article IX.B of the Plan or (y) timely objects to the releases contained in Article IX.A or Article IX.B of the Plan and such objection is not resolved before Confirmation.

"Retained Causes of Action" means those Causes of Action indicated on the Schedule of Retained Causes of Action, which shall vest in the Liquidating Trust or Wind-Down Debtors, as applicable, on the Effective Date.

"Sale Orders" means, collectively: (1) the Zokinvy Sale Order; (2) the Avexitide Sale Order; (3) the Lonafarnib and Lambda Sale Order; and (4) any other order approving the sale of certain of the Debtors' assets pursuant to section 363 of the Bankruptcy Code.

"Sale Transactions" the sale of the assets and related transactions approved by the Sale Orders.

“Sale Transactions Documents” means the definitive documents to effectuate the Sale Transactions.

“Schedule of Assumed Executory Contracts and Unexpired Leases” means the list of Executory Contracts and Unexpired Leases that will be assumed by the Debtors pursuant to Article V of the Plan, which shall be included in the Plan Supplement.

“Schedule of Retained Causes of Action” means the schedule of Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time.

“Schedules” means, collectively, the schedule of assets and liabilities and statement of financial affairs Filed by each Debtor pursuant to section 521 of the Bankruptcy Code, the Bankruptcy Rules, and the official bankruptcy forms, as the same may be amended, modified, or supplemented from time to time.

“Secured” means, when referring to a Claim: (1) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code; or (2) otherwise Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court as a Secured Claim.

“Securities Act” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

“Solicitation Materials” means solicitation materials and documents to be included in the solicitation packages.

“Statutory Committee” means any statutory committee appointed in the Chapter 11 Cases, including the Unsecured Creditors Committee and the Equity Committee.

“Statutory Fees” means all fees due and payable pursuant to section 1930 of Title 28 of the United States Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the United States Code, to the extent applicable.

“Third-Party Release” means such releases by the Releasing Parties as set forth in Article IX.B hereof.

“Unexpired Lease” means a lease to which any of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Unimpaired” means, with respect to a Claim or Class of Claims, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

“Unsecured Creditors Committee” means the official committee of unsecured creditors appointed by the U.S. Trustee under section 1102(b) of the Bankruptcy Code in these Chapter 11 Cases on June 10, 2024 [Docket No. 322].

“U.S. Trustee” means the United States Trustee for the Northern District of Texas.

“Wind-Down” means the post-Effective Date functions of the Plan Administrator as set forth in the definition of “Plan Administrator.”

“Wind-Down Budget” means a budget for any fees, costs, and expenses to be incurred by the Plan Administrator in connection with the Wind-Down of the Debtors from and after the Effective Date as described herein.

“Wind-Down Debtor” means each of the Debtors following the Effective Date.

“Zokinvy Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Sentyln Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order.

“Zokinvy Assets” means the assets related to the Zokinvy Asset Purchase Agreement.

“Zokinvy Sale Order” means the *Order (I) Approving the Sale of the Debtors’ Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162].

B. Rules of Interpretation

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in or exhibit to this Plan, as the same may be amended, waived, or modified from time to time in accordance with the terms hereof. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein and have the same meaning as “in this Plan,” “of this Plan,” “to this Plan,” and “under this Plan,” respectively. The words “includes” and “including” are not limiting. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or plural, shall include both the singular and plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (4) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

C. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Reference to Monetary Figures

All references in this Plan to monetary figures shall refer to the legal tender of the United States of America unless otherwise expressly provided.

E. Controlling Document

In the event of an inconsistency between this Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control unless otherwise specified in such Plan Supplement document. In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided* that if there is determined to be any inconsistency between any provision of this Plan and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan.

ARTICLE II.

ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Compensation Claims) and Priority Tax Claims have not been classified for purposes of voting or receiving distributions, and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims

Except to the extent that a Holder of an Allowed Administrative Claim agrees to a less favorable treatment, each Holder of an Allowed Administrative Claim (other than a Professional Compensation Claim) shall receive, in full and final satisfaction of such Claim, (1) Cash in an amount equal to such Allowed Administrative Claim in accordance with the following: (a) if Allowed on or prior to the Effective Date, then on the Effective Date or as soon as reasonably practicable thereafter; (b) if not Allowed as of the Effective Date, then no later than forty-five (45) days after the date on which an order Allowing such Administrative Claim becomes a Final Order; or (c) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court; or (2) such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

Except for Professional Compensation Claims, and notwithstanding any prior Filing or Proof of Claim, Proofs of Claim seeking the allowance and payment of Administrative Claims must be Filed and served on the Debtors or the Liquidating Trustee (as applicable) and their

counsel by no later than the Administrative Claims Bar Date pursuant to the procedures set forth in the Confirmation Order and the notice of the occurrence of the Effective Date. The burden of proof for the allowance of Administrative Claims remains on the Holder of the Administrative Claims.

Except as otherwise provided in Articles II.B, II.C, or II.D herein, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment of administrative expenses requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtors, the Plan Administrator, the Liquidating Trustee, the Estates, or the Debtors' assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Bankruptcy Court.

B. Professional Compensation Claims

1. Final Fee Applications and Payment of Professional Compensation Claims

All requests for payment of Professional Compensation Claims (other than from OCPs) for services rendered and reimbursement of expenses incurred through the Effective Date shall be filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Objections to Professional Compensation Claims must be Filed and served no later than twenty-one (21) days after the Filing of the Professional Compensation Claims. To the extent any Cash is remaining in the Professional Fee Reserve Account following irrevocable payment in full of all Allowed Professional Compensation Claims (including Allowed Professional Compensation Claims arising after the Confirmation Date), such Cash shall be transferred to the Wind-Down Debtors.

2. Administrative Claims of OCPs

All requests for payment of Professional Compensation Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Compensation Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Compensation Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Plan Administrator (as applicable) from the Professional Fee Reserve Account as soon as reasonably practicable after such Professional Compensation Claims are Allowed pursuant to the OCP Order.

3. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable). Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the

Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) may employ and pay any professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) shall pay, within ten business days after submission of a detailed invoice such reasonable claims for compensation or reimbursement of expenses incurred by the professionals of the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable). If the Debtors, the Plan Administrator, or the Liquidating Trustee, in consultation with the Prepetition Term Loan Agent, dispute the reasonableness of any such invoice, the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

4. Professional Fee Reserve Account

On the Effective Date, the Debtors shall fund an amount in Cash into the Professional Fee Reserve Account equal to (a) the aggregate accrued and unpaid Professional Compensation Claims as of the Effective Date (which shall be estimated by each applicable Professional in its reasonable discretion based on the amount of then-accrued Professional Compensation Claims plus a reasonable estimate of fees and expenses that will accrue up until the Effective Date), less (b) any amount then held in the Professional Fee Reserve Account.

Funds held in the Professional Fee Reserve Account shall be held for the benefit of the Professionals and shall not be property of the Estates. The Professionals shall reasonably and in good faith estimate their Professional Compensation Claims before and as of the Effective Date, taking into account any prior payments, and shall deliver such estimates to the Debtors no later than five (5) Business Days prior to the anticipated Effective Date.

Professional Compensation Claims shall be paid in full without interest or other earnings therefrom, in Cash, from the Professional Fee Reserve Account, in such amounts as are Allowed by the Bankruptcy Court as soon as reasonably practicable after such Professional Compensation Claims are allowed. The obligations of the Estates with respect to Professional Compensation Claims shall not be limited by nor deemed limited to the balance of funds held in the Professional Fee Reserve Account. To the extent that funds held in the Professional Fee Reserve Account are insufficient to satisfy the amount of accrued Professional Compensation Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency. No Liens, claims, or interests shall encumber the Professional Fee Reserve Account in any way, other than customary liens in favor of the depository bank at which the Professional Fee Reserve Account is maintained.

C. **Priority Tax Claims**

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code.

D. Statutory Fees

All Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Plan Administrator shall pay any and all Statutory Fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each of the Debtors and the Plan Administrator, as applicable, shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of a Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

**ARTICLE III.
 CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS**

A. Classification of Claims and Interests

Except for the Claims addressed in Article II herein, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Class to the extent that any portion of the Claim or Interest qualifies within the description of such other Class. A Claim or Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtors pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	Prepetition Term Loan Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 4	General Unsecured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 5	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 6	Existing Equity Interests	Impaired	Entitled to Vote

B. Treatment of Claims and Interests

1. Class 1 – Other Secured Claims

a. *Classification:* Class 1 consists of all Other Secured Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, at the Debtors' option: (i) payment in full in Cash; (ii) the collateral securing its Allowed Other Secured Claim; (iii) reinstatement of its Allowed Other Secured Claim; or (iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

c. *Voting:* Class 1 is Unimpaired, and Holders of Other Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

a. *Classification:* Class 2 consists of all Other Priority Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Other Priority Claim agrees to less favorable treatment, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

c. *Voting:* Class 2 is Unimpaired, and Holders of Other Priority Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 – Prepetition Term Loan Claims

a. *Classification:* Class 3 consists of all Prepetition Term Loan Claims against the Debtors.

b. *Treatment:* On the Effective Date, (i) Cash in the amount of approximately \$10.0 million shall be wired to the Prepetition Term Loan Agent, who shall then distribute such individual amounts to the Prepetition Term Loan Secured Parties in accordance with the Prepetition Term Loan Documents; and (ii) Cash in an amount of approximately \$15.7 million (the "Prepetition Term Loan Claims Escrow Amount") shall be segregated in an escrow account (the "Prepetition Term Loan Claims Escrow Account"), and distribution of all or a portion of the Prepetition Term Loan Claims Escrow Amount to Holders of Prepetition Term Loan Claims shall be subject to the Bankruptcy Court's determination of the aggregate amount of Allowed

Prepetition Term Loan Claims, subject to any offsets (the “Aggregate Allowed Prepetition Term Loan Claims Amount”). All parties’ rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount; *provided* that should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (i) any prepayments made on account of the Prepetition Term Loan Claims and (ii) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool as soon as practicable after the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

Except to the extent the Holder of an Allowed Prepetition Term Loan Claim agrees to less favorable treatment, each Holder of an Allowed Prepetition Term Loan Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, (i) such Holder’s *pro rata* share of approximately \$10.0 million in Cash; and (ii) Cash from the Prepetition Term Loan Claims Escrow Account in an amount equal to such Holder’s *pro rata* share of the Aggregate Allowed Prepetition Term Loan Claims Amount, with such distribution occurring as soon as practicable after the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

c. *Voting:* Class 3 is Unimpaired, and Holders of Prepetition Term Loan Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 3 Prepetition Term Loan Claims are not entitled to vote to accept or reject the Plan.

4. Class 4 – General Unsecured Claims

a. *Classification:* Class 4 consists of all General Unsecured Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, payment in full in Cash, including post-petition interest through the date on which a distribution is made on account of the Claim calculated at the applicable contract rate, the Federal Judgment Rate, or such other rate as determined by the Bankruptcy Court (in any adversary proceeding, contested matter, or otherwise).

c. *Voting:* Class 4 is Unimpaired, and Holders of General Unsecured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 4 General Unsecured Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 – Intercompany Claims

a. *Classification:* Class 5 consists of the Intercompany Claims.

b. *Treatment:* On the Effective Date, each Holder of an Allowed Intercompany Claim shall have its Claim cancelled, released, and extinguished and without any distribution at the election of the Debtors. Per prior agreement, each Holder of an Allowed Intercompany Claim will waive entitlement to a distribution on account of such Claim.

c. *Voting:* Class 5 is Unimpaired, and Holders of Intercompany Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 5 Intercompany Claims are not entitled to vote to accept or reject the Plan.

6. Class 6 – Existing Equity Interests

a. *Classification:* Class 6 consists of all Existing Equity Interests in the Debtors.

b. *Treatment:* Except to the extent the Holder of an Existing Equity Interest agrees to less favorable treatment, each Holder of an Existing Equity Interest shall receive, in full and final satisfaction, settlement, release, and discharge of such Interest, its *pro rata* share of the Existing Equity Interest Recovery Pool.

c. *Voting:* Class 6 is Impaired, and Holders of Class 6 Existing Equity Interests are entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims

Except as otherwise provided in this Plan, nothing under this Plan shall affect the rights of the Debtors or the Liquidating Trustee with respect to any unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such unimpaired Claims.

D. Elimination of Vacant Classes

Any Class that, as of the commencement of the Combined Hearing, does not have at least one Holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from this Plan for purposes of voting to accept or reject this Plan, and disregarded for purposes of determining whether this Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

E. Voting Classes

The Debtors assert that only Classes of Interests in Class 6 are impaired and entitled to vote to accept or reject the Plan.

F. Presumed Acceptance by Non-Voting Classes

With respect to each Debtor, if a Class contained Claims eligible to vote and no Holder of Claims or Interests eligible to vote in such Class votes to accept or reject this Plan, this Plan shall be presumed accepted by the Holders of such Claims or Interests in such Class.

G. Controversy Concerning Impairment

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Combined Hearing.

H. Subordination of Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Liquidating Trustee (as applicable) reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III of the Plan. The Debtors hereby request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors reserve the right to request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

The Debtors reserve the right to modify the Plan in accordance with Section XI.A of the Plan to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules. The Debtors have requested that any party that disputes the Debtors' characterization of its Claim or Interest as being unimpaired request a finding of impairment from the Bankruptcy Court in order to obtain the right to vote on the Plan; *provided, however*, that such party files and serves an objection requesting such determination on or before August 30, 2024 at 4:00 p.m. prevailing Central Time.

J. Insurance

Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

**ARTICLE IV.
MEANS FOR IMPLEMENTATION OF THE PLAN**

A. General Settlement of Claims and Interests

Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions, releases, and other benefits provided pursuant to this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holders of Claims or Interests may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of such Claims and Interests, and is fair, equitable, and reasonable.

B. Creation of Liquidating Trust, Liquidating Trustee, and the Liquidating Trust Oversight Committee

1. Creation of the Liquidating Trust

On the Effective Date, the Liquidating Trust will be established for the benefit of the Holders of Claims and Existing Equity Interests pursuant to the terms set forth in the Liquidating Trust Agreement, which agreement shall be in a form reasonably acceptable to the Debtors, the Unsecured Creditors' Committee, and the Equity Committee. On the Effective Date, certain Causes of Action (as set forth in the Schedule of Retained Causes of Action) shall vest in the Liquidating Trust, and any recoveries from such Retained Causes of Action shall constitute Liquidating Trust Assets. The primary purpose of the Liquidating Trust shall be to hold and to administer the Liquidating Trust Assets, distributing Distributable Cash pursuant to this Plan, and the Liquidating Trust shall have no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the trust. On the Effective Date, the Liquidating Trust Assets will be transferred by the Debtors to the Liquidating Trust. The Liquidating Trust shall be a legally separate and distinct Entity from the Debtors and the Plan Administrator.

As soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount, should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool and transferred to the Liquidating Trust.

2. Liquidating Trustee

The Liquidating Trust shall be controlled and administered by the Liquidating Trustee, subject to the oversight and direction of the Liquidating Trust Oversight Committee. The Debtors

and the Plan Administrator shall have no direct or indirect control, influence, or authority over the Liquidating Trust, the Liquidating Trustee, or the Liquidating Trust Oversight Committee or any of their respective decisions, except as expressly set forth in this Plan.

The Liquidating Trustee, subject to the oversight of the Liquidating Trust Oversight Committee, shall have the exclusive control over all aspects of the Retained Causes of Action that shall vest in the Liquidating Trust (as set forth in the Schedule of Retained Causes of Action), including the investigation, prosecution, and disposition of the same in accordance with the terms of the Liquidating Trust Agreement.

It is intended that the Liquidating Trust qualify as a “liquidating trust” within the meaning of Treasury Regulations Section 301.7701-4(d). In general, a liquidating trust is not a separate taxable entity but rather is treated for U.S. federal income tax purposes as a “grantor” trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust will be structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including the Liquidating Trustee and holders of beneficial interests in the Liquidating Trust) are required to treat for U.S. federal income tax purposes the Liquidating Trust as a grantor trust of which such holders of beneficial interest are the owners and grantors. The Liquidating Trustee is hereby appointed in such instance pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to handle all of the Liquidating Trust’s tax matters, including, without limitation, the filing of all tax returns and the handling of tax audits and proceedings of the Liquidating Trust. Notwithstanding the foregoing, the Liquidating Trustee may make an election under Treasury Regulations Section 1.468B-0(c)(2)(ii) to treat the Liquidating Trust (or any portion thereof) as a disputed ownership fund. The Liquidating Trustee shall be responsible of filing information on behalf of the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) or as a disputed ownership fund.

C. The Plan Administrator

1. Continued Corporate Existence

(a) Each of the Debtors shall remain in existence unless and until dissolved by Plan Administrator in accordance with the provisions of this Plan.

(b) On the Effective Date or as soon as reasonably practicable thereafter, in connection with the assignment of the Retained Causes of Action that shall vest in the Liquidating Trust (as set forth in the Schedule of Retained Causes of Action), at the discretion of the Liquidating Trustee, one percent (1%) of an Intercompany Interest of any Debtor shall be transferred to the Liquidating Trustee to confer standing upon the Liquidating Trustee to institute litigation respecting Retained Causes of Action on behalf of the Debtors pursuant to the provisions of any applicable LLC Act. For the avoidance of doubt, the 1% Intercompany Interest transferred to the Liquidating Trust pursuant to this Plan shall not confer any voting or other rights to the Liquidating Trustee other than for the purpose of conferring exclusive derivative standing upon the Liquidating Trustee as described herein.

(c) The Plan Administrator shall give the Liquidating Trustee forty-five (45) days written notice (the “Termination Notice”) of its intentions to merge, dissolve, or otherwise terminate the existence of a Wind-Down Debtor. Upon receipt of the Termination Notice, the Liquidating Trustee will evaluate whether prosecution of a pending or contemplated Retained Cause of Action necessitates the continued corporate existence of a Wind-Down Debtor, in which case the Plan Administrator shall take no action with respect to merging, dissolving, or otherwise terminating the existence of such Wind-Down Debtor until such litigation claim is resolved by the Liquidating Trust; *provided, however*, that all costs (including the fees of the Plan Administrator) associated with maintaining the continued corporate existence of any such Wind-Down Debtor beyond forty-five (45) days from the delivery of the Termination Notice shall be borne by the Liquidating Trustee.

(d) As of the Effective Date, the certificate of incorporation, bylaws, articles of organization, certificate of formation, or limited liability company operating agreement, as applicable, of each Debtor shall be deemed amended to the extent necessary to carry out the provisions of the Plan. The entry of the Confirmation Order shall constitute authorization for the Debtors, the Wind-Down Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, to take or cause to be taken all actions (including, if applicable, corporate actions) necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation.

(e) To the extent that it is determined that additional corporate governance or structural changes may be required to confer standing on the Liquidating Trustee with respect to any Retained Causes of Action, the Plan Administrator will exercise reasonable efforts to cooperate and work with the Liquidating Trustee to achieve and confer such standing so long as any proposed governance or structural changes requested by the Liquidating Trustee do not interfere with the Plan Administrator’s ability to carry out its own functions and responsibilities.

(f) Tax Reporting

The Plan Administrator shall file any and all tax returns for the Wind-Down Debtors and the Estates, as applicable; *provided, however*, that the Plan Administrator shall have no personal liability for the signing or accuracy of the Debtors’ tax returns that are due to be filed after the Effective Date or for any tax liability related thereto.

The Plan Administrator shall be responsible for payment, out of the Wind-Down Budget, of any taxes imposed on the Debtors.

(g) On or after the Effective Date, Debtor Eiger BioPharmaceuticals, Inc. may convert from a Delaware corporation to a Delaware limited liability company (the “Eiger Conversion”), which shall be deemed effective for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or the Wind-Down Debtors; *provided, however*, that the Debtors or the Wind-Down Debtors may, but will not be required to, take appropriate action to document such conversion under applicable law. The Wind-Down Debtors shall be authorized to adopt any agreements, documents, and instruments and to take any other

actions contemplated under the Plan as necessary to consummate the Plan without the need for any approvals, authorizations or consents, except those expressly required under the Plan.

D. Liquidation Transactions

On or before the Effective Date, the Debtors or the Plan Administrator shall enter into and take any actions that may be necessary or appropriate to effectuate the Sale Transactions or the Wind-Down of the Debtors, as applicable, including but not limited to: (1) the Eiger Conversion; (2) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law; (3) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with this Plan; (4) the delivery of Liquidating Trust Assets to the Liquidating Trustee; (5) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (6) any and all other actions that the Debtors or the Plan Administrator determine are necessary or appropriate to effectuate the Plan.

1. Wind Down of the Debtors

Following the Effective Date, the Plan Administrator shall Wind-Down the business affairs and operations of the Debtors. The responsibilities and authority of the Plan Administrator shall include the following: (a) administering the Professional Fee Reserve Account, the Wind-Down Budget, and the Prepetition Term Loan Claims Escrow Account on the terms set forth herein; (b) administering and paying taxes, including, among other things, (i) filing tax returns (to the extent not the obligation of any Purchaser), and (ii) representing the interest and account of the Debtors before any taxing authority in all matters; (c) retaining and paying, without the need for retention or fee applications, professionals in connection with the Plan Administrator's performance of its duties under this Plan; (d) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (e) complying with any continuing obligations under the Asset Purchase Agreements, as applicable; (f) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Cases; and (g) making distributions to Professionals for Allowed Professional Compensation Claims from the Professional Fee Reserve Account.

The responsibilities and authority of the Liquidating Trustee shall include the following: (a) preserving and liquidating the Debtors' assets remaining after consummation of the Sale Transactions, if any, including through the prosecution of any Claims or Retained Causes of Action; (b) considering, litigating, or resolving disputed Claims; (c) distributing the Distributable Cash and other assets of the Debtors' Estates pursuant to the terms of this Plan to Holders of Allowed Claims and Interests; (d) procuring the necessary insurance to facilitate the Wind-Down, including appropriate D&O Liability Insurance Policies; and (e) performing such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

E. Sources of Consideration for Plan Distributions

Subject to the provisions of the Plan concerning the Professional Fee Reserve Account and the Wind-Down Budget, the Debtors or the Liquidating Trustee (as applicable) shall fund distributions under the Plan with the Liquidating Trust Assets, including but not limited to, (1) the remaining proceeds from the Sale Transactions, (2) the Debtors' Cash on hand delivered to the Liquidating Trustee, and (3) the recovery, if any, from prosecution or settlement of the Retained Causes of Action, all in accordance with the terms herein.

1. Sale Transactions

On or before the Effective Date, the Debtors or the Plan Administrator shall take any actions that may be necessary or appropriate to effectuate the Sale Transactions in accordance with the Bid Procedures Order and this Plan.

2. Use of Cash

The Debtors or the Liquidating Trustee shall use Cash on hand to pay the fees and expenses of administering their respective functions and to fund distributions to Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

3. Retained Causes of Action

The Debtors, the Liquidating Trustee, or the Plan Administrator shall use the recovery, if any, from prosecution or settlement of the Retained Causes of Action to fund distributions to certain Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

F. Vesting of Assets

Except as otherwise provided in this Plan or the Sale Orders, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except for certain Causes of Action (as set forth on the Schedule of Retained Causes of Action), the Wind-Down Budget, the Professional Fee Reserve Account, which shall vest in the Wind-Down Debtors, all property in each of the Estates, including all claims, rights, Causes of Action that shall vest in the Liquidating Trust, and any property acquired by the Debtors under or in connection with this Plan, shall vest in the Liquidating Trust and with the Liquidating Trustee, free and clear of all Claims, Liens, encumbrances, charges, Causes of Action, or other interests. Subject to the terms of this Plan, on or after the Effective Date, the Liquidating Trustee may use, acquire, and dispose of property, and may prosecute, compromise, or settle any Claims and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order.

As soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount, should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed

Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool and transferred to the Liquidating Trust.

On the Effective Date, the attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities (all together, “Privileges”) belonging to the Debtors or the Estates that concern or in any way relate to any of the Liquidating Trust Assets, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any Liquidating Trust Assets, shall vest in the Liquidating Trust. The Liquidating Trustee shall have the sole right to waive Privileges that concern or in any way relate to any of the Liquidating Trust Assets or that would apply to communications, documents, or electronic records concerning or in any way relating to any Liquidating Trust Assets.

G. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trustee or the Plan Administrator, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, including any actions specifically enumerated in the Schedule of Retained Causes of Action, that are not otherwise transferred or sold pursuant to the Sale Transactions or distributed pursuant to the Plan, whether arising before or after the Petition Date, and the Liquidating Trustee’s or the Plan Administrator’s, as applicable, rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX hereof, which shall be deemed released and waived by the Debtors as of the Effective Date. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Liquidating Trustee, or the Plan Administrator, as applicable, will not pursue any and all available Causes of Action of the Debtors against it.

H. Corporate Action

On the Effective Date, the Debtors shall not be dissolved unless and until the Plan Administrator, in consultation with the Liquidating Trustee, determines that dissolution will not have any adverse impact on the value of the Debtors’ assets; *provided* that neither the Debtors nor any party released pursuant to Article IX herein shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors; *provided further*, that nothing in the Plan shall be construed as relieving the Debtors or the Plan Administrator (as applicable) of their duties to pay U.S. Trustee Statutory Fees as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtors’ Chapter 11 Cases or the cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. The Plan Administrator shall submit with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation

Order shall suffice for purposes of obtaining a Certificate of Dissolution from the applicable Secretary of State or equivalent body.

Without limiting the foregoing, on the Effective Date and following satisfaction of the Debtors' distribution and funding requirements set forth in the Plan, the Debtors shall have no further duties or responsibilities in connection with implementation of this Plan, and the directors and officers of the Debtors shall be deemed to have resigned in favor of the ongoing administration of the Debtors' affairs by the Plan Administrator. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, provided that neither of them shall have duties other than as expressly set forth in the Plan or the Confirmation Order.

I. Cancellation of Existing Securities and Agreements

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, securities and other documents evidencing any Claim or Interest, and any rights of any Holder in respect thereof, shall be deemed cancelled and of no further force or effect and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged and, as applicable, shall be deemed to have been surrendered to the Liquidating Trustee. The Holders of or parties to such cancelled instruments, securities, and other documentation shall have no rights arising from or related to such instruments, securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan. All parties' rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

J. Effectuating Documents; Further Transactions

Upon entry of the Confirmation Order, the Debtors or the Plan Administrator or the Liquidating Trustee (as applicable) shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan. The Debtors or the Plan Administrator or the Liquidating Trustee, all Holders of Claims or Interests receiving distributions pursuant to this Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

K. Section 1146 Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or

governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

L. Sale Orders

Notwithstanding anything to the contrary herein, nothing in this Plan shall affect, impair or supersede the Sale Orders or Sale Transactions Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

M. Authority to Act

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state(s) in which the Debtors are formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

N. Separate Plans

Notwithstanding the combination of separate plans of liquidation for the Debtors set forth in this Plan for purposes of economy and efficiency, this Plan constitutes a separate chapter 11 plan for each Debtor. Accordingly, if the Bankruptcy Court does not confirm this Plan with respect to one or more Debtors, it may still confirm this Plan with respect to any other Debtor that satisfies the Confirmation requirements of section 1129 of the Bankruptcy Code.

**ARTICLE V.
TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein (which exclusion includes the Indemnification Obligations and the D&O Liability Insurance Policies) or otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, if any (which shall be included in the Plan Supplement), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Transactions Documents or this Plan, and payment of any Cures relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership

interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Bankruptcy Court, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Plan Administrator and the Liquidating Trustee within thirty (30) days of the Effective Date.

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with the provisions herein.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be disallowed automatically, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties.

C. Reservation of Rights

Neither the exclusion nor the inclusion by the Debtors of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Supplement, nor anything contained in this Plan, shall constitute an admission by the Debtors that any such contract or lease is or is not an Executory Contract or Unexpired Lease or that the Debtors, the Plan Administrator, or the Liquidating Trustee, or their respective affiliates has any liability thereunder. Except as explicitly provided in this Plan, nothing in this Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors, the Plan Administrator, or the Liquidating Trustee under any executory or non-executory contract or unexpired or expired lease. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under this Plan, the Debtors, or the Wind-Down Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right to receive, or any

continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations. The Plan shall constitute a motion to reject all such Executory Contracts or Unexpired Leases that are subject to rejection under this Article V.

Notwithstanding any other provision of this Article V or the Plan, the Debtors shall submit to the Court on before the date of the Combined Hearing, but after the occurrence of the “Closing” as defined in the Lonafarnib Asset Purchase Agreement, an order for entry by the Court providing for rejection of the Merck License on the terms set forth in such order, which order shall be in the form required under the Merck Side Letters.

E. Indemnity Obligations

Each of the Debtors’ Indemnification Obligations shall not be discharged, impaired, or otherwise affected by the Plan. The Indemnification Obligations shall be deemed Executory Contracts assumed by the Debtors under the Plan. Notwithstanding the foregoing, such Indemnification Obligations shall be subject to typical exclusions for actual fraud, willful misconduct, or gross negligence.

F. D&O Liability Insurance Policies

Each D&O Liability Insurance Policy to which the Debtors are a party as of the Effective Date shall be deemed an Executory Contract and shall be automatically assumed or assumed and assigned by the applicable Debtor, effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code. For the avoidance of doubt, coverage for defense and indemnity under the D&O Liability Insurance Policies shall remain available to all individuals within the definition of “Insured” in the D&O Liability Insurance Policies. In addition, after the Effective Date, all officers, directors, agents, or employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of the D&O Liability Insurance Policies (including any “tail” policy) in effect or purchased as of the Effective Date for the full term of such policy regardless of whether such officers, directors, agents, and/or employees remain in such positions after the Effective Date, in each case, to the extent set forth in the D&O Liability Insurance Policies.

G. Employment Agreements

Any Employment Agreement not assumed and assigned pursuant to the Sale Transactions Documents as part of the Sale Transactions shall be rejected by the Plan Administrator on the Effective Date of the Plan.

H. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

I. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

J. Employee Compensation and Benefits

All employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and nonemployee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, Executory Contracts under this Plan and, on the Effective Date, shall be rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

**ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Distributions on Account of Claims Allowed as of the Effective Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims or Interests. The Disbursing Agent shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Disbursing Agent shall be entitled to recognize and deal for all purposes hereunder only with those record Holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided* that the manner of such distributions shall be determined at the discretion of the Disbursing Agent; *provided, further*, that to the extent a Proof of Claim has been filed, the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder. As soon as reasonably practicable after the Bankruptcy Court has determined the Aggregate Allowed Prepetition Term Loan Claims Amount, the Disbursing Agent shall make all distributions for Class 3 Claims to the Prepetition Term Loan Agent, who shall then distribute such individual amounts to the Prepetition Term Loan Secured Parties in accordance with the Prepetition Term Loan Documents.

The Disbursing Agent will implement a procedure to ensure post-petition interest accruing on Class 4 Claims is calculated using the appropriate contractual rate, as applicable, through the date on which a distribution is made on account of the Claim.

B. Compliance with Tax Requirements

In connection with this Plan, any Person issuing any instrument or making any distribution or payment in connection therewith, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority. In the case of a non-Cash distribution that is subject to withholding, the distributing party may require the intended recipient of such distribution to provide the withholding agent with an amount of Cash sufficient to satisfy such withholding tax as a condition to receiving such distribution or withhold an appropriate portion of such distributed property and either (1) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax) or (2) pay the withholding tax using its own funds and retain such withheld property. The distributing party shall have the right not to make a distribution under this Plan until its withholding or reporting obligation is satisfied pursuant to the preceding sentences. Any amounts withheld pursuant to this Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

Any party entitled to receive any property as an issuance or distribution under this Plan shall, upon request, deliver to the withholding agent or such other Person designated by the Liquidating Trustee the appropriate IRS Form or other tax forms or documentation requested by the Liquidating Trustee to reduce or eliminate any required federal, state, or local withholding. If the party entitled to receive such property as an issuance or distribution fails to comply with any such request for a one hundred eighty (180) day period beginning on the date after the date such request is made, the amount of such issuance or distribution shall irrevocably revert to the Liquidating Trustee and any Claim in respect of such distribution under this Plan shall be discharged and forever barred from assertion against such Debtor, the Plan Administrator, or the Liquidating Trustee or its respective property.

Notwithstanding the above, each Holder of an Allowed Claim or Interest that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Plan Distribution.

C. Date of Distributions

Distributions shall be made on or after the Effective Date to Holders of Allowed Claims or Allowed Interests. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. For the avoidance of doubt, the Prepetition Term Loan Claims Escrow Account includes a reserve for interest that may accrue after the Effective Date on amounts to be distributed in satisfaction of Prepetition Term Loan Claims prior to such distributions.

D. Disbursing Agent

Except as may be otherwise provided in the Sale Orders or Cash Collateral Order, all distributions under this Plan shall be made by the Disbursing Agent on and after the Effective Date and as provided herein. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

E. Rights and Powers of Disbursing Agent

The Disbursing Agent may (1) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of this Plan; (2) make all distributions contemplated hereby; and (3) perform such other duties as may be required of the Disbursing Agent pursuant to this Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

F. Surrender of Instruments

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Liquidating Trustee or the Liquidating Trustee's designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Liquidating Trustee and furnish a bond in form, substance, and amount reasonably satisfactory to the Liquidating Trustee within six (6) months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder. All parties' rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

G. Delivery of Distributions and Undeliverable or Unclaimed Distributions

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims or Allowed Interests shall be made by the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or Interests or their designees.

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check and file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trustee for distribution in accordance with the terms of this Plan; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

H. Manner of Payment

Except as specifically provided herein, at the option of the Debtors or the Liquidating Trustee, as applicable, any Cash payment to be made under this Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

I. Foreign Currency Exchange Rate

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal* on the Petition Date.

J. Setoffs and Recoupment

The Debtors or the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), and applicable bankruptcy and/or non-bankruptcy law, without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any claims of any nature whatsoever that the Debtors or their Estates may have against the Holder of such Allowed Claim; *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trustee of any such claim the Debtors or their Estates may have against the Holder of such Claim.

K. Minimum Distribution

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Wind-Down Budget. If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

L. Allocations

Except as otherwise provided in this Plan or as otherwise required by law, distributions with respect to an Allowed Claim shall be allocated first to the principal portion of such Allowed Claim (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any.

M. Distributions Free and Clear

Except as otherwise provided in this Plan, any distribution or transfer made under this Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to this Plan.

N. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtors or the Liquidating Trustee on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtors or the Liquidating Trustee, then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtors or the Liquidating Trustee on account of such Claim, such Holder shall, within fourteen (14) calendar days of receipt thereof, repay or return the distribution to the Liquidating Trustee, to the extent the Holder's total recovery on account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Except as set forth in Article IX herein, nothing in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity, including the Liquidating Trustee, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

O. No Post-Petition Interest on Claims

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, post-petition interest shall not accrue or be paid on any prepetition Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on such Claim.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. Allowance of Claims

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest immediately prior to the Effective Date.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the sole authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims and Interests

Before or after the Effective Date, the Debtors or the Liquidating Trustee may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims or Interests Without Objection

Any Claim that has been paid, satisfied, or assumed by the Purchaser(s) in the Sale Transactions, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims

Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Debtors or the Liquidating Trustee).

F. Disallowance of Claims or Interests

Except as otherwise expressly set forth herein, all Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors, the Liquidating Trustee allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (1) the Entity, on the one hand, and the Debtors or the Liquidating Trustee, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (2) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

G. Disallowance of Late Claims

Except as provided herein or otherwise agreed to by the Liquidating Trustee, any Holder of a Claim Filed via Proof of Claim after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Combined Hearing such late Claim has been deemed timely Filed by a Final Order.

H. Disputed Claims Process

All Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims shall not be entitled to vote to accept or reject this Plan. A Claim deemed Disputed pursuant to this Article VII.H. shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtors or the Liquidating Trustee from such Holder have been paid.

For the avoidance of doubt, Prepetition Term Loan Claims will remain Disputed until the Bankruptcy Court determines the Aggregate Allowed Prepetition Term Loan Claims Amount.

I. Amendments to Claims

Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

J. No Distributions Pending Allowance

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

K. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Within ten (10) days after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan, unless otherwise provided by order of the Bankruptcy Court. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim unless the Plan provides otherwise. The Aggregate Allowed Prepetition Term Loan Claims Amount shall include any interest accrued, as applicable per the Bankruptcy Court's determination, with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

**ARTICLE VIII.
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

A. Conditions Precedent to the Effective Date

The following shall be conditions precedent to the occurrence of the Effective Date:

- (a) The Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code;
- (b) the Plan, the Disclosure Statement, and the other Definitive Documents shall be in full force and effect;
- (c) the Bankruptcy Court shall have entered the Confirmation Order, which shall have become a Final Order or as to which any stay of the Confirmation Order pursuant to any Bankruptcy Rule is waived by the Bankruptcy Court;
- (d) the final version of each of the Plan and the Plan Supplement shall have been Filed;
- (e) the Sale Transactions shall have been consummated substantially on the terms described in the Bid Procedures Order and the Debtors shall have received the proceeds therefrom;
- (f) the Debtors shall have implemented the Liquidation Transactions and all transactions contemplated in this Plan in a manner consistent with the Plan;

- (g) the Debtors shall have fully funded the Professional Fee Reserve Account and the Wind-Down Budget;
- (h) the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;
- (i) the Plan Administrator shall have been appointed in accordance with the terms hereof and shall have accepted his or her appointment;
- (j) the Liquidating Trust shall have been formed; and
- (k) the Liquidating Trustee shall have been appointed in accordance with the terms hereof and shall have accepted his or her appointment.

B. Waiver of Conditions Precedent to the Effective Date

Unless otherwise specifically provided for in the Plan, the conditions set forth in Article VIII.A of the Plan may be waived, in whole or in part, by the Debtors.

**ARTICLE IX.
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Debtor Releases

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, effective on the Effective Date, each Released Party is hereby deemed to be hereby released and discharged by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any causes of action, directly or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Debtors, from any and all derivative Claims and Causes of Action asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any Holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested

by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, and the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. Notwithstanding anything to the contrary in the foregoing, the releases under this section only release Claims held by the Debtors or Claims that could be asserted by the Debtors under applicable law.

B. Releases by the Releasing Parties

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, and with respect to all other Releasing Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or

before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan, (2) the Confirmation Order, or (3) any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

C. Exculpations

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from any Cause of Action for any claim related to any act or omission taking place between the Petition Date and the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transaction, including any contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

D. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) were purchased and released by a Purchaser in connection with the Sale Transactions; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, Interests, Causes of Action, or liabilities that have been compromised or settled against any of the Debtors or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Plan Administrator, the Liquidating Trustee, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such

Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan by the Debtors, the Plan Administrator, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

E. No Discharge

Because the Debtors are liquidating and will not engage in business after consummation of the Plan, they are not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interests.

F. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date in accordance with the terms of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns.

If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Other Secured Claim, as soon as practicable on or after the date such Holder has been satisfied in full pursuant to the Plan, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

All parties' rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

G. Gatekeeper Provision

No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a Cause of Action of any kind against the Debtors or the Plan Administrator, the Liquidating Trustee, the Exculpated Parties, or the Released Parties that relates to, or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of, a Cause of Action subject to Article IX.A, Article IX.B, and Article IX.C without first (1) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Debtor or the Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party and is not a Claim that the Debtors released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (2) obtaining from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Debtor or Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party. For the avoidance of doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Cause of Action is colorable and, only to the extent legally permissible, will have jurisdiction to adjudicate the underlying colorable Cause of Action.

ARTICLE X. RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in or related to the Chapter 11 Cases for, among other things, the following purposes:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.
2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.
3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan.
4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which

a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the Cash Collateral Order and the Debtors' use of cash collateral, the Sale Transactions Documents, the Disclosure Statement, the Plan, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims or Allowed Interests are accomplished pursuant to the provisions of the Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.

18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.

19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.

20. To recover all assets of the Debtors and property of the Debtors' Estates, wherever located.

21. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.

22. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtors or the Liquidating Trustee pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.

23. Enter an order or final decree concluding or closing the Chapter 11 Cases.

24. Enforce all orders previously entered by the Bankruptcy Court.

25. Hear any other matter over which the Bankruptcy Court has jurisdiction.

ARTICLE XI.

MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN

A. Modification and Amendment

This Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date, the Debtors, in consultation with the Prepetition Term Loan Agent, may remedy any defect or omission or reconcile any inconsistencies in this Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes of effects of this Plan, and any Holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

B. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors. If, with respect to a Debtor, this Plan has been revoked or withdrawn prior to the Effective Date, or if Confirmation or the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then, with respect to such Debtor: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (3) nothing contained in this Plan shall (a) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person, (b) prejudice in any manner the rights of such Debtor or any other Person, or (c) constitute an admission of any sort by any Debtor or any other Person.

**ARTICLE XII.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of this Plan shall be immediately effective and enforceable and deemed binding upon and inure to the benefit of the Debtors or the Plan Administrator, the Liquidating Trustee, the Holders of Claims or Interests, the Released Parties, and each of their respective successors and assigns. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

B. Additional Documents

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Liquidating Trustee (as applicable) and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

C. Substantial Consummation

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

D. Reservation of Rights

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtors with respect to the Plan, the Disclosure Statement,

or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests prior to the Effective Date.

E. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, beneficiaries or guardian, if any, of each Entity.

F. Determination of Tax Liabilities

As of the Effective Date, the Plan Administrator (to the extent not the responsibility of the Purchaser(s)) will be responsible for preparing and filing any tax forms or returns on behalf of the Debtors' Estates; provided that neither the Plan Administrator nor the Liquidating Trustee shall be responsible for preparing or filing any tax forms for Holders of Interests in the Debtors (which Interests shall be cancelled pursuant to this Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtors or the Plan Administrator shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtors' Estates for any tax incurred during the administration of these Chapter 11 Cases.

G. Dissolution of the Committee

On the Effective Date, any duly appointed Statutory Committee will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to these Chapter 11 Cases.

H. Books and Records

In accordance with the Liquidating Trust Agreement, on the Effective Date, the Debtors shall provide to the Liquidating Trustee timely access to the books and records relating to the Liquidating Trust Assets, in a form accessible and viewable by the Liquidating Trustee.

I. Notices

In order for all notices, requests, and demands to or upon the Debtors or the Plan Administrator, or the Liquidating Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

Debtors	Counsel to the Debtors
Eiger BioPharmaceuticals Inc. 2100 Ross Avenue, Dallas, Texas 75201, Attention: Douglas Staut	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Facsimile: (212) 839-5599

Chief Restructuring Officer Email: dstaut@alvarezandmarsal.com	Attn: William E. Curtin Anne G. Wallace Email: wcurtin@sidley.com anne.wallice@sidley.com
Plan Administrator	Counsel to the Plan Administrator
To be provided.	To be provided.
Liquidating Trustee	Counsel to the Liquidating Trustee
To be provided.	To be provided.
Counsel to the Prepetition Term Loan Agent	
<p>Bradley Arant Boult Cummings LLP 1221 Broadway, Suite 2400 Nashville, Tennessee 37203 Facsimile: (615) 252-4714</p> <p>Attn: Roger G. Jones Email: rjones@bradley.com</p> <p>Kramer Levin Naftalis & Frankel LLP 1177 Avenue of the Americas New York, New York 10036 Facsimile: (212) 715-8000</p> <p>Attn: Adam C. Rogoff P. Bradley O’Neill Andrew J. Citron Email: arogoff@kramerlevin.com boneill@kramerlevin.com acitron@kramerlevin.com</p> <p>Forshey Prostok, LLP, 777 Main St. Suite 1550, Fort Worth, TX 76102</p> <p>Attn: Jeff Prostok Email: jprostok@forsheyprostok.com</p>	

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator and the Liquidating Trustee are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

J. Term of Injunctions or Stays

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under this Plan (1) all injunctions with respect to or stays against an action against property of the Debtors or the Debtors' Estates arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtors or the Debtors' Estates; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Cases are closed pursuant to a final order of the Bankruptcy Court, or (b) the date that the Chapter 11 Cases are dismissed pursuant to a final order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

K. Entire Agreement

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

L. Plan Supplement

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel or the Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website at <https://veritaglobal.net/eiger>. All documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

M. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

N. Nonseverability of Plan Provisions

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding,

alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Liquidating Trustee (as applicable); and (3) nonseverable and mutually dependent.

O. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents, representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, and, therefore, neither any of such parties or individuals will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

P. Closing of the Chapter 11 Cases

After the full administration of the Chapter 11 Cases, the Plan Administrator shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to rule 3022-1(a) of the Bankruptcy Local Rules for the Northern District of Texas, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

[Remainder of page intentionally left blank.]

Dated: August 28, 2024

Respectfully submitted,

Douglas Staut

By: Douglas Staut
Chief Restructuring Officer
Eiger BioPharmaceuticals, Inc.
EBPI Merger Inc.
EB Pharma LLC
Eiger BioPharmaceuticals Europe Limited
EigerBio Europe Limited

[Signature Page to Plan of Liquidation]

Exhibit B

Redline

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)

**SECOND~~THIRD~~ AMENDED JOINT PLAN OF LIQUIDATION OF
EIGER BIOPHARMACEUTICALS, INC. AND ITS DEBTOR
AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

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.

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INTRODUCTION

The Debtors propose this Plan under section 1121 of the Bankruptcy Code. The Debtors are the proponents of the Plan within the meaning of section 1129 of the Bankruptcy Code.

Reference is made to the Disclosure Statement Filed contemporaneously with this Plan for a discussion of the Debtors' history, business, prepetition capital structure, and Liquidation Analysis, as well as a summary and analysis of the Plan and certain related matters, including distributions to be made under this Plan.

Supplemental agreements and documents referenced in this Plan and the Disclosure Statement are available for review on both the Bankruptcy Court's docket and on the Debtors' case information website: <https://veritaglobal.net/eiger>.

ALL HOLDERS OF CLAIMS AND INTERESTS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I. DEFINED TERMS AND RULES OF INTERPRETATION

A. Defined Terms

“Administrative Claim” means a Claim of a kind specified under section 503(b) of the Bankruptcy Code and entitled to priority under sections 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, including: (1) the actual and necessary costs and expenses incurred on or after the Petition Date until and including the Effective Date of preserving the Estates and operating Debtors' business; (2) Allowed Professional Compensation Claims; (3) Statutory Fees; and (4) 503(b)(9) Claims.

“Administrative Claims Bar Date” means 5:00 p.m. prevailing Central Time on the date that is 30 days after the Effective Date and is the deadline by which a claimant must file a request for payment of any Administrative Claim (excluding Professional Compensation Claims) arising on or after the Petition Date, through and including the Effective Date.

“Affiliate” has the meaning set forth in section 101(2) of the Bankruptcy Code as if the reference Entity was a debtor in a case under the Bankruptcy Code.

“Aggregate Allowed Prepetition Term Loan Claims Amount” has the meaning set forth in Article III.B.3 of the Plan.

“Allowed” means, with respect to any Claim or Interest, except as otherwise provided herein: (1) a Claim or Interest in a liquidated amount as to which no objection has been Filed prior to the applicable claims objection deadline and that is evidenced by a Proof of Claim timely Filed by the applicable Bar Date or that is not required to be evidenced by a Filed Proof of Claim under the Plan, the Bankruptcy Code, or a Final Order; (2) a Claim or Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and for which no Proof of Claim has been timely Filed in an unliquidated or a different amount; (3) a Claim or Interest that is upheld or

otherwise Allowed (a) pursuant to the Plan (including any Claim or Interest that is upheld or otherwise Allowed pursuant to a settlement executed by a Debtor or a Wind-Down Debtor in accordance with the Plan), (b) in any stipulation that is approved by the Bankruptcy Court, (c) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith, or (d) by Final Order (including any such Claim to which the Debtors had objected or which the Bankruptcy Court had disallowed prior to such Final Order); *provided* that with respect to a Claim or Interest described in clauses (1) through (3) above, such Claim or Interest shall be considered Allowed only if and to the extent that with respect to such Claim or Interest no objection to the allowance thereof has been or, in the Debtors' or the Wind-Down Debtors' reasonable good faith judgment, may be interposed within the applicable period of time fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court, or such an objection is so interposed and the Claim or Interest, as applicable, shall have been allowed by a Final Order; *provided, further*, that no Claim of any Entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such Entity pays in full the amount that it owes such Debtor. A Proof of Claim Filed after the Bar Date is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. Any Claim that has been or is hereafter listed in the Schedules as contingent, unliquidated, or disputed, and for which no Proof of Claim is or has been timely Filed, is not considered Allowed and shall be deemed expunged without further action by the Debtors and without further notice to any party or action, approval, or order of the Bankruptcy Court. "Allow," "Allowing," and "Allowance" shall have correlative meanings.

~~"Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc." means the amended certificate of incorporation of Eiger BioPharmaceuticals, Inc.~~

"Asset Purchase Agreements" means, collectively, (1) the Avexitide Asset Purchase Agreement, (2) the Zokinvy Asset Purchase Agreement, (3) the Lonafarnib Asset Purchase Agreement, (4) the Lambda Asset Purchase Agreement, or (5) any other asset purchase agreement approved by the Sale Orders.

"Avexitide Asset Purchase Agreement" means that certain *Asset Purchase Agreement by and between Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of June 21, 2024* [Docket No. 350, Ex. A] and as from time to time amended in accordance with the Avexitide Sale Order or further order of this Court.

"Avexitide Assets" means the assets related to the Avexitide Asset Purchase Agreement.

"Avexitide Sale Order" means the *Order (I) Approving the Sale of the Debtors' Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376].

"Avoidance Actions" means any and all claims and Causes of Action which any of the Debtors, the Estates, or any other appropriate party in interest has asserted or may assert under sections 502, 510, 542, 544, 545, or 547 through 553 of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

“Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Texas.

“Bankruptcy Rules” means Federal Rules of Bankruptcy Procedure.

“Bar Date” means, with respect to any particular Claim, the applicable date set by the Bankruptcy Court as the last day for Filing Proofs of Claim or requesting allowance of Administrative Claims in the Chapter 11 Cases for such Claim, whether pursuant to the Confirmation Order, the Plan, the *Order (I) Setting Bar Dates for Filing Proofs of Claim; (II) Approving Form and Manner for Filing Proofs of Claim; and (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests Notice of Bar Dates* [Docket No. 375], or any other applicable order of the Bankruptcy Court.

“Bid Procedures Order” means that certain *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* [Docket No. 94] entered in the Chapter 11 Cases.

“Business Day” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of Texas.

“Cash” means cash in legal tender of the United States of America and cash equivalents, including bank deposits, checks, and other similar items.

“Cash Collateral Order” means that certain *Final Order (I) Authorizing the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Term Loan Secured Parties; and (III) Modifying Automatic Stay* [Docket No. 161] entered in the Chapter 11 Cases or such further interim or final order authorizing the Debtors’ use of cash collateral, as applicable.

“Causes of Action” means without limitation, any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, Liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include the following: (1) Avoidance Actions; (2) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (3) the right to object to or otherwise contest Claims or Interests; (4) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (5) such claims

and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

“Chapter 11 Cases” means those certain chapter 11 bankruptcy cases of the Debtors jointly administered under the caption *In re Eiger BioPharmaceuticals, Inc., et al.*, Case No. 24-80040 (SGJ) (Bankr. N.D. Tex. 2024).

“Claim” means any claim, as defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

“Claims Objection” means an objection to the allowance of a claim as set forth in section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and/or any Bankruptcy Court order regarding omnibus claims objections.

“Claims Objection Bar Date” means 5:00 p.m. Central Time on the date that is sixty (60) days after the Effective Date and is the deadline by which a Claims Objection must be made; *provided* that the Claims Objection Bar may be extended upon presentment of an order to the Bankruptcy Court by the Plan Administrator or Liquidating Trustee, as applicable.

“Claims Register” means the register managed by the Notice and Claims Agent reflecting Filed Proofs of Claim.

“Class” means a category of Holders of Claims or Interests pursuant to section 1122(a) of the Bankruptcy Code.

“Combined Hearing” means the hearing(s) conducted by the Bankruptcy Court to consider (1) final approval of the adequacy of the Disclosure Statement under section 1125 of the Bankruptcy Code and (2) confirmation of the proposed Plan under section 1129 of the Bankruptcy Code, as such hearing may be adjourned or continued from time to time.

“Conditions Precedent to the Effective Date” means the conditions set forth in Article VIII.A of this Plan.

“Confirmation” means the Bankruptcy Court’s entry of the Confirmation Order on the docket of the Chapter 11 Cases within the meaning of Bankruptcy Rules 5003 and 9021.

“Confirmation Date” means the date on which Confirmation occurs.

“Confirmation Order” means the order of the Bankruptcy Court confirming the Plan under section 1129 of the Bankruptcy Code.

“Consummation” means the occurrence of the Effective Date.

“Cure” means a Claim (unless waived or modified by the applicable counterparty) based upon a Debtor’s defaults under an Executory Contract or an Unexpired Lease assumed or assumed and assigned by such Debtor under section 365 of the Bankruptcy Code amounts, other than a default that is not required to be cured pursuant to section 365(b)(2) of the Bankruptcy Code.

“D&O Liability Insurance Policies” means, collectively, each director and officer liability insurance policy and any “tail policy” to which any of the Debtors are a party as of the Effective Date.

“Debtor Releases” means the releases set forth in Article IX.A herein.

“Debtors” means, collectively, Eiger BioPharmaceuticals, Inc., EBPI Merger Inc., EB Pharma LLC, Eiger BioPharmaceuticals Europe Limited, and EigerBio Europe Limited.

“Definitive Documents” means this Plan (including, for the avoidance of doubt, the Plan Supplement and any and all exhibits, supplements, appendices, and schedules hereto and thereto), the Confirmation Order, the Disclosure Statement Order (including all exhibits, supplements, appendices, and schedules thereto), the Solicitation Materials, including the Disclosure Statement, and any such other agreements, instruments, and documents as may be necessary or reasonably desirable to consummate and document the Liquidation Transactions.

“Disallowed” means all or that portion, as applicable, of any Claim or Interest which: (1) has been disallowed under the Plan, the Bankruptcy Code, applicable law or by a Final Order; (2) is scheduled by the Debtors as being in an amount of zero dollars (\$0.00) or as contingent, disputed, or unliquidated and as to which no Proof of Claim was timely filed or deemed timely filed prior to the applicable Bar Date pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court, including the order approving the Bar Date, or otherwise deemed timely filed under applicable law; or (3) is not scheduled by the Debtors and as to which no Proof of Claim or request for allowance of an Administrative Claim (as applicable) has been timely filed or deemed timely filed prior to the applicable Bar Date pursuant to either the Bankruptcy Code or any Final Order of the Bankruptcy Court or otherwise deemed timely filed under applicable law.

“Disbursing Agent” means the Debtors, the Wind-Down Debtors, or the Liquidating Trustee or the Person or Entit(ies) selected by the Liquidating Trustee, as applicable, to make or to facilitate distributions under the Plan, which Entity may include the Notice and Claims Agent.

“Disclosure Statement” means the related disclosure statement with respect to the Plan, as the same may be amended, supplemented, or modified from time to time, including all exhibits and schedules thereto, as approved or ratified by the Bankruptcy Court pursuant to section 1125 of the Bankruptcy Code.

“Disclosure Statement Motion” means the *Debtors’ Motion for Entry of an Order (I) Scheduling a Combined Disclosure Statement Approval and Plan Confirmation Hearing; (II) Conditionally Approving the Disclosure Statement; (III) Establishing Objection Deadlines and Related Procedures; (IV) Approving the Notice Materials; and (V) Granting Related Relief* [Docket No. 426].

“Disclosure Statement Order” means the order approving the Disclosure Statement.

“Disputed” means, with respect to any Claim or Interest, any Claim or Interest or any portion thereof that is not yet Allowed or Disallowed.

“Distributable Cash” means the Cash on hand of the Debtors or, after the Effective Date, the Liquidating Trust available for distribution as of the Effective Date or such applicable later date pursuant to the terms of the Plan.

“Distribution Record Date” means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date as designated in a Final Order of the Bankruptcy Court.

“Effective Date” means the date that is the first Business Day after the Confirmation Date on which (1) all Conditions Precedent to the Effective Date have been satisfied or waived in accordance with the Plan and (2) no stay of the Confirmation Order is in effect. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

[“Eiger Conversion” has the meaning set forth in Article IV.C.1 of the Plan.](#)

“Employment Agreement” means any agreement relating to the employment of any of the Debtors’ current employees.

“Entity” has the meaning as defined in section 101(15) of the Bankruptcy Code.

“Equity Committee” means the official committee of equity security holders appointed by the U.S. Trustee under section 1102(b) of the Bankruptcy Code in these Chapter 11 Cases on June 25, 2024 [Docket No. 359, as amended, Docket No. 438].

“Estate” means the estate of any Debtor created under sections 301 and 541 of the Bankruptcy Code upon the commencement of the applicable Debtor’s Chapter 11 Case.

“Exculpated Parties” means collectively, (1) the Debtors and the Wind-Down Debtors, (2) any Statutory Committee and each of its members, (3) the Debtors’ Professionals, including Sidley Austin LLP, SSG Advisors, LLC, Alvarez & Marsal North America, LLC, Neligan LLP, and Verita Global f/k/a Kurtzman Carson Consultants, LLC, (4) the Professionals of any Statutory Committee, and (5) any directors and officers of the Debtors as of the Petition Date.

“Executory Contract” means a contract to which any of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Existing Equity Interest Recovery Pool” means all Distributable Cash of the Debtors or the Wind-Down Debtors (as applicable) less (1) an amount of Cash required to pay Administrative Claims and Priority Tax Claims Allowed as of the Effective Date, (2) an amount of Cash required to fund the Wind-Down Budget, (3) an amount of Cash required to fund the Professional Fee Reserve Account in accordance with the Plan, (4) an amount of Cash required to satisfy the Other Secured Claims and the Other Priority Claims pursuant to the Plan, (5) an amount of Cash required to fund the Prepetition Term Loan Claims Escrow Account, and (6) an amount of Cash required to satisfy the General Unsecured Claims pursuant to the Plan; *provided* that should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims [Amount](#) minus any prepayments made on

account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool as soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

“Existing Equity Interests” means an Interest in a Debtor existing as of the Petition Date.

“Federal Judgment Rate” means the interest rate provided under 28 U.S.C. 1961(a), calculated as of the Petition Date.

“File,” “Filed,” or “Filing” means file, filed, or filing with the Bankruptcy Court or its authorized designee in the Chapter 11 Cases.

“Final Order” means an order or judgment of the Bankruptcy Court or court of competent jurisdiction with respect to the subject matter that has not been reversed, stayed, modified, or amended, as entered on the docket in any Chapter 11 Case or the docket of any court of competent jurisdiction, and as to which the time to appeal, or seek certiorari or move for a new trial, reargument, or rehearing has expired and no appeal or petition for certiorari or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely Filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing will have been denied, resulted in no stay pending appeal of such order, or has otherwise been dismissed with prejudice; *provided, however*, that no order or judgment shall fail to be a “Final Order” solely because of the possibility that a motion under Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous Bankruptcy Rule (or analogous rules applicable in another court of competent jurisdiction) or sections 502(j) or 1144 of the Bankruptcy Code, may be Filed with respect to such order or judgment.

“General Unsecured Claim” means any Claim that is not an Administrative Claim (including a Professional Compensation Claim), a Priority Tax Claim, an Other Secured Claim, an Other Priority Claim, a Prepetition Term Loan Claim, or an Intercompany Claim.

“Governmental Unit” means a “governmental unit,” as defined in section 101(27) of the Bankruptcy Code.

“Holder” means any Entity that holds a Claim or Interest, as applicable.

“Impaired” means with respect to any Class of Claims or Interests, a Class of Claims or Interests that is impaired within the meaning of section 1124 of the Bankruptcy Code.

“Indemnification Obligations” means, collectively, each of the Debtors' indemnification obligations (whether arising from charters, bylaws, limited liability company agreements, other organizational documents, or contracts) in place as of the Effective Date to indemnify the Debtors' officers, directors, agents, or employees serving in such roles as of the Petition Date with respect to all present and future actions, suits, and proceedings against the Debtors or such officers, directors, agents, or employees based upon any act or omission for or on behalf of the Debtors.

“Insurance Policies” means all insurance policies that have been issued at any time to or provide coverage to the Debtors and all agreements, documents, or instruments relating thereto; *provided* that “Insurance Policies” does not include any such policies that are, or have been, assumed and assigned to the Purchaser on or before the Effective Date pursuant to the ~~Zokinvy Asset Purchase Agreement, any other asset purchase agreement approved by the Sale Orders, Agreements,~~ the Sale Orders, and section 365 of the Bankruptcy Code.

“Intercompany Claim” means a Claim held by a Debtor against a Debtor.

“Intercompany Interests” means all interests of any Debtor in any other Debtor.

“Interest(s)” means any equity security (as defined in section 101(16) of the Bankruptcy Code) in any Debtor and any other rights, options, warrants, stock appreciation rights, phantom stock rights, restricted stock units, redemption rights, repurchase rights, convertible, exercisable or exchangeable securities or other agreements, arrangements or commitments of any character relating to, or whose value is related to, any such interest or other ownership interest in any Debtor.

“IRS Form” means IRS Form W-9, W-8BEN, any acceptable substitute, or any other tax information form that the Debtors or the Liquidating Trustee may require from a Holder of a Claim for a distribution under the Plan.

“Lambda Asset Purchase Agreement” means that certain Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024, annexed as Exhibit B to the Lonafarnib and Lambda Sale Order and as from time to time amended in accordance with the Lonafarnib and Lambda Sale Order or further order of this Court.

“Lambda Assets” means the assets related to the Lambda Asset Purchase Agreement.

“Law” means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

“Lien” means a lien as defined in section 101(37) of the Bankruptcy Code.

“Liquidation” means the liquidation of the Debtors through the Liquidation Transactions in accordance with the terms of this Plan.

“Liquidation Analysis” means the analysis of a liquidation scenario under chapter 7 of the Bankruptcy Code for these Debtors, to be filed as part of the Plan Supplement.

“Liquidation Transactions” means the transactions described in Article IV of the Plan.

“Liquidating Trust Agreement” means the liquidating trust agreement included in the Plan Supplement, as the same may be amended, modified, or supplemented from time to time.

“Liquidating Trust Assets” means all property and Cash of the Estates, net of the Wind-Down Budget and the Professional Fee Reserve Account, which shall vest in and be administered by the Plan Administrator, and the Prepetition Term Loan Claims Escrow Account, to be administered as provided herein.

“Liquidating Trust” means the vehicle created pursuant to this Plan and the Liquidating Trust Agreement to take the following actions: (1) administer the Liquidating Trust Assets; (2) File and prosecute objections and/or settlements of disputed Claims; (3) upon resolution of disputed Claims, make distributions as appropriate; and (4) exercise discretion to evaluate and prosecute Retained Causes of Action, all as set forth more particularly in Article IV of this Plan and in the Liquidating Trust Agreement.

“Liquidating Trustee” means the Person or Entity appointed, with the consent of the Debtors, the Unsecured Creditors’ Committee, and the Equity Committee, on the Effective Date to administer the Liquidating Trust in accordance with this Plan and the Liquidating Trust Agreement.

“Liquidating Trust Oversight Committee” means the Persons or Entities appointed, pursuant to Article IV of this Plan, on the Effective Date to supervise the Liquidating Trustee in the discharge of the Liquidating Trustee’s duties as set forth in this Plan and the Liquidating Trust Agreement.

“Lonafarnib and Lambda Sale Order” means the Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief [Docket No. 558].

“Lonafarnib Asset Purchase Agreement” means that certain Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024, annexed as Exhibit A to the Lonafarnib and Lambda Sale Order and as from time to time amended in accordance with the Lonafarnib and Lambda Sale Order or further order of this Court.

“Lonafarnib Assets” means the assets related to the Lonafarnib Asset Purchase Agreement.

“Marketing Process” means the process for the marketing and sale of all or substantially all of the Debtors’ assets, or any combination thereof, pursuant to the Bid Procedures Order.

“Merck License” means that certain License Agreement dated September 3, 2010 by and between Debtor Eiger BioPharmaceuticals, Inc. and Merck Sharp & Dohme LLC (as successor in interest to Merck Sharp & Dome Corp., as successor in interest to Schering Corporation) as amended.

“Merck Side Letters” means, collectively, each “Merck Side Letter” as defined in, respectively, the Zokinvy Asset Purchase Agreement and the Lonafarnib Asset Purchase Agreement.

“Notice and Claims Agent” means Verita Global f/k/a Kurtzman Carson Consultants, LLC, in its capacity as noticing, claims, and solicitation agent for the Debtors.

“OCP” means an ordinary course professional whose retention and compensation has been authorized by the Bankruptcy Court pursuant to the OCP Order.

“OCP Order” means the order entered by the Bankruptcy Court approving the Debtors’ motion or motions to retain and compensate certain OCPs in the ordinary course of business [Docket No. 254].

“Other Priority Claim” means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

“Other Secured Claim” means any Secured Claim other than a Prepetition Term Loan Claim.

“Person” means a “person” as defined in section 101(41) of the Bankruptcy Code.

“Petition Date” the date on which each of the Debtors Filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code, thereby commencing these Chapter 11 Cases, or April 1, 2024.

“Plan” means this plan under chapter 11 of the Bankruptcy Code, as may be altered, amended, supplemented, or otherwise modified from time to time in accordance with the Bankruptcy Code, the Bankruptcy Rules, or the terms hereof, as the case may be, including the Plan Supplement, which is incorporated herein by reference, including any and all exhibits, supplements, appendices, and schedules hereto and thereto.

“Plan Administrator” means the Person or Entity appointed by the Debtors, in consultation with the Unsecured Creditors’ Committee and Equity Committee, on the Effective Date to administer and wind down the Debtor’s remaining business operations including (1) transition services and obligations required under the ~~Avexitide Asset Purchase Agreement and the Zokinvy Asset Purchase Agreement~~[Agreements](#), including maintaining necessary licensures and government approvals, to the extent required thereunder, all as approved pursuant to the Sale Orders, (2) transition services required under any other ~~Asset Purchase Agreement~~[asset purchase agreement](#)(s) entered into by the Debtors and any third party and approved by the Bankruptcy Court prior to the Effective Date, (3) administer employee termination and wind-down matters, (4) maintain and distribute the Professional Fee Reserve Account, (5) file any and all tax returns (other than any Liquidating Trust’s tax return), (6) in consultation and cooperation with the Liquidating Trustee, close these Chapter 11 Cases, as described in more detail in Article IV herein, and (7) any other duties or responsibilities set forth herein.

“Plan Distribution” means a payment or distribution to Holders of Allowed Claims or other eligible Entities under this Plan.

“Plan Objection Deadline” means the deadline to file objections to the adequacy of the Disclosure Statement and confirmation of the Plan pursuant to the Disclosure Statement Order.

“Plan Supplement” means the compilation of documents and forms of documents, agreements, schedules, and exhibits to the Plan (in each case, as may be altered, amended, modified, or supplemented from time to time through the Effective Date in accordance with the terms hereof and in accordance with the Bankruptcy Code and Bankruptcy Rules) to be Filed two (2) weeks prior to the Plan Objection Deadline by the Debtors, including the following: (1) the Schedule of Assumed Executory Contracts and Unexpired Leases; (2) the Schedule of Retained Causes of Action; and (3) the Liquidating Trust Agreement, ~~and (4) the Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc.~~

“Prepetition Term Loan Agent” means Innovatus Life Sciences Lending Fund I, LP, as Collateral Agent (as defined in the Prepetition Term Loan Credit Agreement and, in such capacity and including any successors thereto).

“Prepetition Term Loan Claims” meaning any Claim on account of the Prepetition Term Loan Documents.

“Prepetition Term Loan Claims Escrow Account” has the meaning set forth in Article III.B.3 of the Plan.

“Prepetition Term Loan Claims Escrow Amount” has the meaning set forth in Article III.B.3 of the Plan.

“Prepetition Term Loan Credit Agreement” means that certain Loan and Security Agreement, dated as of June 1, 2022 (as amended, restated, or otherwise modified from time to time).

“Prepetition Term Loan Documents” means the Prepetition Term Loan Credit Agreement and, together with all other documentation executed in connection therewith, including without limitation, the Loan Documents (as defined in the Prepetition Term Loan Credit Agreement) executed in connection therewith, as amended, restated, or otherwise modified from time to time.

“Prepetition Term Loan Secured Parties” means, collectively, the Prepetition Term Loan Agent and the lenders from time to time party to the Prepetition Term Loan Credit Agreement.

“Priority Tax Claim” means any Claim of a Governmental Unit of the kind specified in section 507(a)(8) of the Bankruptcy Code.

“Professional” means a Person or Entity employed in the Chapter 11 Cases pursuant to a Bankruptcy Court order in accordance with sections 327, 328, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered before or on the Effective Date, pursuant to sections 327, 328, 329, 330, 363, or 331 of the Bankruptcy Code, excluding any ordinary course professional retained pursuant to a Bankruptcy Court order.

“Professional Compensation Claim” means a Claim against a Debtor for professional services rendered and costs incurred between the Petition Date and the Effective Date by a Professional, including estimates through the Effective Date, in connection with the Chapter 11 Cases.

“Professional Fee Reserve Account” means that certain account held by the Debtors for the benefit of Professionals, as more fully described in Paragraph 3(d) of the Cash Collateral Order.

“Proof of Claim” means a proof of claim Filed against any of the Debtors in the Chapter 11 Cases by the applicable Bar Date.

“Purchaser” means, collectively: (1) Sentyln Therapeutics, Inc., in its capacity as purchaser of the Zokinvy Assets; (2) Amylyx Pharmaceuticals, Inc., or a wholly owned subsidiary thereof, in its capacity as purchaser of the Avexitide Assets; ~~and~~ (3) [Eiger InnoTherapeutics, Inc., in its capacity as purchaser of the Lonafarnib Assets and Lambda Assets](#); and (4) any purchaser of other of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code.

“Related Party” means each of, and in each case in its capacity as such, current and former directors, managers, officers, committee members, members of any governing body, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, managed accounts or funds, predecessors, participants, successors, assigns, subsidiaries, Affiliates, partners, limited partners, general partners, principals, members, management companies, fund advisors or managers, employees, agents, trustees, advisory board members, financial advisors, attorneys (including any other attorneys or professionals retained by any current or former director or manager in his or her capacity as director or manager of an entity), accountants, investment bankers, consultants, representatives, and other professionals and advisors and any such Person’s or Entity’s respective heirs, executors, estates, and nominees.

“Released Party” means each of, and in each case in its capacity as such: (1) each Debtor and its Estate; (2) each Wind-Down Debtor and its Estate; (3) each Related Party of each Entity in clause (1) and (2); *provided* that in each case, an Entity shall not be a Released Party if it: (x) elects to opt out of the releases contained in Article IX.A or Article IX.B of the Plan or (y) timely objects to the releases contained in Article IX.A or Article IX.B of the Plan and such objection is not resolved before Confirmation.

“Releasing Party” means each of, and in each case in its capacity as such: (1) each Debtor and its Estate; (2) each Wind-Down Debtor and its Estate; (3) any Statutory Committee and each of its members; (4) the Holders of all Claims or Interests who vote to accept the Plan; (5) the Holders of all Claims or Interests whose vote to accept or reject the Plan is solicited but who do not vote either to accept or to reject the Plan and do not opt out of granting the releases set forth in Article IX.A or Article IX.B of the Plan; (6) the Holders of all Claims or Interests who vote to reject the Plan but do not opt out of granting the releases set forth in Article IX.A or Article IX.B of the Plan; (7) each current and former Affiliate of each Entity in clauses (1) through (6) and the following clause (8); and (8) each Related Party of each Entity in clause (1) through this clause (8), solely to the extent such Related Party may assert Claims or Causes of Action on behalf of or in a derivative capacity by or through an Entity in clause (1) through clause (7); *provided* that in each case, an Entity shall not be a Releasing Party if it: (x) elects to opt out of the releases contained in Article IX.A or Article IX.B of the Plan or (y) timely objects to the releases contained in Article IX.A or Article IX.B of the Plan and such objection is not resolved before Confirmation.

“Retained Causes of Action” means those Causes of Action indicated on the Schedule of Retained Causes of Action, which shall vest in the Liquidating Trust or Wind-Down Debtors, as applicable, on the Effective Date.

“Sale Orders” means, collectively: (1) the Zokinvy Sale Order; (2) the Avexitide Sale Order; ~~and~~ (3) the Lonafarnib and Lambda Sale Order; and (4) any other order approving the sale of certain of the Debtors’ assets pursuant to section 363 of the Bankruptcy Code.

“Sale Transactions” the sale of the assets and related transactions approved by the Sale Orders.

“Sale Transactions Documents” means the definitive documents to effectuate the Sale Transactions.

“Schedule of Assumed Executory Contracts and Unexpired Leases” means the list of Executory Contracts and Unexpired Leases that will be assumed by the Debtors pursuant to Article V of the Plan, which shall be included in the Plan Supplement.

“Schedule of Retained Causes of Action” means the schedule of Causes of Action of the Debtors that are not released, waived, or transferred pursuant to the Plan, as the same may be amended, modified, or supplemented from time to time.

“Schedules” means, collectively, the schedule of assets and liabilities and statement of financial affairs Filed by each Debtor pursuant to section 521 of the Bankruptcy Code, the Bankruptcy Rules, and the official bankruptcy forms, as the same may be amended, modified, or supplemented from time to time.

“Secured” means, when referring to a Claim: (1) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor’s interest in the Estate’s interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code or, in the case of setoff, pursuant to section 553 of the Bankruptcy Code; or (2) otherwise Allowed pursuant to the Plan or a Final Order of the Bankruptcy Court as a Secured Claim.

“Securities Act” means the Securities Act of 1933, as amended, 15 U.S.C. §§ 77a–77aa, or any similar federal, state, or local law, as now in effect or hereafter amended, and the rules and regulations promulgated thereunder.

“Solicitation Materials” means solicitation materials and documents to be included in the solicitation packages.

“Statutory Committee” means any statutory committee appointed in the Chapter 11 Cases, including the Unsecured Creditors Committee and the Equity Committee.

“Statutory Fees” means all fees due and payable pursuant to section 1930 of Title 28 of the United States Code, together with the statutory rate of interest set forth in section 3717 of Title 31 of the United States Code, to the extent applicable.

“Third-Party Release” means such releases by the Releasing Parties as set forth in Article IX.B hereof.

“Unexpired Lease” means a lease to which any of the Debtors is a party that is subject to assumption or rejection under section 365 of the Bankruptcy Code.

“Unimpaired” means, with respect to a Claim or Class of Claims, not “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

“Unsecured Creditors Committee” means the official committee of unsecured creditors appointed by the U.S. Trustee under section 1102(b) of the Bankruptcy Code in these Chapter 11 Cases on June 10, 2024 [Docket No. 322].

“U.S. Trustee” means the United States Trustee for the Northern District of Texas.

“Wind-Down” means the post-Effective Date functions of the Plan Administrator as set forth in the definition of “Plan Administrator.”

“Wind-Down Budget” means a budget for any fees, costs, and expenses to be incurred by the Plan Administrator in connection with the Wind-Down of the Debtors from and after the Effective Date as described herein.

“Wind-Down Debtor” means each of the Debtors following the Effective Date.

“Zokinvy Asset Purchase Agreement” means that certain *Asset Purchase Agreement by and between Sentyln Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order.

“Zokinvy Assets” means the assets related to the Zokinvy Asset Purchase Agreement.

“Zokinvy Sale Order” means the *Order (I) Approving the Sale of the Debtors’ Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162].

B. Rules of Interpretation

Unless otherwise specified, all section or exhibit references in this Plan are to the respective section in or exhibit to this Plan, as the same may be amended, waived, or modified from time to time in accordance with the terms hereof. The words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar import refer to this Plan as a whole and not to any particular section, subsection, or clause contained therein and have the same meaning as “in this Plan,” “of this Plan,”

“to this Plan,” and “under this Plan,” respectively. The words “includes” and “including” are not limiting. The headings in this Plan are for convenience of reference only and shall not limit or otherwise affect the provisions hereof. For purposes herein: (1) in the appropriate context, each term, whether stated in the singular or plural, shall include both the singular and plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender; (2) any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (3) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; and (4) any term used in capitalized form herein that is not otherwise defined but that is used in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as the case may be.

C. Computation of Time

In computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) will apply. Any references to the Effective Date shall mean the Effective Date or as soon as reasonably practicable thereafter unless otherwise specified herein.

D. Reference to Monetary Figures

All references in this Plan to monetary figures shall refer to the legal tender of the United States of America unless otherwise expressly provided.

E. Controlling Document

In the event of an inconsistency between this Plan and the Plan Supplement, the terms of the relevant document in the Plan Supplement shall control unless otherwise specified in such Plan Supplement document. In the event of an inconsistency between this Plan and any other instrument or document created or executed pursuant to this Plan, or between this Plan and the Disclosure Statement, this Plan shall control. The provisions of this Plan and of the Confirmation Order shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided* that if there is determined to be any inconsistency between any provision of this Plan and any provision of the Confirmation Order that cannot be so reconciled, then, solely to the extent of such inconsistency, the provisions of the Confirmation Order shall govern, and any such provisions of the Confirmation Order shall be deemed a modification of this Plan.

ARTICLE II.

ADMINISTRATIVE CLAIMS, PRIORITY TAX CLAIMS, AND STATUTORY FEES

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims (including Professional Compensation Claims) and Priority Tax Claims have not been classified for purposes of voting or receiving distributions, and, thus, are excluded from the Classes of Claims and Interests set forth in Article III hereof.

A. Administrative Claims

Except to the extent that a Holder of an Allowed Administrative Claim agrees to a less favorable treatment, each Holder of an Allowed Administrative Claim (other than a Professional Compensation Claim) shall receive, in full and final satisfaction of such Claim, (1) Cash in an amount equal to such Allowed Administrative Claim in accordance with the following: (a) if Allowed on or prior to the Effective Date, then on the Effective Date or as soon as reasonably practicable thereafter; (b) if not Allowed as of the Effective Date, then no later than forty-five (45) days after the date on which an order Allowing such Administrative Claim becomes a Final Order; or (c) at such time and upon such terms as set forth in a Final Order of the Bankruptcy Court; or (2) such other treatment consistent with the provisions of section 1129(a)(9) of the Bankruptcy Code.

Except for Professional Compensation Claims, and notwithstanding any prior Filing or Proof of Claim, Proofs of Claim seeking the allowance and payment of Administrative Claims must be Filed and served on the Debtors or the Liquidating Trustee (as applicable) and their counsel by no later than the Administrative Claims Bar Date pursuant to the procedures set forth in the Confirmation Order and the notice of the occurrence of the Effective Date. The burden of proof for the allowance of Administrative Claims remains on the Holder of the Administrative Claims.

Except as otherwise provided in Articles II.B, II.C, or II.D herein, Holders of Administrative Claims that do not File and serve a Proof of Claim or application for payment of administrative expenses requesting the allowance of an Administrative Claim by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting Administrative Claims against the Debtors, the Plan Administrator, the Liquidating Trustee, the Estates, or the Debtors' assets and properties, and any Administrative Claims shall be deemed disallowed as of the Effective Date unless otherwise ordered by the Bankruptcy Court.

B. Professional Compensation Claims

1. Final Fee Applications and Payment of Professional Compensation Claims

All requests for payment of Professional Compensation Claims (other than from OCPs) for services rendered and reimbursement of expenses incurred through the Effective Date shall be filed no later than forty-five (45) days after the Effective Date. The Bankruptcy Court shall determine the Allowed amounts of such Professional Compensation Claims after notice and a hearing in accordance with the procedures established by the Bankruptcy Code. Objections to Professional Compensation Claims must be Filed and served no later than twenty-one (21) days after the Filing of the Professional Compensation Claims. To the extent any Cash is remaining in the Professional Fee Reserve Account following irrevocable payment in full of all Allowed Professional Compensation Claims (including Allowed Professional Compensation Claims arising after the Confirmation Date), such Cash shall be transferred to the Wind-Down Debtors.

2. Administrative Claims of OCPs

All requests for payment of Professional Compensation Claims of OCPs shall be made pursuant to the OCP Order. To the extent any Professional Compensation Claims of the OCPs have not been Allowed pursuant to the OCP Order on or before the Effective Date, the amount of Professional Compensation Claims owing to the OCPs shall be paid in Cash to such OCPs by the Debtor or the Plan Administrator (as applicable) from the Professional Fee Reserve Account as soon as reasonably practicable after such Professional Compensation Claims are Allowed pursuant to the OCP Order.

3. Post-Confirmation Date Fees and Expenses

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable). Upon the Confirmation Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) may employ and pay any professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable) shall pay, within ten business days after submission of a detailed invoice such reasonable claims for compensation or reimbursement of expenses incurred by the professionals of the Debtors, the Plan Administrator, or the Liquidating Trustee (as applicable). If the Debtors, the Plan Administrator, or the Liquidating Trustee, in consultation with the Prepetition Term Loan Agent, dispute the reasonableness of any such invoice, the affected professional may submit such dispute to the Bankruptcy Court for a determination of the reasonableness of any such invoice, and the disputed portion of such invoice shall not be paid until the dispute is resolved.

4. Professional Fee Reserve Account

On the Effective Date, the Debtors shall fund an amount in Cash into the Professional Fee Reserve Account equal to (a) the aggregate accrued and unpaid Professional Compensation Claims as of the Effective Date (which shall be estimated by each applicable Professional in its reasonable discretion based on the amount of then-accrued Professional Compensation Claims plus a reasonable estimate of fees and expenses that will accrue up until the Effective Date), less (b) any amount then held in the Professional Fee Reserve Account.

Funds held in the Professional Fee Reserve Account shall be held for the benefit of the Professionals and shall not be property of the Estates. The Professionals shall reasonably and in good faith estimate their Professional Compensation Claims before and as of the Effective Date, taking into account any prior payments, and shall deliver such estimates to the Debtors no later than five (5) Business Days prior to the anticipated Effective Date.

Professional Compensation Claims shall be paid in full without interest or other earnings therefrom, in Cash, from the Professional Fee Reserve Account, in such amounts as are Allowed by the Bankruptcy Court as soon as reasonably practicable after such Professional Compensation Claims are allowed. The obligations of the Estates with respect to Professional Compensation Claims shall not be limited by nor deemed limited to the balance of funds held in the Professional Fee Reserve Account. To the extent that funds held in the Professional Fee Reserve Account are insufficient to satisfy the amount of accrued Professional Compensation Claims owing to the Professionals, such Professionals shall have an Allowed Administrative Claim for any such deficiency. No Liens, claims, or interests shall encumber the Professional Fee Reserve Account in any way, other than customary liens in favor of the depository bank at which the Professional Fee Reserve Account is maintained.

C. Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a less favorable treatment, each Holder of an Allowed Priority Tax Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, treatment in a manner consistent with section 1129(a)(9)(C) of the Bankruptcy Code.

D. Statutory Fees

All Statutory Fees due and payable prior to the Effective Date shall be paid by the Debtors. On and after the Effective Date, the Plan Administrator shall pay any and all Statutory Fees when due and payable, and shall file with the Bankruptcy Court quarterly reports in a form reasonably acceptable to the U.S. Trustee. Each of the Debtors and the Plan Administrator, as applicable, shall remain obligated to pay quarterly fees to the U.S. Trustee until the earliest of a Debtor's case being closed, dismissed, or converted to a case under chapter 7 of the Bankruptcy Code.

ARTICLE III.

CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

A. Classification of Claims and Interests

Except for the Claims addressed in Article II herein, all Claims and Interests are classified in the Classes set forth below in accordance with sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or an Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other Class to the extent that any portion of the Claim or Interest qualifies within the description of such other Class. A Claim or Interest also is classified in a particular Class for the purpose of receiving distributions under the Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and has not been otherwise paid, released, or satisfied at any time.

The classification of Claims against and Interests in the Debtors pursuant to the Plan is as follows:

Class	Claims and Interests	Status	Voting Rights
Class 1	Other Secured Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 2	Other Priority Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 3	Prepetition Term Loan Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 4	General Unsecured Claims	Impaired Unimpaired	Not Entitled to Vote (<u>Deemed to Accept</u>)
Class 5	Intercompany Claims	Unimpaired	Not Entitled to Vote (Deemed to Accept)
Class 6	Existing Equity Interests	Impaired	Entitled to Vote

B. Treatment of Claims and Interests

1. Class 1 – Other Secured Claims

a. *Classification:* Class 1 consists of all Other Secured Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Other Secured Claim agrees to less favorable treatment, each Holder of an Allowed Other Secured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, at the Debtors’ option: (i) payment in full in Cash; (ii) the collateral securing its Allowed Other Secured Claim; (iii) reinstatement of its Allowed Other Secured Claim; or (iv) such other treatment rendering its Allowed Other Secured Claim Unimpaired in accordance with section 1124 of the Bankruptcy Code.

c. *Voting:* Class 1 is Unimpaired, and Holders of Other Secured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 1 Other Secured Claims are not entitled to vote to accept or reject the Plan.

2. Class 2 – Other Priority Claims

a. *Classification:* Class 2 consists of all Other Priority Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed Other Priority Claim agrees to less favorable treatment, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, treatment in a manner consistent with section 1129(a)(9) of the Bankruptcy Code.

c. *Voting:* Class 2 is Unimpaired, and Holders of Other Priority Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 2 Other Priority Claims are not entitled to vote to accept or reject the Plan.

3. Class 3 – Prepetition Term Loan Claims

a. *Classification:* Class 3 consists of all Prepetition Term Loan Claims against the Debtors.

b. *Treatment:* On the Effective Date, (i) Cash in the amount of approximately \$10.0 million shall be wired to the Prepetition Term Loan Agent, who shall then distribute such individual amounts to the Prepetition Term Loan Secured Parties in accordance with the Prepetition Term Loan Documents; and (ii) Cash in an amount of approximately ~~\$13.4~~15.7 million (the “Prepetition Term Loan Claims Escrow Amount”) shall be segregated in an escrow account (the “Prepetition Term Loan Claims Escrow Account”), and distribution of all or a portion of the Prepetition Term Loan Claims Escrow Amount to Holders of Prepetition Term Loan Claims shall be subject to the Bankruptcy Court’s determination of the aggregate amount of Allowed Prepetition Term Loan Claims, subject to any offsets (the “Aggregate Allowed Prepetition Term Loan Claims Amount”). All parties’ rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount; *provided that* should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (i) any prepayments made on account of the Prepetition Term Loan Claims and (ii) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool as soon as practicable after the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

Except to the extent the Holder of an Allowed Prepetition Term Loan Claim agrees to less favorable treatment, each Holder of an Allowed Prepetition Term Loan Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, (i) such Holder’s *pro rata* share of approximately \$10.0 million in Cash; and (ii) Cash from the Prepetition Term Loan Claims Escrow Account in an amount equal to such Holder’s *pro rata* share of the Aggregate Allowed Prepetition Term Loan Claims Amount, with such distribution occurring as soon as practicable after the Bankruptcy Court’s determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

c. *Voting:* Class 3 is Unimpaired, and Holders of Prepetition Term Loan Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the

Bankruptcy Code. Therefore, Holders of Class 3 Prepetition Term Loan Claims are not entitled to vote to accept or reject the Plan.

4. Class 4 – General Unsecured Claims

a. *Classification:* Class 4 consists of all General Unsecured Claims against the Debtors.

b. *Treatment:* Except to the extent the Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction, settlement, release, and discharge of such Claim, payment in full in Cash, including post-petition interest through the date on which a distribution is made on account of the Claim calculated at the applicable contract rate, the Federal Judgment Rate, or such other rate as determined by the Bankruptcy Court (in any adversary proceeding, contested matter, or otherwise).

c. *Voting:* Class 4 is ~~Impaired, and~~ Unimpaired, and Holders of General Unsecured Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 4 General Unsecured Claims are not entitled to vote to accept or reject the Plan.

5. Class 5 – Intercompany Claims

a. *Classification:* Class 5 consists of the Intercompany Claims.

b. *Treatment:* On the Effective Date, each Holder of an Allowed Intercompany Claim shall have its Claim cancelled, released, and extinguished and without any distribution at the election of the Debtors. Per prior agreement, each Holder of an Allowed Intercompany Claim will waive entitlement to a distribution on account of such Claim.

c. *Voting:* Class 5 is Unimpaired, and Holders of Intercompany Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Holders of Class 5 Intercompany Claims are not entitled to vote to accept or reject the Plan.

6. Class 6 – Existing Equity Interests

a. *Classification:* Class 6 consists of all Existing Equity Interests in the Debtors.

b. *Treatment:* Except to the extent the Holder of an Existing Equity Interest agrees to less favorable treatment, each Holder of an Existing Equity Interest shall receive, in full and final satisfaction, settlement, release, and discharge of such Interest, its *pro rata* share of the Existing Equity Interest Recovery Pool.

c. *Voting:* Class 6 is Impaired, and Holders of Class 6 Existing Equity Interests are entitled to vote to accept or reject the Plan.

C. Special Provision Governing Unimpaired Claims

Except as otherwise provided in this Plan, nothing under this Plan shall affect the rights of the Debtors or the Liquidating Trustee with respect to any unimpaired Claims, including all rights in respect of legal and equitable defenses to, or setoffs or recoupments against, any such unimpaired Claims.

D. Elimination of Vacant Classes

Any Class that, as of the commencement of the Combined Hearing, does not have at least one Holder of a Claim or Interest that is Allowed in an amount greater than zero for voting purposes shall be considered vacant, deemed eliminated from this Plan for purposes of voting to accept or reject this Plan, and disregarded for purposes of determining whether this Plan satisfies section 1129(a)(8) of the Bankruptcy Code with respect to such Class.

E. Voting Classes

The Debtors assert that only Classes of ~~Claims or~~ Interests in ~~Class 4 and~~ Class 6 are impaired and entitled to vote to accept or reject the Plan.

F. Presumed Acceptance by Non-Voting Classes

With respect to each Debtor, if a Class contained Claims eligible to vote and no Holder of Claims or Interests eligible to vote in such Class votes to accept or reject this Plan, this Plan shall be presumed accepted by the Holders of such Claims or Interests in such Class.

G. Controversy Concerning Impairment

If a controversy arises as to whether any Claim or any Class of Claims is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Combined Hearing.

H. Subordination of Claims

The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments under the Plan shall take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, contract, section 510(b) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors or the Liquidating Trustee (as applicable) reserve the right to re-classify any Allowed Claim or Allowed Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

I. Confirmation Pursuant to Sections 1129(a)(10) and 1129(b) of the Bankruptcy Code

Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by one or more of the Classes entitled to vote pursuant to Article III of

the Plan. The Debtors hereby request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any Class that is deemed to reject the Plan pursuant to section 1126(g) of the Bankruptcy Code. The Debtors reserve the right to request Confirmation of the Plan under section 1129(b) of the Bankruptcy Code with respect to any voting Class that votes to reject the Plan.

The Debtors reserve the right to modify the Plan in accordance with Section XI.A of the Plan to the extent that Confirmation pursuant to section 1129(b) of the Bankruptcy Code requires modification to the extent permitted by the Bankruptcy Code and the Bankruptcy Rules. The Debtors have requested that any party that disputes the Debtors' characterization of its Claim or Interest as being unimpaired request a finding of impairment from the Bankruptcy Court in order to obtain the right to vote on the Plan; *provided, however*, that such party files and serves an objection requesting such determination on or before August 30, 2024 at 4:00 p.m. prevailing Central Time.

J. Insurance

Notwithstanding anything to the contrary in the Plan, if any Claim is subject to coverage under an Insurance Policy, payments on account of such Claim will first be made from proceeds of such Insurance Policy in accordance with the terms thereof, with the balance of such Claim, if any, treated in accordance with the provisions of the Plan governing the Class applicable to such Claim.

ARTICLE IV. MEANS FOR IMPLEMENTATION OF THE PLAN

A. General Settlement of Claims and Interests

Pursuant to section 1123(b)(2) of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the distributions, releases, and other benefits provided pursuant to this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good faith compromise and settlement of Claims, Interests, and controversies relating to the contractual, legal, and subordination rights that a Holders of Claims or Interests may have with respect to any Allowed Claim or Interest or any distribution to be made on account of such Allowed Claim or Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise and settlement of all such Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of such Claims and Interests, and is fair, equitable, and reasonable.

B. Creation of Liquidating Trust, Liquidating Trustee, and the Liquidating Trust Oversight Committee

1. Creation of the Liquidating Trust

On the Effective Date, the Liquidating Trust will be established for the benefit of the Holders of Claims and Existing Equity Interests pursuant to the terms set forth in the Liquidating Trust Agreement, which agreement shall be in a form reasonably acceptable to the Debtors, the Unsecured Creditors' Committee, and the Equity Committee. On the Effective Date, certain

Causes of Action (as set forth in the Schedule of Retained Causes of Action) shall vest in the ~~Liquidation~~Liquidating Trust, and any recoveries from such Retained Causes of Action shall constitute ~~Liquidation~~Liquidating Trust Assets. The primary purpose of the Liquidating Trust shall be to hold and to administer the Liquidating Trust Assets, distributing Distributable Cash pursuant to this Plan, and the Liquidating Trust shall have no objective to continue or engage in the conduct of a trade or business except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the trust. On the Effective Date, the Liquidating Trust Assets will be transferred by the Debtors to the Liquidating Trust. The Liquidating Trust shall be a legally separate and distinct Entity from the Debtors and the Plan Administrator.

As soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount, should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool and transferred to the Liquidating Trust.

2. Liquidating Trustee

The Liquidating Trust shall be controlled and administered by the Liquidating Trustee, subject to the oversight and direction of the Liquidating Trust Oversight Committee. The Debtors and the Plan Administrator shall have no direct or indirect control, influence, or authority over the Liquidating Trust, the Liquidating Trustee, or the Liquidating Trust Oversight Committee or any of their respective decisions, except as expressly set forth in this Plan.

The Liquidating Trustee, subject to the oversight of the Liquidating Trust Oversight Committee, shall have the exclusive control over all aspects of the Retained Causes of Action that shall vest in the ~~Liquidation~~Liquidating Trust (as set forth in the Schedule of Retained Causes of Action), including the investigation, prosecution, and disposition of the same in accordance with the terms of the Liquidating Trust Agreement.

It is intended that the Liquidating Trust qualify as a "liquidating trust" within the meaning of Treasury Regulations Section 301.7701-4(d). In general, a liquidating trust is not a separate taxable entity but rather is treated for U.S. federal income tax purposes as a "grantor" trust (i.e., a pass-through entity). The IRS, in Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an IRS ruling as to the grantor trust status of a liquidating trust under a chapter 11 plan. The Liquidating Trust will be structured with the intention of complying with such general criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties (including the Liquidating Trustee and holders of beneficial interests in the Liquidating Trust) are required to treat for U.S. federal income tax purposes the Liquidating Trust as a grantor trust of which such holders of beneficial interest are the owners and grantors. The Liquidating Trustee is hereby appointed in such instance pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to handle all of the Liquidating Trust's tax matters, including, without limitation, the filing of all tax returns and the handling of tax audits and proceedings of the Liquidating Trust. Notwithstanding the foregoing, the Liquidating Trustee may make an election under Treasury Regulations Section

1.468B-0(c)(2)(ii) to treat the Liquidating Trust (or any portion thereof) as a disputed ownership fund. The Liquidating Trustee shall be responsible of filing information on behalf of the Liquidating Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a) or as a disputed ownership fund.

C. The Plan Administrator

1. Continued Corporate Existence

(a) Each of the Debtors shall remain in existence unless and until dissolved by Plan Administrator in accordance with the provisions of this Plan.

(b) On the Effective Date or as soon as reasonably practicable thereafter, in connection with the assignment of the Retained Causes of Action that shall vest in the Liquidating Trust (as set forth in the Schedule of Retained Causes of Action), at the discretion of the Liquidating Trustee, one percent (1%) of an Intercompany Interest of any Debtor shall be transferred to the Liquidating Trustee to confer standing upon the Liquidating Trustee to institute litigation respecting Retained Causes of Action on behalf of the Debtors pursuant to the provisions of any applicable LLC Act. For the avoidance of doubt, the 1% Intercompany Interest transferred to the Liquidating Trust pursuant to this Plan shall not confer any voting or other rights to the Liquidating Trustee other than for the purpose of conferring exclusive derivative standing upon the Liquidating Trustee as described herein.

(c) The Plan Administrator shall give the Liquidating Trustee forty-five (45) days written notice (the "Termination Notice") of its intentions to merge, dissolve, or otherwise terminate the existence of a Wind-Down Debtor. Upon receipt of the Termination Notice, the Liquidating Trustee will evaluate whether prosecution of a pending or contemplated Retained Cause of Action necessitates the continued corporate existence of a Wind-Down Debtor, in which case the Plan Administrator shall take no action with respect to merging, dissolving, or otherwise terminating the existence of such Wind-Down Debtor until such litigation claim is resolved by the Liquidating Trust; *provided, however*, that all costs (including the fees of the Plan Administrator) associated with maintaining the continued corporate existence of any such Wind-Down Debtor beyond forty-five (45) days from the delivery of the Termination Notice shall be borne by the Liquidating Trustee.

(d) As of the Effective Date, the certificate of incorporation, bylaws, articles of organization, certificate of formation, or limited liability company operating agreement, as applicable, of each Debtor shall be deemed amended to the extent necessary to carry out the provisions of the Plan. The entry of the Confirmation Order shall constitute authorization for the Debtors, the Wind-Down Debtors, the Plan Administrator, and the Liquidating Trustee, as applicable, to take or cause to be taken all actions (including, if applicable, corporate actions) necessary or appropriate to implement all provisions of, and to consummate, the Plan prior to, on, and after the Effective Date and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court without further approval, act, or action under any applicable law, order, rule, or regulation.

(e) To the extent that it is determined that additional corporate governance or structural changes may be required to confer standing on the Liquidating Trustee with respect to any Retained Causes of Action, the Plan Administrator will exercise reasonable efforts to cooperate and work with the Liquidating Trustee to achieve and confer such standing so long as any proposed governance or structural changes requested by the Liquidating Trustee do not interfere with the Plan Administrator's ability to carry out its own functions and responsibilities.

(f) Tax Reporting

The Plan Administrator shall file any and all tax returns for the Wind-Down Debtors and the Estates, as applicable; *provided, however*, that the Plan Administrator shall have no personal liability for the signing or accuracy of the Debtors' tax returns that are due to be filed after the Effective Date or for any tax liability related thereto.

The Plan Administrator shall be responsible for payment, out of the Wind-Down Budget, of any taxes imposed on the Debtors.

(g) On or after the Effective Date, Debtor Eiger BioPharmaceuticals, Inc. may convert from a Delaware corporation to a Delaware limited liability company (the "Eiger Conversion"), which shall be deemed effective for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtors or the Wind-Down Debtors; *provided, however*, that the Debtors or the Wind-Down Debtors may, but will not be required to, take appropriate action to document such conversion under applicable law. The Wind-Down Debtors shall be authorized to adopt any agreements, documents, and instruments and to take any other actions contemplated under the Plan as necessary to consummate the Plan without the need for any approvals, authorizations or consents, except those expressly required under the Plan.

D. Liquidation Transactions

On or before the Effective Date, the Debtors or the Plan Administrator shall enter into and take any actions that may be necessary or appropriate to effectuate the Sale Transactions or the Wind-Down of the Debtors, as applicable, including but not limited to: (1) the ~~adoption of the Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc.~~ Eiger Conversion; (2) the execution and delivery of appropriate agreements or other documents of consolidation, conversion, disposition, transfer, or dissolution containing terms that are consistent with the terms of this Plan and that satisfy the requirements of applicable law; (3) the execution and delivery of any appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, duty, or obligation on terms consistent with this Plan; (4) the delivery of Liquidating Trust Assets to the Liquidating Trustee; (5) the filing of appropriate documents with the appropriate governmental authorities pursuant to applicable law; and (6) any and all other actions that the Debtors or the Plan Administrator determine are necessary or appropriate to effectuate the Plan.

1. Wind Down of the Debtors

Following the Effective Date, the Plan Administrator shall Wind-Down the business affairs and operations of the Debtors. The responsibilities and authority of the Plan Administrator shall include the following: (a) administering the Professional Fee Reserve Account, the Wind-Down Budget, and the Prepetition Term Loan Claims Escrow Account on the terms set forth herein; (b) administering and paying taxes, including, among other things, (i) filing tax returns (to the extent not the obligation of any Purchaser), and (ii) representing the interest and account of the Debtors before any taxing authority in all matters; (c) retaining and paying, without the need for retention or fee applications, professionals in connection with the Plan Administrator's performance of its duties under this Plan; (d) distributing information statements as required for U.S. federal income tax and other applicable tax purposes; (e) complying with any continuing obligations under the ~~Zokinvy-Asset Purchase Agreement or the Avexitide Asset Purchase Agreement~~ Agreements, as applicable; (f) Filing an application for entry by the Bankruptcy Court of a final decree closing the Chapter 11 Cases; and (g) making distributions to Professionals for Allowed Professional Compensation Claims from the Professional Fee Reserve Account.

The responsibilities and authority of the Liquidating Trustee shall include the following: (a) preserving and liquidating the Debtors' assets remaining after consummation of the Sale Transactions, if any, including through the prosecution of any Claims or Retained Causes of Action; (b) considering, litigating, or resolving disputed Claims; (c) distributing the Distributable Cash and other assets of the Debtors' Estates pursuant to the terms of this Plan to Holders of Allowed Claims and ~~Equity~~ Interests; (d) procuring the necessary insurance to facilitate the Wind-Down, including appropriate D&O Liability Insurance Policies; and (e) performing such other responsibilities as may be vested in the Liquidating Trustee pursuant to this Plan or an order of the Bankruptcy Court (including, without limitation, the Confirmation Order), or as may be necessary and proper to carry out the provisions of this Plan.

E. Sources of Consideration for Plan Distributions

Subject to the provisions of the Plan concerning the Professional Fee Reserve Account and the Wind-Down Budget, the Debtors or the Liquidating Trustee (as applicable) shall fund distributions under the Plan with the Liquidating Trust Assets, including but not limited to: (1) the remaining proceeds from the Sale Transactions, (2) the Debtors' Cash on hand delivered to the Liquidating Trustee, and (3) the recovery, if any, from prosecution or settlement of the Retained Causes of Action, all in accordance with the terms herein.

1. Sale Transactions

On or before the Effective Date, the Debtors or the Plan Administrator shall take any actions that may be necessary or appropriate to effectuate the Sale Transactions in accordance with the Bid Procedures Order and this Plan.

2. Use of Cash

The Debtors or the Liquidating Trustee shall use Cash on hand to pay the fees and expenses of administering their respective functions and to fund distributions to Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

3. Retained Causes of Action

The Debtors, the Liquidating Trustee, or the Plan Administrator shall use the recovery, if any, from prosecution or settlement of the Retained Causes of Action to fund distributions to certain Holders of Allowed Claims and Allowed Interests, consistent with the terms of the Plan.

F. Vesting of Assets

Except as otherwise provided in this Plan or the Sale Orders, on and after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, except for certain Causes of Action (as set forth on the Schedule of Retained Causes of Action), the Wind-Down Budget, the Professional Fee Reserve Account, which shall vest in the Wind-Down Debtors, all property in each of the Estates, including all claims, rights, Causes of Action that shall vest in the ~~Liquidation~~ Liquidating Trust, and any property acquired by the Debtors under or in connection with this Plan, shall vest in the Liquidating Trust and with the Liquidating Trustee, free and clear of all Claims, Liens, encumbrances, charges, Causes of Action, or other interests. Subject to the terms of this Plan, on or after the Effective Date, the Liquidating Trustee may use, acquire, and dispose of property, and may prosecute, compromise, or settle any Claims and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order.

As soon as practicable after the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount, should the Aggregate Allowed Prepetition Term Loan Claims Amount be less than the sum of (a) any prepayments made on account of the Prepetition Term Loan Claims and (b) the Prepetition Term Loan Claims Escrow Amount, the portion of the Prepetition Term Loan Claims Escrow Amount in excess of the Aggregate Allowed Prepetition Term Loan Claims Amount minus any prepayments made on account of the Prepetition Term Loan Claims shall be reallocated to the Existing Equity Interest Recovery Pool and transferred to the Liquidating Trust.

On the Effective Date, the attorney-client privilege, the attorney work product doctrine and any similar privilege against disclosure, and all other similar immunities (all together, "Privileges") belonging to the Debtors or the Estates that concern or in any way relate to any of the Liquidating Trust Assets, or that would apply to communications, documents, or records recorded in magnetic, optical, or other form of electronic medium concerning or in any way relating to any Liquidating Trust Assets, shall vest in the Liquidating Trust. The Liquidating Trustee shall have the sole right to waive Privileges that concern or in any way relate to any of the Liquidating Trust Assets or that would apply to communications, documents, or electronic records concerning or in any way relating to any Liquidating Trust Assets.

G. Preservation of Causes of Action

In accordance with section 1123(b) of the Bankruptcy Code, the Liquidating Trustee or the Plan Administrator, as applicable, shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action of the Debtors, including any actions specifically enumerated in the Schedule of Retained Causes of Action, that are not otherwise transferred or

sold pursuant to the Sale Transactions or distributed pursuant to the Plan, whether arising before or after the Petition Date, and the Liquidating Trustee's or the Plan Administrator's, as applicable, rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date, other than the Causes of Action released by the Debtors pursuant to the releases and exculpations contained in the Plan, including in Article IX hereof, which shall be deemed released and waived by the Debtors as of the Effective Date. No preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable, or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or Consummation. No Entity (other than the Released Parties) may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors, the Liquidating Trustee, or the Plan Administrator, as applicable, will not pursue any and all available Causes of Action of the Debtors against it.

H. Corporate Action

On the Effective Date, ~~following the Debtors' adoption of the Amended Certificate of Incorporation of Eiger BioPharmaceuticals, Inc.,~~ the Debtors shall not be dissolved unless and until the Plan Administrator, in consultation with the Liquidating Trustee, determines that dissolution will not have any adverse impact on the value of the Debtors' assets; *provided* that neither the Debtors nor any party released pursuant to Article IX herein shall be responsible for any liabilities that may arise as a result of non-dissolution of the Debtors; *provided further*, that nothing in the Plan shall be construed as relieving the Debtors or the Plan Administrator (as applicable) of their duties to pay U.S. Trustee Statutory Fees as required by the Bankruptcy Code and applicable law until such time as a final decree is entered in the Debtors' Chapter 11 Cases or the cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code. The Plan Administrator shall submit with the appropriate governmental agencies a copy of the Confirmation Order, which Confirmation Order shall suffice for purposes of obtaining a Certificate of Dissolution from the applicable Secretary of State or equivalent body.

Without limiting the foregoing, on the Effective Date and following satisfaction of the Debtors' distribution and funding requirements set forth in the Plan, the Debtors shall have no further duties or responsibilities in connection with implementation of this Plan, and the directors and officers of the Debtors shall be deemed to have resigned in favor of the ongoing administration of the Debtors' affairs by the Plan Administrator. From and after the Effective Date, the Plan Administrator and the Liquidating Trustee shall be authorized to act on behalf of the Estates, as applicable, provided that neither of them shall have duties other than as expressly set forth in the Plan or the Confirmation Order.

I. Cancellation of Existing Securities and Agreements

Except for the purpose of evidencing a right to a distribution under this Plan and except as otherwise set forth in this Plan, on the Effective Date, all agreements, instruments, notes, certificates, indentures, mortgages, securities and other documents evidencing any Claim or Interest, and any rights of any Holder in respect thereof, shall be deemed cancelled and of no further force or effect and the obligations of the Debtors thereunder shall be deemed fully satisfied, released, and discharged and, as applicable, shall be deemed to have been surrendered to the

Liquidating Trustee. The Holders of or parties to such cancelled instruments, securities, and other documentation shall have no rights arising from or related to such instruments, securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to this Plan. All parties' rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

J. Effectuating Documents; Further Transactions

Upon entry of the Confirmation Order, the Debtors or the Plan Administrator or the Liquidating Trustee (as applicable) shall be authorized to execute, deliver, file, or record such contracts, instruments, releases, consents, certificates, resolutions, programs, and other agreements or documents, and take such acts and actions as may be reasonable, necessary, or appropriate to effectuate, implement, consummate, and/or further evidence the terms and conditions of this Plan and any transactions described in or contemplated by this Plan. The Debtors or the Plan Administrator or the Liquidating Trustee, all Holders of Claims or Interests receiving distributions pursuant to this Plan, and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents, and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan.

K. Section 1146 Exemption from Certain Taxes and Fees

Pursuant to section 1146(a) of the Bankruptcy Code, any transfers of property pursuant to the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and upon entry of the Confirmation Order, the appropriate state or local governmental officials or agents shall forgo the collection of any such tax or governmental assessment and accept for filing and recordation all such instruments or other documents governing or evidencing such transfers without the payment of any such tax, recordation fee, or governmental assessment.

L. Sale Orders

Notwithstanding anything to the contrary herein, nothing in this Plan shall affect, impair or supersede the Sale Orders or Sale Transactions Documents, each of which remains in full force and effect and governs in the event of any inconsistency with the Plan.

M. Authority to Act

Prior to, on, or after the Effective Date (as appropriate), all matters expressly provided for under this Plan that would otherwise require approval of the stockholders, security holders, officers, directors, or other owners of the Debtors shall be deemed to have occurred and shall be in effect prior to, on, or after the Effective Date (as applicable) pursuant to the applicable law of the state(s) in which the Debtors are formed, without any further vote, consent, approval, authorization, or other action by such stockholders, security holders, officers, directors, or other owners of the Debtor or notice to, order of, or hearing before, the Bankruptcy Court.

N. Separate Plans

Notwithstanding the combination of separate plans of liquidation for the Debtors set forth in this Plan for purposes of economy and efficiency, this Plan constitutes a separate chapter 11 plan for each Debtor. Accordingly, if the Bankruptcy Court does not confirm this Plan with respect to one or more Debtors, it may still confirm this Plan with respect to any other Debtor that satisfies the Confirmation requirements of section 1129 of the Bankruptcy Code.

ARTICLE V. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

A. Assumption and Rejection of Executory Contracts and Unexpired Leases

On the Effective Date, except as otherwise provided herein (which exclusion includes the Indemnification Obligations; and the D&O Liability Insurance Policies; ~~and the Employment Agreements~~) or otherwise identified on the Schedule of Assumed Executory Contracts and Unexpired Leases, if any (which shall be included in the Plan Supplement), all Executory Contracts or Unexpired Leases not previously assumed, assumed and assigned, or rejected pursuant to an order of the Bankruptcy Court, will be deemed rejected, in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code other than those Executory Contracts or Unexpired Leases that are the subject of a motion to assume that is pending on the Confirmation Date.

Assumption of any Executory Contract or Unexpired Lease pursuant to the Sale Transactions Documents or this Plan, and payment of any Cures relating thereto, shall, upon satisfaction of the applicable requirements of section 365 of the Bankruptcy Code, result in the full, final, and complete release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults or provisions restricting the change in control of ownership interest composition or other bankruptcy-related defaults, arising under any assumed Executory Contract or Unexpired Lease at any time prior to the effective date of assumption.

B. Claims Based on Rejection of Executory Contracts or Unexpired Leases

If the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order results in a Claim, then, unless otherwise ordered by the Bankruptcy Court, such Claim shall be forever barred and shall not be enforceable against the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties unless a Proof of Claim is Filed with the Notice and Claims Agent and served upon counsel to the Plan Administrator and the Liquidating Trustee within thirty (30) days of the Effective Date.

The foregoing applies only to Claims arising from the rejection of an Executory Contract or Unexpired Lease under the Plan and Confirmation Order; any other Claims held by a party to a rejected Executory Contract or Unexpired Lease shall have been evidenced by a Proof of Claim Filed by the applicable Bar Date or shall be barred and unenforceable. Claims arising from the rejection of Executory Contracts or Unexpired Leases under the Plan and Confirmation Order shall be classified as General Unsecured Claims and shall, if Allowed, be treated in accordance with the provisions herein.

Any Claims arising from the rejection of an Executory Contract or Unexpired Lease pursuant to the Plan and Confirmation Order that are not timely Filed within thirty (30) days of the Effective Date will be disallowed automatically, forever barred from assertion, and shall not be enforceable against, as applicable, the Debtors, the Estates, the Plan Administrator, or the Liquidating Trustee, or any of their respective assets and properties.

C. Reservation of Rights

Neither the exclusion nor the inclusion by the Debtors of any contract or lease on any exhibit, schedule, or other annex to this Plan or in the Plan Supplement, nor anything contained in this Plan, shall constitute an admission by the Debtors that any such contract or lease is or is not an Executory Contract or Unexpired Lease or that the Debtors, the Plan Administrator, or the Liquidating Trustee, or their respective affiliates has any liability thereunder. Except as explicitly provided in this Plan, nothing in this Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors, the Plan Administrator, or the Liquidating Trustee under any executory or non-executory contract or unexpired or expired lease. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under this Plan, the Debtors, or the Wind-Down Debtors, as applicable, shall have thirty (30) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

D. Preexisting Obligations to the Debtors Under Executory Contracts and Unexpired Leases

Rejection of any Executory Contract or Unexpired Lease pursuant to the Plan or otherwise shall not constitute a termination of preexisting obligations owed to the Debtors under such Executory Contracts or Unexpired Leases. In particular, notwithstanding any non-bankruptcy law to the contrary, the Debtors expressly reserve and do not waive any right to receive, or any continuing obligation of a counterparty to provide, warranties, indemnity or continued maintenance obligations. [The Plan shall constitute a motion to reject all such Executory Contracts or Unexpired Leases that are subject to rejection under this Article V.](#)

[Notwithstanding any other provision of this Article V or the Plan, the Debtors shall submit to the Court on before the date of the Combined Hearing, but after the occurrence of the “Closing” as defined in the Lonafarnib Asset Purchase Agreement, an order for entry by the Court providing for rejection of the Merck License on the terms set forth in such order, which order shall be in the form required under the Merck Side Letters.](#)

E. Indemnity Obligations

Each of the Debtors’ Indemnification Obligations shall not be discharged, impaired, or otherwise affected by the Plan. The Indemnification Obligations shall be deemed Executory Contracts assumed by the Debtors under the Plan ~~(solely to the extent of coverage under the D&O Liability Insurance Policies)~~. Notwithstanding the foregoing, such Indemnification Obligations: ~~(1) shall be limited to and shall not exceed available coverage under the D&O Liability Insurance Policies; and (2) shall be subject to typical exclusions for actual fraud, willful misconduct, or gross negligence.~~

F. D&O Liability Insurance Policies

Each D&O Liability Insurance Policy to which the Debtors are a party as of the Effective Date shall be deemed an Executory Contract and shall be automatically assumed or assumed and assigned by the applicable Debtor, effective as of the Effective Date, pursuant to sections 365 and 1123 of the Bankruptcy Code. For the avoidance of doubt, coverage for defense and indemnity under the D&O Liability Insurance Policies shall remain available to all individuals within the definition of “Insured” in the D&O Liability Insurance Policies. In addition, after the Effective Date, all officers, directors, agents, or employees of the Debtors who served in such capacity at any time before the Effective Date shall be entitled to the full benefits of the D&O Liability Insurance Policies (including any “tail” policy) in effect or purchased as of the Effective Date for the full term of such policy regardless of whether such officers, directors, agents, and/or employees remain in such positions after the Effective Date, in each case, to the extent set forth in the D&O Liability Insurance Policies.

G. Employment Agreements

Any Employment Agreement not assumed and assigned pursuant to the Sale Transactions Documents as part of the Sale Transactions shall be rejected by the Plan Administrator on the Effective Date of the Plan.

H. Modifications, Amendments, Supplements, Restatements, or Other Agreements

Modifications, amendments, supplements, and restatements to a prepetition Executory Contract and/or Unexpired Lease that have been executed by the Debtors during the Chapter 11 Cases shall not be deemed to alter the prepetition nature of the Executory Contract or Unexpired Lease.

I. Nonoccurrence of Effective Date

In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting Unexpired Leases pursuant to section 365(d)(4) of the Bankruptcy Code.

J. Employee Compensation and Benefits

All employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and nonemployee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, Executory Contracts under this Plan and, on the Effective Date, shall be rejected pursuant to sections 365 and 1123 of the Bankruptcy Code.

**ARTICLE VI.
PROVISIONS GOVERNING DISTRIBUTIONS**

A. Distributions on Account of Claims Allowed as of the Effective Date

As of the close of business on the Distribution Record Date, the various transfer registers for each of the Classes of Claims or Interests as maintained by the Debtors, or their respective agents, shall be deemed closed, and there shall be no further changes in the record Holders of any of the Claims or Interests. The Disbursing Agent shall have no obligation to recognize any ownership transfer of the Claims or Interests occurring on or after the Distribution Record Date. The Disbursing Agent shall be entitled to recognize and deal for all purposes hereunder only with those record Holders stated on the transfer ledgers as of the close of business on the Distribution Record Date, to the extent applicable.

Except as otherwise provided herein, the Disbursing Agent shall make distributions to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date at the address for each such Holder as indicated on the Debtors' records as of the date of any such distribution; *provided* that the manner of such distributions shall be determined at the discretion of the Disbursing Agent; *provided, further*, that to the extent a Proof of Claim has been filed, the address for each Holder of an Allowed Claim shall be deemed to be the address set forth in any Proof of Claim Filed by that Holder. As soon as reasonably practicable after the Bankruptcy Court has determined the Aggregate Allowed Prepetition Term Loan Claims Amount, the Disbursing Agent shall make all distributions for Class 3 Claims to the Prepetition Term Loan Agent, who shall then distribute such individual amounts to the Prepetition Term Loan Secured Parties in accordance with the Prepetition Term Loan Documents.

The Disbursing Agent will implement a procedure to ensure post-petition interest accruing on Class 4 Claims is calculated using the appropriate contractual rate, as applicable, through the date on which a distribution is made on account of the Claim.

B. Compliance with Tax Requirements

In connection with this Plan, any Person issuing any instrument or making any distribution or payment in connection therewith, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, or local taxing authority. In the case of a non-Cash distribution that is subject to withholding, the distributing party may require the intended recipient of such distribution to provide the withholding agent with an amount of Cash sufficient to satisfy such withholding tax as a condition to receiving such distribution or withhold an appropriate portion of such distributed property and either (1) sell such withheld property to generate Cash necessary to pay over the withholding tax (or reimburse the distributing party for any advance payment of the withholding tax) or (2) pay the withholding tax using its own funds and retain such withheld property. The distributing party shall have the right not to make a distribution under this Plan until its withholding or reporting obligation is satisfied pursuant to the preceding sentences. Any amounts withheld pursuant to this Plan shall be deemed to have been distributed to and received by the applicable recipient for all purposes of this Plan.

Any party entitled to receive any property as an issuance or distribution under this Plan shall, upon request, deliver to the withholding agent or such other Person designated by the Liquidating Trustee the appropriate IRS Form or other tax forms or documentation requested by the Liquidating Trustee to reduce or eliminate any required federal, state, or local withholding. If the party entitled to receive such property as an issuance or distribution fails to comply with any such request for a one hundred eighty (180) day period beginning on the date after the date such request is made, the amount of such issuance or distribution shall irrevocably revert to the Liquidating Trustee and any Claim in respect of such distribution under this Plan shall be discharged and forever barred from assertion against such Debtor, the Plan Administrator, or the Liquidating Trustee or its respective property.

Notwithstanding the above, each Holder of an Allowed Claim or Interest that is to receive a distribution under this Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such Plan Distribution.

C. Date of Distributions

Distributions shall be made on or after the Effective Date to Holders of Allowed Claims or Allowed Interests. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date. Except as otherwise provided in the Plan, Holders of Claims shall not be entitled to interest, dividends, or accruals on the distributions provided for in the Plan, regardless of whether such distributions are delivered on or at any time after the Effective Date. For the avoidance of doubt, the Prepetition Term Loan Claims Escrow Account includes a reserve for interest that may accrue after the Effective Date on amounts to be distributed in satisfaction of Prepetition Term Loan Claims prior to such distributions.

D. Disbursing Agent

Except as may be otherwise provided in the Sale Orders or Cash Collateral Order, all distributions under this Plan shall be made by the Disbursing Agent on and after the Effective Date and as provided herein. The Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties.

E. Rights and Powers of Disbursing Agent

The Disbursing Agent may (1) effect all actions and execute all agreements, instruments, and other documents necessary to carry out the provisions of this Plan; (2) make all distributions contemplated hereby; and (3) perform such other duties as may be required of the Disbursing Agent pursuant to this Plan or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions hereof.

F. Surrender of Instruments

As a condition precedent to receiving any distribution under this Plan, each holder of a certificated instrument or note must surrender such instrument or note held by it to the Liquidating Trustee or the Liquidating Trustee's designee. Any holder of such instrument or note that fails to (1) surrender the instrument or note; or (2) execute and deliver an affidavit of loss or indemnity reasonably satisfactory to the Liquidating Trustee and furnish a bond in form, substance, and amount reasonably satisfactory to the Liquidating Trustee within six (6) months of being entitled to such distribution shall be deemed to have forfeited all rights and claims and may not participate in any distribution hereunder. All parties' rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

G. Delivery of Distributions and Undeliverable or Unclaimed Distributions

Subject to applicable Bankruptcy Rules, all distributions to Holders of Allowed Claims or Allowed Interests shall be made by the Disbursing Agent, who shall transmit such distributions to the applicable Holders of Allowed Claims or Interests or their designees.

If any distribution to a Holder of an Allowed Claim (1) is returned as undeliverable for lack of a current address or otherwise; or (2) is not cashed or otherwise presented for collection by the Holder of the Allowed Claim within ninety (90) calendar days after the mailing of such distribution, the Liquidating Trustee shall be authorized to cancel such distribution check and file with the Bankruptcy Court the name and last known address of the Holder of undeliverable distribution or uncashed distribution, as applicable. If, after the passage of thirty (30) calendar days after such Filing, the payment or distribution on the Allowed Claim still cannot be made, then (1) the Holder of such Claim shall cease to be entitled to the undeliverable distribution or uncashed distribution, which will revert to the Liquidating Trustee for distribution in accordance with the terms of this Plan; and (2) the Allowed Claim of such Holder shall be deemed disallowed and expunged for purposes of further distributions under the Plan.

H. Manner of Payment

Except as specifically provided herein, at the option of the Debtors or the Liquidating Trustee, as applicable, any Cash payment to be made under this Plan may be made by a check or wire transfer or as otherwise required or provided in applicable agreements or customary practices of the Debtors.

I. Foreign Currency Exchange Rate

As of the Effective Date, any Claim asserted in currency other than U.S. dollars shall be automatically deemed converted to the equivalent U.S. dollar value using the exchange rate for the applicable currency as published in *The Wall Street Journal* on the Petition Date.

J. Setoffs and Recoupment

The Debtors or the Liquidating Trustee, pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code), and applicable bankruptcy and/or non-bankruptcy law,

without the approval of the Bankruptcy Court and upon no less than fourteen (14) calendar days' notice to the applicable Holder of a Claim, or as may be agreed to by the Holder of a Claim, may, but shall not be required to, set off against or recoup against any Allowed Claim and the distributions to be made pursuant to this Plan on account of such Allowed Claim, any claims of any nature whatsoever that the Debtors or their Estates may have against the Holder of such Allowed Claim; *provided* that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtors or the Liquidating Trustee of any such claim the Debtors or their Estates may have against the Holder of such Claim.

K. Minimum Distribution

No payment of Cash in an amount of less than one hundred U.S. dollars (\$100.00) shall be required to be made on account of any Allowed Claim. Such undistributed amount may instead be used in accordance with the Plan and the Wind-Down Budget. If the Cash available for the final distribution is less than the cost to distribute such funds, the Liquidating Trustee may donate such funds to the unaffiliated charity of its choice.

L. Allocations

Except as otherwise provided in this Plan or as otherwise required by law, distributions with respect to an Allowed Claim shall be allocated first to the principal portion of such Allowed Claim (as determined for U.S. federal income tax purposes) and, thereafter, to the remaining portion of such Allowed Claim, if any.

M. Distributions Free and Clear

Except as otherwise provided in this Plan, any distribution or transfer made under this Plan, including distributions to any Holder of an Allowed Claim, shall be free and clear of any Liens, Claims, encumbrances, charges, and other interests, and no other entity shall have any interest, whether legal, beneficial, or otherwise, in property distributed or transferred pursuant to this Plan.

N. Claims Paid or Payable by Third Parties

1. Claims Paid by Third Parties

If a Holder of a Claim receives a payment or other satisfaction of its Claim other than through the Debtors or the Liquidating Trustee on account of such Claim, such Claim shall be reduced by the amount of such payment or satisfaction without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court, and if the Claim was paid or satisfied in full other than through the Debtors or the Liquidating Trustee, then such Claim shall be disallowed and any recovery in excess of a single recovery in full shall be paid over to the Liquidating Trustee without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court. To the extent a Holder of a Claim receives a distribution on account of such Claim and receives payment or satisfaction from a party that is not the Debtors or the Liquidating Trustee on account of such Claim, such Holder shall, within fourteen (14) calendar days of receipt thereof, repay or return the distribution to the Liquidating Trustee, to the extent the Holder's total recovery on

account of such Claim from the third party and under the Plan exceeds the amount of such Claim as of the date of any such distribution under the Plan.

2. Claims Payable by Third Parties

No distributions under the Plan shall be made on account of an Allowed Claim that is payable pursuant to one of the Debtors' Insurance Policies until the Holder of such Allowed Claim has exhausted all remedies with respect to such Insurance Policy. To the extent that one or more of the Debtors' insurers agrees to satisfy in full or in part a Claim (if and to the extent adjudicated by a court of competent jurisdiction), then immediately upon such insurers' agreement, the applicable portion of such Claim may be expunged without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

3. Applicability of Insurance Policies

Except as otherwise provided in the Plan, distributions to Holders of Allowed Claims shall be in accordance with the provisions of any applicable insurance policy. Except as set forth in Article IX herein, nothing in this Plan shall constitute or be deemed a waiver of any Cause of Action that the Debtors or any Entity, including the Liquidating Trustee, may hold against any other Entity, including insurers under any policies of insurance, nor shall anything contained herein constitute or be deemed a waiver by such insurers of any defenses, including coverage defenses, held by such insurers.

O. No Post-Petition Interest on Claims

Unless otherwise specifically provided for in this Plan or the Confirmation Order, or required by applicable bankruptcy and non-bankruptcy law, post-petition interest shall not accrue or be paid on any prepetition Claims, and no Holder of a Claim shall be entitled to interest accruing on or after the Petition Date on such Claim.

**ARTICLE VII.
PROCEDURES FOR RESOLVING CONTINGENT,
UNLIQUIDATED, AND DISPUTED CLAIMS**

A. Allowance of Claims

After the Effective Date, the Liquidating Trustee shall have and retain any and all rights and defenses that the Debtors had with respect to any Claim or Interest immediately prior to the Effective Date.

B. Claims Administration Responsibilities

Except as otherwise specifically provided in the Plan, after the Effective Date, the Liquidating Trustee shall have the sole authority to: (1) File, withdraw, or litigate to judgment, objections to Claims or Interests; (2) settle or compromise any Disputed Claim without any further notice to or action, order, or approval by the Bankruptcy Court; and (3) administer and adjust the Claims Register to reflect any such settlements or compromises without any further notice to or action, order, or approval by the Bankruptcy Court.

C. Estimation of Claims and Interests

Before or after the Effective Date, the Debtors or the Liquidating Trustee may (but are not required to) at any time request that the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim, including during the litigation of any objection to any Claim or during the appeal relating to such objection.

Notwithstanding any provision otherwise herein, a Claim that has been expunged or disallowed from the Claims Register, but that either is subject to appeal or has not been the subject of a Final Order, shall be deemed to be estimated at zero dollars (\$0.00) unless otherwise ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute a maximum limitation on such Claim for all purposes under the Plan (including for purposes of distributions), and the Debtors or the Liquidating Trustee (as applicable) may elect to pursue any supplemental proceedings to object to any ultimate distribution on such Claim.

D. Adjustment to Claims or Interests Without Objection

Any Claim that has been paid, satisfied, or assumed by the Purchaser(s) in the Sale Transactions, or any Claim that has been amended or superseded, may be adjusted or expunged on the Claims Register by the Debtors or the Liquidating Trustee (as applicable) without an objection to such Claim having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

E. Time to File Objections to Claims

Except as otherwise provided herein, any objections to Claims shall be Filed on or before the Claims Objection Bar Date (as such date may be extended upon presentment of an order to the Bankruptcy Court by the Debtors or the Liquidating Trustee).

F. Disallowance of Claims or Interests

Except as otherwise expressly set forth herein, all Claims and Interests of any Entity from which property is sought by the Debtors under sections 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtors, the Liquidating Trustee allege is a transferee of a transfer that is avoidable under sections 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if: (1) the Entity, on the one hand, and the Debtors or the Liquidating Trustee, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turn over any property or monies under any of the aforementioned sections of the Bankruptcy Code; and (2) such Entity or transferee has failed to turn over such property by the date set forth in such agreement or Final Order.

G. Disallowance of Late Claims

Except as provided herein or otherwise agreed to by the Liquidating Trustee, any Holder of a Claim Filed via Proof of Claim after the Bar Date shall not receive any distributions on account of such Claims, unless on or before the Combined Hearing such late Claim has been deemed timely Filed by a Final Order.

H. Disputed Claims Process

All Claims held by Persons or Entities against whom or which the Debtor has commenced a proceeding asserting a Cause of Action under sections 542, 543, 544, 545, 547, 548, 549, or 550 of the Bankruptcy Code or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 548, 549 or 724(a) of the Bankruptcy Code shall be deemed Disputed Claims pursuant to section 502(d) of the Bankruptcy Code, and Holders of such Claims shall not be entitled to vote to accept or reject this Plan. A Claim deemed Disputed pursuant to this Article VII.H. shall continue to be Disputed for all purposes until the relevant proceeding against the Holder of such Claim has been settled or resolved by a Final Order and any sums due to the Debtors or the Liquidating Trustee from such Holder have been paid.

For the avoidance of doubt, Prepetition Term Loan Claims will remain Disputed until the Bankruptcy Court determines the Aggregate Allowed Prepetition Term Loan Claims Amount.

I. Amendments to Claims

Except as provided herein, on or after the Effective Date, without the prior authorization of the Bankruptcy Court or the Liquidating Trustee, a Claim may not be Filed or amended and any such new or amended Claim Filed shall be deemed disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.

J. No Distributions Pending Allowance

If an objection to a Claim, Proof of Claim, or portion thereof is Filed, no payment or distribution provided under the Plan shall be made on account of such Claim, Proof of Claim, or portion thereof unless and until the Disputed Claim becomes an Allowed Claim.

K. Distributions After Allowance

To the extent that a Disputed Claim ultimately becomes an Allowed Claim, distributions shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. Within ten (10) days after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the Disbursing Agent shall provide to the Holder of such Claim the distribution to which such Holder is entitled under the Plan, unless otherwise provided by order of the Bankruptcy Court. No interest shall accrue or be paid on any Claim with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim unless the Plan provides otherwise. The Aggregate Allowed Prepetition Term Loan Claims Amount shall include any interest accrued, as applicable per the Bankruptcy Court's determination, with respect to the period from the Effective Date to the date a final distribution is made on account of such Claim.

**ARTICLE VIII.
CONDITIONS PRECEDENT TO THE EFFECTIVE DATE**

A. Conditions Precedent to the Effective Date

The following shall be conditions precedent to the occurrence of the Effective Date:

- (a) The Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code;
- (b) the Plan, the Disclosure Statement, and the other Definitive Documents shall be in full force and effect;
- (c) the Bankruptcy Court shall have entered the Confirmation Order, which shall have become a Final Order or as to which any stay of the Confirmation Order pursuant to any Bankruptcy Rule is waived by the Bankruptcy Court;
- (d) the final version of each of the Plan and the Plan Supplement shall have been Filed;
- (e) the Sale Transactions shall have been consummated substantially on the terms described in the Bid Procedures Order and the Debtors shall have received the proceeds therefrom;
- (f) the Debtors shall have implemented the Liquidation Transactions and all transactions contemplated in this Plan in a manner consistent with the Plan;
- (g) the Debtors shall have fully funded the Professional Fee Reserve Account and the Wind-Down Budget;
- (h) the Debtors shall have obtained all authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate the Plan;
- (i) the Plan Administrator shall have been appointed in accordance with the terms hereof and shall have accepted his or her appointment;
- (j) the Liquidating Trust shall have been formed; and
- (k) the Liquidating Trustee shall have been appointed in accordance with the terms hereof and shall have accepted his or her appointment.

B. Waiver of Conditions Precedent to the Effective Date

Unless otherwise specifically provided for in the Plan, the conditions set forth in Article VIII.A of the Plan may be waived, in whole or in part, by the Debtors.

**ARTICLE IX.
RELEASE, INJUNCTION, AND RELATED PROVISIONS**

A. Debtor Releases

Notwithstanding anything contained in the Plan to the contrary, pursuant to section 1123(b) of the Bankruptcy Code, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, effective on the Effective Date, each Released Party is hereby deemed to be hereby released and discharged by the Debtors and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives, and any and all other entities who may purport to assert any causes of action, directly or derivatively, by, through, for, or because of the foregoing Entities on behalf of the Debtors, from any and all derivative Claims and Causes of Action asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any Holder of any Claim against, or Interest in, a Debtor or other Entity could have asserted on behalf of the Debtors, based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the assertion or enforcement of rights and remedies against the Debtors, the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, and the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date, except for claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence of such Person. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release any post-Effective Date obligations of any party or Entity under the Plan, the Confirmation Order, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan. Notwithstanding anything to the contrary in the foregoing, the releases under this section only release Claims held by the Debtors or Claims that could be asserted by the Debtors under applicable law.

B. Releases by the Releasing Parties

Except as otherwise expressly set forth in the Plan or the Confirmation Order, on and after the Effective Date, and with respect to all other Releasing Parties, in exchange for good and valuable consideration, the adequacy of which is hereby confirmed, each Released Party is, and is deemed to be, hereby conclusively, absolutely, unconditionally, irrevocably and forever, released by each Releasing Party from any and all Causes of Action, whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or hereafter arising, in law, equity, contract, tort, or otherwise, including any derivative claims asserted on behalf of the Debtors, that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the capital structure, management, ownership, or operation thereof), the Debtors' in- or out-of-court restructuring efforts, any Avoidance Actions (but excluding Avoidance Actions brought as counterclaims or defenses to Claims asserted against the Debtors), intercompany transactions, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan (including, for the avoidance of doubt, the Plan Supplement), the Sale Transactions, or any aspect of the Liquidation Transactions, including any contract, instrument, release, or other agreement or document (including any legal opinion requested by any Entity regarding any transaction, contract, instrument, document or other agreement contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion) relating to any of the foregoing, created or entered into in connection with the Disclosure Statement, the Plan, the Plan Supplement, the Sale Transactions, before or during the Chapter 11 Cases, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the distribution of property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence related or relating to any of the foregoing taking place on or before the Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release or act to modify (1) any post Effective Date obligations of any party or Entity under the Plan, (2) the Confirmation Order, or (3) any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan or any Claim or obligation arising under the Plan.

C. Exculpations

Except as otherwise specifically provided in the Plan, no Exculpated Party shall have or incur, and each Exculpated Party is hereby exculpated from any Cause of Action for any claim related to any act or omission taking place between the Petition Date and the Effective Date in connection with, relating to, or arising out of, the Chapter 11 Cases, the Disclosure Statement, the Plan, the Sale Transactions, or any aspect of the Liquidation Transaction, including any contract, instrument, release or other agreement or document (including providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement contemplated by the Plan or the reliance by any Exculpated Party on the Plan or the Confirmation Order in lieu of such legal opinion) created or entered into in connection with the Disclosure Statement or the Plan, the Sale Transactions, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the

administration and implementation of the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order of a court of competent jurisdiction to have constituted actual fraud, willful misconduct, or gross negligence but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

D. Injunction

Except as otherwise provided in the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims, Interests, Causes of Action, or liabilities that: (1) are subject to compromise and settlement pursuant to the terms of the Plan; (2) have been released pursuant to the Plan; (3) were purchased and released by a Purchaser in connection with the Sale Transactions; (4) are subject to exculpation pursuant to the Plan; or (5) are otherwise discharged, satisfied, stayed, released, or terminated pursuant to the terms of the Plan, are permanently enjoined and precluded, from and after the Effective Date, from commencing or continuing in any manner, any action or other proceeding, including on account of any Claims, Interests, Causes of Action, or liabilities that have been compromised or settled against any of the Debtors or any Entity so released or exculpated (or the property or estate of any Entity, directly or indirectly, so released or exculpated) on account of, or in connection with or with respect to, any discharged, released, settled, compromised, or exculpated Claims, Interests, Causes of Action, or liabilities, including being permanently enjoined and precluded, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Plan Administrator, the Liquidating Trustee, the Released Parties, or Exculpated Parties (as applicable): (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any lien or encumbrance of any kind against such Entities or the property or the estate of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of setoff or subrogation of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Entity has timely asserted such setoff right in a document filed with the Bankruptcy Court explicitly preserving such setoff, and notwithstanding an indication of a Claim or Interest or otherwise that such Entity asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such claims or Interests released or settled pursuant to the Plan.

Upon the Bankruptcy Court's entry of the Confirmation Order, all Holders of Claims and Interests and other parties in interest, along with their respective present or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of this Plan by the Debtors, the Plan Administrator, the Liquidating Trustee, and their respective affiliates, employees, advisors, officers and directors, or agents.

E. No Discharge

Because the Debtors are liquidating and will not engage in business after consummation of the Plan, they are not entitled to a discharge of obligations pursuant to section 1141 of the Bankruptcy Code with regard to any Holders of Claims or Interests.

F. Release of Liens

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date in accordance with the terms of the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estate shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Debtors and their successors and assigns.

If any Holder of an Other Secured Claim or any agent for such Holder has filed or recorded publicly any Liens and/or security interests to secure such Holder's Other Secured Claim, as soon as practicable on or after the date such Holder has been satisfied in full pursuant to the Plan, such Holder (or the agent for such Holder) shall take any and all steps requested by the Liquidating Trustee that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Liquidating Trustee shall be entitled to make any such filings or recordings on such Holder's behalf. The presentation or filing of the Confirmation Order to or with any federal, state, provincial, or local agency or department shall constitute good and sufficient evidence of, but shall not be required to effect, the termination of such Liens.

All parties' rights, defenses, and causes of action related to the Prepetition Term Loan Claims shall be reserved pending the Bankruptcy Court's determination of the Aggregate Allowed Prepetition Term Loan Claims Amount.

G. Gatekeeper Provision

No party may commence, continue, amend, or otherwise pursue, join in, or otherwise support any other party commencing, continuing, amending, or pursuing, a Cause of Action of any kind against the Debtors or the Plan Administrator, the Liquidating Trustee, the Exculpated Parties, or the Released Parties that relates to, or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of, a Cause of Action subject to Article IX.A, Article IX.B, and Article IX.C without first (1) requesting a determination from the Bankruptcy Court, after notice and a hearing, that such Cause of Action represents a colorable claim against a Debtor or the Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party and is not a Claim that the Debtors released under the Plan, which request must attach the complaint or petition proposed to be filed by the requesting party and (2) obtaining from the Bankruptcy Court specific authorization for such party to bring such Cause of Action against any such Debtor or Plan Administrator, Liquidating Trustee, Exculpated Party, or Released Party. For the avoidance of

doubt, any party that obtains such determination and authorization and subsequently wishes to amend the authorized complaint or petition to add any Causes of Action not explicitly included in the authorized complaint or petition must obtain authorization from the Bankruptcy Court before filing any such amendment in the court where such complaint or petition is pending. The Bankruptcy Court will have sole and exclusive jurisdiction to determine whether a Cause of Action is colorable and, only to the extent legally permissible, will have jurisdiction to adjudicate the underlying colorable Cause of Action.

ARTICLE X. RETENTION OF JURISDICTION

On and after the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction, pursuant to 28 U.S.C. §§ 1334 and 157, over all matters arising in or related to the Chapter 11 Cases for, among other things, the following purposes:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Interests.

2. Resolve any cases, controversies, suits, or disputes that may arise in connection with Claims, including Claim objections, allowance, disallowance, subordination, estimation and distribution.

3. Decide and resolve all matters related to the granting and denying, in whole or in part of, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or the Plan.

4. Resolve any matters related to: (a) the assumption or assumption and assignment of any Executory Contract or Unexpired Lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any cure amount arising therefrom; and/or (b) any dispute regarding whether a contract or lease is or was executory or expired.

5. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters, and any other matters, and grant or deny any applications involving the Debtors that may be pending on the Effective Date.

6. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code.

7. Adjudicate, decide or resolve any motions, adversary proceedings, contested, or litigated matters.

8. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement.

9. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan.

10. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with enforcement of the Plan.

11. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in the Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions.

12. Enter and implement such orders as are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated.

13. Determine any other matters that may arise in connection with or related to the Cash Collateral Order and the Debtors' use of cash collateral, the Sale Transactions Documents, the Disclosure Statement, the Plan, and the Confirmation Order.

14. Ensure that distributions to Holders of Allowed Claims or Allowed Interests are accomplished pursuant to the provisions of the Plan.

15. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of distributions and the recovery of additional amounts owed by any Holder for amounts not timely repaid.

16. Adjudicate any and all disputes arising from or relating to distributions under the Plan.

17. Consider any modifications of the Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order.

18. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of the Plan or the Confirmation Order.

19. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code.

20. To recover all assets of the Debtors and property of the Debtors' Estates, wherever located.

21. To hear and determine any Causes of Action that may be brought by the Liquidating Trustee.

22. To hear and determine any other rights, claims, or Causes of Action held by or accruing to the Debtors or the Liquidating Trustee pursuant to the Bankruptcy Code or any applicable state or federal statute or legal theory.

23. Enter an order or final decree concluding or closing the Chapter 11 Cases.
24. Enforce all orders previously entered by the Bankruptcy Court.
25. Hear any other matter over which the Bankruptcy Court has jurisdiction.

**ARTICLE XI.
MODIFICATION, REVOCATION, OR WITHDRAWAL OF THE PLAN**

A. Modification and Amendment

This Plan may be amended, modified, or supplemented by the Debtors in the manner provided for by section 1127 of the Bankruptcy Code or as otherwise permitted by law, without additional disclosure pursuant to section 1125 of the Bankruptcy Code. In addition, after the Confirmation Date, the Debtors, in consultation with the Prepetition Term Loan Agent, may remedy any defect or omission or reconcile any inconsistencies in this Plan or the Confirmation Order with respect to such matters as may be necessary to carry out the purposes of effects of this Plan, and any Holder of a Claim or Interest that has accepted this Plan shall be deemed to have accepted this Plan as amended, modified, or supplemented.

B. Effect of Confirmation on Modifications

Entry of the Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

C. Revocation or Withdrawal of Plan

The Debtors reserve the right to revoke or withdraw this Plan prior to the Effective Date as to any or all of the Debtors. If, with respect to a Debtor, this Plan has been revoked or withdrawn prior to the Effective Date, or if Confirmation or the occurrence of the Effective Date as to such Debtor does not occur on the Effective Date, then, with respect to such Debtor: (1) this Plan shall be null and void in all respects; (2) any settlement or compromise embodied in this Plan (including the fixing or limiting to an amount any Claim or Interest or Class of Claims or Interests), assumption or rejection of Executory Contracts or Unexpired Leases affected by this Plan, and any document or agreement executed pursuant to this Plan shall be deemed null and void; and (3) nothing contained in this Plan shall (a) constitute a waiver or release of any Claim by or against, or any Interest in, such Debtor or any other Person, (b) prejudice in any manner the rights of such Debtor or any other Person, or (c) constitute an admission of any sort by any Debtor or any other Person.

**ARTICLE XII.
MISCELLANEOUS PROVISIONS**

A. Immediate Binding Effect

Notwithstanding Bankruptcy Rules 3020(e), 6004(h), 7062, or otherwise, upon the occurrence of the Effective Date, the terms of this Plan shall be immediately effective and

enforceable and deemed binding upon and inure to the benefit of the Debtors or the Plan Administrator, the Liquidating Trustee, the Holders of Claims or Interests, the Released Parties, and each of their respective successors and assigns. Any action to be taken on the Effective Date may be taken on or as soon as reasonably practicable thereafter.

B. Additional Documents

On or before the Effective Date, the Debtors may File with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or the Liquidating Trustee (as applicable) and all Holders of Claims or Interests receiving distributions pursuant to the Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may reasonably be necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

C. Substantial Consummation

On the Effective Date, this Plan shall be deemed to be substantially consummated (within the meaning set forth in section 1101 of the Bankruptcy Code) pursuant to section 1127(b) of the Bankruptcy Code.

D. Reservation of Rights

The Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the Filing of the Plan, any statement or provision contained in the Plan, or the taking of any action by the Debtors with respect to the Plan, the Disclosure Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of the Debtors with respect to the Holders of Claims or Interests prior to the Effective Date.

E. Successors and Assigns

The rights, benefits, and obligations of any Entity named or referred to in the Plan shall be binding on, and shall inure to the benefit of any heir, executor, administrator, successor or assign, beneficiaries or guardian, if any, of each Entity.

F. Determination of Tax Liabilities

As of the Effective Date, the Plan Administrator (to the extent not the responsibility of the Purchaser(s)) will be responsible for preparing and filing any tax forms or returns on behalf of the Debtors' Estates; provided that neither the Plan Administrator nor the Liquidating Trustee shall be responsible for preparing or filing any tax forms for Holders of Interests in the Debtors (which Interests shall be cancelled pursuant to this Plan), but shall provide such Holders with any information reasonably required to prepare such forms. The Debtors or the Plan Administrator shall have the right to request an expedited determination of any tax liability pursuant to section 505 of the Bankruptcy Code, including on any unpaid liability of the Debtors' Estates for any tax incurred during the administration of these Chapter 11 Cases.

G. Dissolution of the Committee

On the Effective Date, any duly appointed Statutory Committee will dissolve and the members thereof will be released and discharged from all duties and obligations arising from or related to these Chapter 11 Cases.

H. Books and Records

In accordance with the Liquidating Trust Agreement, on the Effective Date, the Debtors shall provide to the Liquidating Trustee timely access to the books and records relating to the Liquidating Trust Assets, in a form accessible and viewable by the Liquidating Trustee.

I. Notices

In order for all notices, requests, and demands to or upon the Debtors or the Plan Administrator, or the Liquidating Trustee, as the case may be, to be effective such notices, requests and demands shall be in writing (including by electronic mail) and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by email, when received, and served on or delivered to the following parties:

Debtors	Counsel to the Debtors
Eiger BioPharmaceuticals Inc. 2100 Ross Avenue, Dallas, Texas 75201, Attention: Douglas Staut Chief Restructuring Officer Email: dstaut@alvarezandmarsal.com	Sidley Austin LLP 787 Seventh Avenue New York, New York 10019 Facsimile: (212) 839-5599 Attn: William E. Curtin Anne G. Wallace Email: wcurtin@sidley.com anne.wallice@sidley.com
Plan Administrator	Counsel to the Plan Administrator
To be included in the Plan Supplement <u>provided.</u>	To be included in the Plan Supplement <u>provided.</u>
Liquidating Trustee	Counsel to the Liquidating Trustee
To be included in the Plan Supplement <u>provided.</u>	To be included in the Plan Supplement <u>provided.</u>
Counsel to the Prepetition Term Loan Agent	
Bradley Arant Boult Cummings LLP 1221 Broadway, Suite 2400 Nashville, Tennessee 37203 Facsimile: (615) 252-4714	

Attn: Roger G. Jones
Email: rjones@bradley.com

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Facsimile: (212) 715-8000

Attn: Adam C. Rogoff
P. Bradley O'Neill
Andrew J. Citron
Email: arogoff@kramerlevin.com
boneill@kramerlevin.com
acitron@kramerlevin.com

Forshey Prostok, LLP,
777 Main St. Suite 1550,
Fort Worth, TX 76102

Attn: Jeff Prostok
Email: jprostok@forsheyprostok.com

After the Effective Date, Persons or Entities that wish to continue to receive documents pursuant to Bankruptcy Rule 2002 must File a renewed request to receive documents pursuant to Bankruptcy Rule 2002. After the Effective Date, the Plan Administrator and the Liquidating Trustee are authorized to limit the list of Entities receiving documents pursuant to Bankruptcy Rule 2002 to those Entities that Filed such renewed requests.

J. Term of Injunctions or Stays

Except as otherwise provided in this Plan, to the maximum extent permitted by applicable law and subject to the Bankruptcy Court's post-confirmation jurisdiction to modify the injunctions and stays under this Plan (1) all injunctions with respect to or stays against an action against property of the Debtors or the Debtors' Estates arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, and in existence on the date the Confirmation Order is entered, shall remain in full force and effect until such property is no longer property of the Debtors or the Debtors' Estates; and (2) all other injunctions and stays arising under or entered during the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code shall remain in full force and effect until the earliest of (a) the date that the Chapter 11 Cases are closed pursuant to a final order of the Bankruptcy Court, or (b) the date that the Chapter 11 Cases are dismissed pursuant to a final order of the Bankruptcy Court. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect indefinitely.

K. Entire Agreement

On the Effective Date, the Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

L. Plan Supplement

All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. Copies of such exhibits and documents shall be made available upon written request to the Debtors' counsel or the Liquidating Trustee's counsel (as applicable) at the address above or by downloading such exhibits and documents free of charge from the Notice and Claims Agent's website at <https://veritaglobal.net/eiger>. All documents in the Plan Supplement are considered an integral part of the Plan and shall be deemed approved by the Bankruptcy Court pursuant to the Confirmation Order.

M. Governing Law

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Texas, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters.

N. Nonseverability of Plan Provisions

If any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void, or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of the Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation.

The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is the following: (1) valid and enforceable pursuant to its terms; (2) integral to the Plan and may not be deleted or modified without the consent of the Debtors or the Liquidating Trustee (as applicable); and (3) nonseverable and mutually dependent.

O. Votes Solicited in Good Faith

Upon entry of the Confirmation Order, the Debtors will be deemed to have solicited votes on the Plan in good faith and in compliance with the Bankruptcy Code, and pursuant to section 1125(e) of the Bankruptcy Code, the Debtors and each of their respective Affiliates, agents,

representatives, members, principals, shareholders, officers, directors, managers, employees, advisors, and attorneys will be deemed to have participated in good faith and in compliance with the Bankruptcy Code, and, therefore, neither any of such parties or individuals will have any liability for the violation of any applicable law, rule, or regulation governing the solicitation of votes on the Plan.

P. Closing of the Chapter 11 Cases

After the full administration of the Chapter 11 Cases, the Plan Administrator shall promptly File with the Bankruptcy Court all documents required by Bankruptcy Rule 3022, a motion pursuant to rule 3022-1(a) of the Bankruptcy Local Rules for the Northern District of Texas, and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases.

[Remainder of page intentionally left blank.]

Dated: August 15~~28~~, 2024

Respectfully submitted,

Douglas Staut

By: Douglas Staut
Chief Restructuring Officer
Eiger BioPharmaceuticals, Inc.
EBPI Merger Inc.
EB Pharma LLC
Eiger BioPharmaceuticals Europe Limited
EigerBio Europe Limited

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

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)	Case No. 23-80004-swe11
In Re:)	
)	Dallas, Texas
EBIX, INC., et al.,)	August 2, 2024
)	3:30 p.m. Docket
Debtors.)	
)	RULING - AMENDED CHAPTER 11
)	PLAN (816)
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SCOTT W. EVERETT,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtors:	Thomas Robert Califano Francesca L. Sadler Rakhee V. Patel SIDLEY AUSTIN, LLP 2021 McKinney Avenue, Suite 200 Dallas, TX 75201 (214) 981-3300
For the Debtors:	Ameneh Bordi SIDLEY AUSTIN, LLP 787 Seventh Avenue New York, NY 10019 (212) 839-8520
For the Unsecured Creditors' Committee:	Marcus A. Helt Grayson Williams MCDERMOTT WILL & EMERY 2501 North Harwood Street Dallas, TX 75201 (214) 295-8063
For the Unsecured Creditors' Committee:	Luke Barrett MCDERMOTT WILL & EMERY 200 Clarendon Street, Floor 58 Boston, MA 02116-5021 (617) 535-3987

1 APPEARANCES, cont'd.:

2 For Regions Bank: Dabin Chung
3 Brian Trust
4 MAYER BROWN, LLP
5 1221 Avenue of the Americas
6 New York, NY 10020
7 (212) 506-2527

8 For Regions Bank: Sean T. Scott
9 MAYER BROWN, LLP
10 71 South Wacker Drive
11 Chicago, IL 60606
12 (312) 701-8310

13 For Regions Bank: John J. Kane
14 KANE RUSSELL COLEMAN LOGAN
15 901 Main Street, Suite 5200
16 Dallas, TX 75202
17 (214) 777-4261

18 For Eraaya LifeSpaces Bryan M. Kotliar
19 Limited, Vitasta TOGUT, SEGAL & SEGAL, LLP
20 Software India Limited, One Penn Plaza, Suite 3335
21 and Vikas Lifecare New York, NY 10119
22 Limited: (212) 594-5000

23 For the U.S. Trustee: Elizabeth Ziegler Young
24 OFFICE OF THE UNITED STATES
25 TRUSTEE
1100 Commerce Street, Room 976
Dallas, TX 75242
(214) 767-1079

Recorded by: Sara Ferrufino
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street
Dallas, TX 75242
(214) 753-2088

Transcribed by: Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

24 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 DALLAS, TEXAS - AUGUST 2, 2024 - 3:33 P.M.

2 THE COURT: Please be seated. Good afternoon. I'm
3 here on our 3:30 docket. We have one matter in the Ebix case,
4 Case No. 23-80004. I'll go ahead and take appearances.

5 MR. CALIFANO: Good afternoon, Your Honor. Tom
6 Califano, Sidley Austin, on behalf of the Debtors. With me
7 are my colleagues Ameneh Bordi, Francesca Sadler, and I
8 believe that's it. And also with us we have the company's
9 CFO, Amit Garg.

10 THE COURT: Good afternoon.

11 MS. PATEL: Your Honor, Rakhee Patel is here, too.
12 Sorry, I know I'm probably down the list.

13 THE COURT: All right. Thank you, Ms. Patel.

14 MR. KANE: Your Honor, John Kane on behalf of the
15 Agent, with Brian Trust, Sean Scott, and Dabin Chung of Mayer
16 Brown.

17 THE COURT: Good afternoon.

18 MS. YOUNG: Your Honor, Liz Ziegler Young for the
19 U.S. Trustee's Office.

20 THE COURT: Good afternoon.

21 MR. KOTLIAR: Good afternoon, Your Honor. Bryan
22 Kotliar of Togut, Segal & Segal, counsel for the Plan Sponsor.

23 THE COURT: Welcome back.

24 MR. KOTLIAR: Thank you.

25 THE COURT: Do we have anybody from the Committee?

1 MR. WILLIAMS: Your Honor, this is Grayson Williams.
2 I think my colleague Marcus Helt is having some audio issues.
3 But he's with me, along with my colleague Luke Barrett.

4 THE COURT: All right. Thank you.

5 All right. Any other appearances? All right. I'm not
6 hearing any.

7 This is the Court's ruling on confirmation of the Debtors'
8 plan of reorganization in the Ebix case. The Court held a
9 hearing on confirmation on July 30, 2024, at which all but one
10 of the objections to confirmation were either resolved or
11 overruled. The sole remaining issue for the Court to address
12 is whether the third-party releases in the plan are
13 permissible. For the reasons I'm about to discuss, I find
14 that they are not.

15 Based on the modifications to the Debtors' plan of
16 reorganization and the proposed confirmation order announced
17 at the confirmation hearing earlier this week, the Court finds
18 that the plan is confirmable in all other respects, subject to
19 the striking of the nonconsensual third-party releases.

20 The Supreme Court recently held that the Bankruptcy Code
21 does not authorize a release and injunction that, as part of a
22 Chapter 11 plan of reorganization, effectively seeks to
23 discharge claims against a nondebtor without the consent of
24 the affected claimants. May a debtor obtain that required
25 consent by mailing notice to claimants that they will be

1 deemed to grant such a third-party release if they do not
2 return to the debtor a form expressly indicating their
3 election to opt out of giving the release?

4 That issue, left unresolved by the Supreme Court, has
5 split not only different bankruptcy courts across the country,
6 but also different bankruptcy judges within various districts,
7 such as Delaware and the Southern District of New York.

8 The four other judges in the Dallas and Fort Worth
9 Divisions of the Northern District of Texas have all approved
10 opt-out release structures in various unpublished rulings. I
11 respectfully part ways with my colleagues.

12 Nothing in the Bankruptcy Code or Bankruptcy Rules
13 provides for such relief, and under Texas contract law that
14 the parties agree governs the third-party release under the
15 Debtors' proposed plan, silence does not equal the consent of
16 the affected claimants on this record.

17 The Debtors filed for bankruptcy in December 2023. Five
18 months into the bankruptcy case, the Debtors were able to sell
19 a significant portion of their assets and use the proceeds
20 from that sale to pay down some of their secured debt of
21 roughly \$617 million. Since then, the Debtors have been
22 working to maximize the value of their remaining assets by
23 concurrently exploring a sale or a reorganization.

24 These efforts led to the solicitation in late June and
25 early July 2024 of a proposed plan of reorganization at Docket

1 No. 693, which I'll refer to in my ruling as the "Solicited
2 Plan," contemplating the sale of the Debtors to a consortium
3 of three Indian companies, one of which is headed by Robin
4 Raina, Ebix, Inc.'s current Chairman of the Board, President,
5 and CEO. At all relevant times, Mr. Raina recused himself
6 from any decision-making on behalf of the Debtors with respect
7 to the proposed transaction.

8 The Solicited Plan provided varying treatment to eight
9 different classes of creditors and equity-interest holders.
10 For example, equity-interest holders in the Debtors, Class 7,
11 were to have their interests extinguished without any
12 distribution or compensation, and general unsecured creditors,
13 including secured lender deficiency claims, Class 4, were to
14 receive cash from the sale of unencumbered assets, if any, and
15 fractional interests in a potential litigation trust.

16 Some classes, such as Class 4 general unsecured creditors,
17 were entitled to vote on the plan, while others were not
18 entitled to vote, either because they would receive nothing
19 and were thus deemed to reject the plan, or because they were
20 unimpaired and thus were conclusively presumed to accept the
21 plan. 11 U.S.C. Section 1126(f) and (g).

22 Holders of claims in classes that were entitled to vote
23 were sent a ballot that included a section describing the
24 releases in the Plan and providing a checkbox with which the
25 claimants could opt out of the releases.

1 Holders of claims or interests that were not entitled to
2 vote were sent a Notice of Non-Voting Status and an opt-out
3 election form that described the releases in the Plan and
4 provided a checkbox with which the claimants and interest
5 holders could opt out of the releases. The election forms and
6 ballots are found at Docket No. 696.

7 Several parties filed objections to the Solicited Plan,
8 but prior to confirmation the Debtors were able to resolve the
9 objections of all parties except for the United States
10 Trustee. The U.S. Trustee raised several objections to
11 confirmation of the Solicited Plan, most notably that the plan
12 contains impermissible third-party releases. Docket Nos. 641
13 and 795. The Debtors filed a response to the United States
14 Trustee's objection at Docket No. 822.

15 Two days prior to the July 30, 2024 confirmation hearing,
16 the Debtors filed an updated plan at Docket No. 816-1, which
17 I'll refer to in my ruling as the "Modified Plan." The
18 Modified Plan, among other things, (a) called for an
19 additional \$3-1/2 million payment by the Plan Sponsor to Class
20 4 general Unsecured Creditors, excluding lenders with
21 deficiency claims, and (b) granted a mutual release to any
22 creditor or equity-interest holder who provided a release or
23 deemed release under the Plan, as I'm about to discuss.

24 Section C(2) in both the Solicited Plan and the Modified
25 Plan contains a lengthy provision that, in very general terms,

1 deems the Releasing Parties to have provided a full discharge,
2 waiver, and release to each of the Released Parties for any
3 and all claims generally related to the Debtors or the
4 Debtors' bankruptcy cases, with some caveats. I'll refer to
5 that as the "Third-Party Releases."

6 Released Parties is defined elsewhere in the Plan to
7 include, among other parties, and subject to caveats contained
8 elsewhere in the Plan, the Non-Debtor Guarantors, the Post-
9 Effective-Date Debtors, the DIP Secured Parties, the
10 Prepetition Secured Lender Parties, the Creditors' Committee
11 and each of its members, the Plan Sponsor and its members,
12 and, in the Modified Plan, each Releasing Party, all as
13 defined elsewhere in the Plan.

14 Releasing Parties is defined in the Plan to include
15 several enumerated parties, but also, as relevant to the issue
16 before the Court, parties that grant the Third-Party Releases
17 to the Released Parties solely based on their silence. In
18 that definition, I'm specifically referring to (h) all Holders
19 of Claims or Interests that are deemed to accept the Plan and
20 who do not affirmatively opt out of the releases provided in
21 the Plan; (i) all Holders of Claims or Interests that vote to
22 reject the Plan or are deemed to reject the Plan and who do
23 not affirmatively opt out of the releases provided by the
24 Plan; and (j) all Holders of Claims or Interests whose vote to
25 accept or reject the Plan is solicited but who do not vote

1 either to accept or to reject the Plan and do not
2 affirmatively opt out of the releases provided in the Plan.
3 It is these Releasing Parties who are Releasing Parties and
4 therefore deemed to grant the Third-Party Releases to the
5 Released Parties based solely on their failure to
6 affirmatively opt out of the release provisions in the Plan
7 that the Court is concerned about.

8 In *Harrington v. Purdue Pharma*, 144 S. Ct. 2071 (2024),
9 the Supreme Court held that the Bankruptcy Code does not
10 authorize a release and injunction that, as part of a plan of
11 reorganization under Chapter 11, effectively seeks to
12 discharge claims against a nondebtor without the consent of
13 the affected claimants. *Purdue* was careful to note that
14 "[n]othing in what we have said should be construed to call
15 into question *consensual* third-party releases offered in
16 connection with a bankruptcy reorganization plan," but stopped
17 short of expressing a view on what qualifies as a consensual
18 release.

19 Because of the split in case law before *Purdue*, the issue
20 of what constitutes consent in the context of a third-party
21 release has already been explored in case law. The framework
22 was well explained in *In re Arsenal Intermediate Holdings*,
23 2023 Bankr. LEXIS 752, at Page 8-12. That's a Bankruptcy
24 decision out of the District of Delaware from March 2023 by
25 Judge Goldblatt.

1 "In particular, when a plan of reorganization contains a
2 third-party release, is it sufficient to treat it as
3 'consensual' if creditors had the opportunity to opt out of
4 the release and did not exercise it? Or is it necessary for
5 the creditor to provide some affirmative expression of
6 consent, such as voting in favor of the plan or checking a box
7 on a form? Absent a statutory definition of the term or
8 appellate authority directed to these questions, bankruptcy
9 judges have taken divergent approaches.

10 "At one end of the spectrum, some cases view the model for
11 finding a third-party release to be consensual as being based
12 in principles of contract law, in which case some affirmative
13 expression of consent is required before one would find that
14 an offer has been accepted and a binding contract thus formed.
15 The argument is that 'consent' to grant a third-party release
16 should be treated the same way as consent to relinquish any
17 other legal entitlement.

18 "At the other end of the spectrum, there are cases,
19 particularly in a jurisdiction like this one" -- and he's
20 referring to the Third Circuit -- "in which even non-
21 consensual third-party releases may be appropriate based on
22 the facts and circumstances of the case -- that view a third-
23 party release just like any other plan provision. Under
24 *Continental Airlines*, the permissibility of a third-party
25 release, even without consent, depends on the facts and

1 circumstances as they are established at the confirmation
2 hearing."

3 And, again, that was Judge Goldblatt's opinion, at least
4 prior to *Purdue*.

5 In *Arsenal*, the Court favored the later approach and found
6 that releases contained in a plan that permit creditors to opt
7 out may be deemed consensual as to those creditors who do not
8 exercise that option. This Court respectfully disagrees with
9 that approach.

10 *Arsenal* points out that it is not uncommon to grant relief
11 on an unopposed motion filed in a bankruptcy case because it
12 is incumbent on parties who have been properly served with
13 pleadings to protect their own rights. That's *Arsenal* at Page
14 9. *Arsenal* makes this same observation in the context of a
15 plan of reorganization: "As a practical matter, the
16 functioning of the bankruptcy system generally depends on
17 requiring parties that object to the relief proposed in a plan
18 to come into court to raise their objection." That's *Arsenal*
19 at Page 13.

20 But the relief that can be obtained through a motion or a
21 plan of reorganization is not unlimited. Courts following the
22 *Arsenal* approach give examples of relief that can be obtained
23 in bankruptcy courts even when there is no response and no
24 manifestation of consent. But in those examples, there is
25 consistently a basis in either the Bankruptcy Code or the

1 Federal Rules of Bankruptcy Procedure or other substantive law
2 contemplating and authorizing that relief. This makes sense
3 because the bankruptcy court must have the power to grant the
4 relief requested, and that power must have a source somewhere
5 in the law.

6 For instance, a debtor may serve a list of proposed cure
7 amounts on contract counterparties, and if there is no
8 objection to the proposed cure amounts, they are presumed
9 correct. This relief is commonly granted *en masse* without
10 affirmative participation by the contract counterparties,
11 but it is contemplated and authorized in Section 365(b)(1)(A)
12 of the Bankruptcy Code. It is well within the power of the
13 bankruptcy court to adjudicate cure amounts, and the
14 bankruptcy court must do so even if contract counterparties do
15 not actively participate.

16 Parties are also expected to object to common plan
17 provisions regarding the structure of a plan, the
18 classification of their claims against the debtor, or the
19 treatment of their claim against the debtor. If they do not
20 respond, their rights may be affected, but adjudication of
21 these rights by a bankruptcy court is specifically
22 contemplated and authorized in Section 1129.

23 The same is true of the failure to file a proof of claim
24 or the failure to respond to a claim objection. Creditors'
25 rights may be affected, but adjudication of these rights by a

1 bankruptcy court is specifically contemplated and authorized
2 in Sections 501 and 502 of the Bankruptcy Code.

3 Federal Rule of Civil Procedure 55 provides that a
4 judgment may be entered by default against a party that fails
5 to respond to a pleading seeking affirmative relief.
6 Similarly, local rules permit courts to grant relief
7 based on negative notice if no response is filed. But
8 procedural rules alone cannot abridge, enlarge, or modify any
9 substantive right. See the Rules Enabling Act, 28 U.S.C.
10 Sections 2072, 2075. There must be a statute or common law or
11 other form of law that authorizes the underlying relief that
12 is being granted by default.

13 Class actions often utilize an opt-out mechanism that can
14 bind parties that do not respond, but that process carries
15 additional procedural safeguards and is specifically
16 contemplated and authorized in Federal Rule of Bankruptcy
17 Procedure 7023 and Federal Rule of Civil Procedure 23. The
18 process contemplated by Rule 23 is nothing like what is
19 happening here. Under Rule 23, if a claimant does not opt
20 out, the claimant's rights are being protected and potentially
21 settled by a class representative that a court determines is
22 representing the rights of the claimants with claims sharing
23 common questions of fact or law.

24 Here, in contrast, no class representative is looking out
25 for the interests of all the deemed-releasing parties, the

1 claims are identified only very generally, and the underlying
2 claims are being extinguished based on a failure to respond,
3 without court adjudication of whether the deemed release
4 is fair and reasonable, considering the potentially unique
5 claims being released. In fact, the Court cannot even
6 determine whether it would have jurisdiction over those
7 thousands of claims, and if so, whether the Court could
8 finally dispose of them.

9 In the case of third-party releases, the bankruptcy court
10 steps out of its traditional role of applying provisions of
11 the Bankruptcy Code or adjudicating claims and causes of
12 action and instead attempts to broker a transaction between
13 non-debtor parties. The bankruptcy court is not being asked
14 to adjudicate the underlying causes of action subject to the
15 releases.

16 Rather, the bankruptcy court is being asked to approve an
17 exchange between non-debtor parties. The exchange may be very
18 important to the success of the bankruptcy case, but that
19 alone does not allow the bankruptcy court to create an
20 agreement where one does not exist. The Court cannot
21 ascertain any source of power to compel non-debtors to enter
22 into a contract via a deemed release; a contract must be
23 formed consistent with the principles of contract law.

24 And finally, before I turn to that contract law, as *Purdue*
25 recognized, Section 1123(b)(6) is not unlimited with respect

1 to what you can insert in a plan.

2 In short, nothing in the Bankruptcy Code or Rules
3 contemplates or authorizes the deemed release of a non-
4 debtor's claims against another non-debtor, so the matter is
5 more accurately construed as one of contract between those
6 non-debtor parties. See, for example, *In re Wool Growers*
7 *Central Storage*, 371 B.R. 768 at 775 (Bankr. N.D. Tex. 2007),
8 noting that "The validity of a consensual release is primarily
9 a question of contract law because releases are no different
10 from any other settlement or contract." In *In re SunEdison*,
11 576 B.R. 453 (Bankr. S.D.N.Y. 2017), evaluating consent to
12 third-party releases under principles of contract law.

13 Perhaps out of deference to this Court's prior ruling in
14 *4 West Holdings*, the Debtors in this case have generally
15 acknowledged this view and argued their case accordingly. I'd
16 just refer to the Debtors' memorandum of law in support of
17 confirmation at Docket 822.

18 Once consent is viewed from a contractual perspective,
19 though, it is exceedingly difficult to construe the failure to
20 opt out of a third-party release as valid consent. I think
21 Judge Goldblatt in *Arsenal* recognized this point: 2023 Bankr.
22 LEXIS 752, at Pages 15-16, where he noted that courts
23 following the *Arsenal* approach "do not take issue with the
24 contention that this form of 'consent' would be inadequate to
25 form an enforceable contract. There is no serious

1 way to disagree with the point made in the cases described
2 above that a party's failure to respond to an offer is an
3 insufficient basis on which to find that the offer was
4 accepted."

5 There are plenty of likely reasons for individuals to fail
6 to opt out of releases, including mistake, inadvertence,
7 carelessness, or simply not understanding what was being asked
8 of them.

9 Nevertheless, consent may be manifested by a failure to
10 act in some situations, as recognized in Texas law in the
11 Restatement (Second) of Contracts, Section 69. Those
12 exceptions according to the parties are governed by Texas law
13 in this instance. I'll refer the parties to Plan Section
14 XII(L), "Governing Law": Where an offeree fails to reply to
15 an offer, his silence and inaction operate as an acceptance in
16 the following cases only: (a) Where an offeree takes the
17 benefit of offered services with reasonable opportunity to
18 reject them and reason to know that they were offered with the
19 expectation of compensation; (b) Where the offeror has stated
20 or given the offeree reason to understand that assent may be
21 manifested by silence or inaction, and the offeree in
22 remaining silent and inactive intends to accept the offer; and
23 (c) Where, because of previous dealings or otherwise, it is
24 reasonable that the offeree should notify the offeror if he
25 does not intend to accept.

1 That's quoting the Restatement (Second) of Contracts,
2 Section 69. See also *Texas Association Government Risk*
3 *Management Pool v. Matagorda County*. 52 S.W.3d 128 (Tex. 2000)
4 and *Advantage Physical Therapy v. Cruse*, 165 S.W.3d 21 (Tex.
5 App. 2005), both of which apply the Restatement of Contracts,
6 Section 69.

7 Taken in reverse order, the third exception does not apply
8 here because there is no evidence of any ongoing course of
9 conduct by the hundreds or thousands of affected claimants
10 that would be applicable here and give rise to a duty to
11 notify the offeror that an offer is not accepted.

12 The second exception under Restatement Section 69
13 generally applies when silence is misleading and there is some
14 element of deception or dishonesty. See *SunEdison*, 576 B.R.
15 at 459. The Debtors sent the parties warnings about the
16 failure to opt out of the Third-Party Releases in the Plan,
17 the ballots, and the other notice materials, but that did not
18 create a duty to speak. There is simply no evidence that all
19 parties even knew about the bankruptcy, the Plan, the ballot,
20 or the other notice materials. Even if they had seen them,
21 there are plenty of other plausible reasons for a failure to
22 opt out, such as mistake, inadvertence, carelessness, or
23 simply not understanding what was being asked.

24 Judge Wiles made exactly this point in the *Chassix* case
25 out of the Southern District of New York. "[M]any creditors

1 may simply have assumed that a package that related to the
2 Debtors' bankruptcy case must have related only to their
3 dealings with the Debtors and would not affect their claims
4 against other parties. Charging all inactive creditors with
5 full knowledge of the scope and implications of the proposed
6 third party releases, and implying a 'consent' to the third
7 party releases based on the creditors' inaction, is simply not
8 realistic or fair, and would stretch the meaning of 'consent'
9 beyond the breaking point." *In re Chassix Holdings*, 533 B.R.
10 64, Pages 80-81 (Bankr. S.D.N.Y. 2015).

11 The first exception under Section 69 of the Restatement is
12 the one that the Debtors rely on, but it does not apply
13 because there is no evidence that the offerees have accepted
14 any benefits with reason to know that benefits were being
15 offered with the expectation of compensation. The reason they
16 would not expect to be required to provide compensation is
17 because they are not required to provide any compensation.
18 Under the Solicited Plan, the treatment afforded to the
19 various claimants and equity-interest holders does not vary
20 based on whether or not they opt out of the release.

21 After solicitation was complete, under the Modified Plan,
22 the Debtors offered to provide the Releasing Parties with a
23 mutual release if they did not opt out, but these alleged
24 benefits could not have been known to the Releasing Parties
25 because they were only added after the original Plan was

1 solicited.

2 Just as important, even if the Modified Plan with the
3 mutual releases were resolicited, there simply is no way of
4 telling whether any of the parties intended to accept this
5 mutual-release benefit because we have no idea if they are
6 paying any attention at all to this bankruptcy case and
7 because it is, frankly, difficult to discern exactly when and
8 how one accepts this kind of deemed release.

9 So, in conclusion, for purposes of the Third-Party
10 Releases, the Court finds that they must be consensual, and
11 consent in this context is defined by applicable state law
12 governing contract formation.

13 Because the Debtors have not satisfied their burden of
14 showing that the parties specified in Subsections (h), (i),
15 and (j) of the definition of Releasing Parties have consented
16 to the Third-Party Releases by virtue of their silence, the
17 Plan cannot be confirmed as is.

18 But the Plan is, in all other respects, confirmable. If
19 the Debtors are able and willing to remove Subsections (h),
20 (i), and (j) from the definition of Releasing Parties and make
21 the other revisions that were discussed at the hearing on
22 confirmation of the Plan, the Court stands ready to promptly
23 confirm the Plan without the need for further notice or a
24 hearing. If not, an order will be entered denying
25 confirmation.

1 That concludes the Court's ruling.

2 Mr. Califano, is there anything else before the Court
3 recesses?

4 MR. CALIFANO: No. I was going to say we will make
5 the modifications, Your Honor, and submit the confirmation
6 order as modified, hopefully before the end of today.

7 THE COURT: All right. Well, I will stay here as
8 long as necessary to sign that. I really do want to see this
9 case confirmed. The parties have done a marvelous job. I do
10 appreciate and respect the fact that when I kind of flagged
11 this issue for the parties prior to plan solicitation, it
12 appears that the provisions in the Modified Plan such as the
13 mutual releases were intended to address my concerns. Even
14 though that didn't get you over the goal line, I do appreciate
15 and respect very much that you heard my concerns and attempted
16 to address them.

17 And with that said, I'll be happy to confirm the plan when
18 that modified -- well, when you upload that confirmation order
19 acknowledging those changes.

20 MR. CALIFANO: All right. Thank you, Your Honor.

21 MS. BORDI: Thank you, Your Honor. This is Ameneh
22 Bordi on behalf of the Debtors. We will just need to make
23 some corresponding changes to the confirmation order as well
24 to remove findings of fact with respect to the opt-outs. And
25 we have one or two other clean-up comments to conform the

1 confirmation order to the plan in a few places that did not
2 make it into the version that was filed. So we're happy to
3 submit that along with a redline to Your Honor, if that works
4 for you.

5 THE COURT: That's fine. Do you have an estimate?
6 Do you think I will get that this afternoon, or is it going to
7 be over the weekend or on Monday? Do you know? Because I'm
8 happy --

9 MS. BORDI: No, Your Honor, we'll -- we have it ready
10 to go. We just need to reflect Your Honor's opinion. We
11 didn't want to presume what the opinion would be. So if you'd
12 give us an hour -- max, two -- it will be in your -- we will
13 file it and submit it.

14 THE COURT: All right. I will try to round up
15 somebody here to be available. Sometimes the folks in the
16 Clerk's Office leave at 5:00. I will do my best to find
17 somebody that, even if they go home, is able to enter it
18 tonight. If I think there's going to be a problem with that,
19 my courtroom deputy will notify you by email. But I'll do my
20 best to try and find somebody to enter it after it's uploaded.

21 If you would, --

22 MS. BORDI: And we will do our best to try to get it
23 uploaded in the next half-hour. We'll work very quickly.

24 THE COURT: All right. And if you could, --

25 MS. YOUNG: And Your Honor?

1 THE COURT: Well, one more thing.

2 MS. YOUNG: Oh, I'm sorry, Your Honor.

3 THE COURT: That's all right. And Ms. Bordi, when it
4 is uploaded, if you could please email my courtroom deputy at
5 the settings email. That way we know it's there, to go get
6 it.

7 All right. Ms. Young?

8 MS. BORDI: Absolutely, Your Honor.

9 THE COURT: Go ahead, Ms. Young.

10 MS. YOUNG: Thank you, Your Honor. And if I could
11 just get one last look at that version of that confirmation
12 order before it's uploaded, I would appreciate that as well.

13 THE COURT: All right. I assume that Ms. Bordi won't
14 have any problems sending it to you as well.

15 MS. BORDI: Absolutely.

16 THE COURT: All right. Anything else before we
17 recess?

18 MS. BORDI: So, it may take us just a -- it may take
19 us just a little bit longer, then, to circulate it among the
20 parties and get final sign-off, Your Honor. We will send it
21 as soon as we can. And I think if it is entered tonight or on
22 Monday, that would be very good for us.

23 THE COURT: All right. Ms. Young, it's 4:10. How
24 late are you going to be available once you receive the
25 document?

1 MS. YOUNG: Your Honor, I can make myself -- I can
2 make myself available for the rest of the afternoon. So as
3 soon as I get it, I will turn comments immediately back to the
4 Debtors, hopefully with -- hopefully not too -- too soon after
5 I get it, I can get that back to them, over to them.

6 THE COURT: All right. Very good.

7 All right. Anything else, Mr. Califano or Ms. Bordi?

8 MR. CALIFANO: No, Your Honor. Thank you very much
9 for your patience and for your time.

10 THE COURT: All right. Thank you all. We'll be in
11 recess.

12 THE CLERK: All rise.

13 (Proceedings concluded at 4:10 p.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

08/05/2024

24

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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

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In Re:) **Case No. 18-30777-swe-11**
)
) Dallas, Texas
4 WEST HOLDINGS, INC.,) October 18, 2022
) 1:30 p.m.
Debtor.)
) MOTION TO ENFORCE CONFIRMATION
) ORDER AND RELEASES AND
) INJUNCTIONS THEREUNDER (2077)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE SCOTT W. EVERETT,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For OHI Asset (SC) Rachael L. Smiley
Orangeburg, LLC: FERGUSON BRASWELL FRASER KUBASTA,
P.C.
2500 Dallas Parkway, Suite 600
Plano, TX 75093
(972) 826-4457

Recorded by: Michael F. Edmond, Sr.
UNITED STATES BANKRUPTCY COURT
1100 Commerce Street, 12th Floor
Dallas, TX 75242
(214) 753-2062

Transcribed by: Kathy Rehling
311 Paradise Cove
Shady Shores, TX 76208
(972) 786-3063

UST Exhibit C

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - OCTOBER 18, 2022 - 1:31 P.M.

2 THE COURT: Good afternoon. We're here in the 4 West
3 Holdings case, Case No. 18-30777. I'll take appearances,
4 please. Ms. Smiley, I think you're on mute.

5 MS. SMILEY: Apologies, Your Honor. Good afternoon.
6 You would think I would understand the mute function by this
7 point in the pandemic. Rachel Smiley on behalf of OHI Asset
8 (SC) Orangeburg, LLC.

9 THE COURT: Good afternoon. So, we have just one
10 motion on the docket. It's Docket No. 2077. It's a Motion to
11 Enforce. I didn't see any response filed. Has this been
12 resolved?

13 MS. SMILEY: Your Honor, no response has ever been
14 filed. Despite attempts to reach out to counsel for the
15 claimants, we have not received any kind of a formal response.
16 I can represent to the Court that I did speak to counsel's
17 assistant earlier on in the process and explained that we
18 would be filing a motion to reopen the case and the basis for
19 it, and tried to explain how the confirmation order worked,
20 the basis for the motion. I got a little where with her that
21 it was, you know, she was not a lawyer so I was really just
22 attempting to get her to have her boss call me back.

23 I did receive one email in response from counsel basically
24 stating that she needed some kind of an order that she could
25 file with the court in South Carolina, and I tried to explain,

1 well, that would be the confirmation order, but that's what
2 we're trying to enforce here, please let's discuss, and just
3 didn't receive a response back.

4 So we've noticed this hearing and served them with all the
5 papers. We've got certificates of service on file. We've
6 served them by email as well as by mail with everything. And
7 we have just not gotten a response.

8 THE COURT: Okay. Well, this makes it a little bit
9 awkward, because I do have some concerns about the motion. So
10 I'll let you -- I don't know if you want to make a
11 presentation first, or if you want me to give you a heads up
12 on what my concerns are.

13 MS. SMILEY: How ever Your Honor prefers. If you
14 want to go ahead and give me your concerns, that would be
15 fine, if that reduces, you know, the length or the breadth of
16 what I was going to present to the Court.

17 THE COURT: Sure. So, you're probably aware, there
18 are kind of conflicting cases out there on this issue of opt-
19 out releases. And so that I guess I have kind of three
20 fundamental concerns.

21 The first one is whether the Debtor provided notice, the
22 Debtors or anybody else provided Ms. Frazier -- or her estate
23 after she died -- of notice of the bankruptcy, and in
24 particular, notice of the plan and the ballot. There's
25 nothing in the motion that I can see that addresses whether or

1 not the Debtors even provided notice of the bankruptcy or the
2 plan or the ballot to either Ms. Frazier or whoever represents
3 her estate, because I understand she passed away. According
4 to the state court complaint that was attached to your motion,
5 she left the facility July 25, 2018 and died just a few days
6 later, which was after the petition date but before the
7 confirmation order.

8 So the first issue I have is, was there even notice given
9 to the Debtor -- not the Debtor -- to Ms. Frazier or to her
10 estate of the bankruptcy, and then, in particular, of the plan
11 and the ballot?

12 MS. SMILEY: So, Your Honor, I was not counsel to the
13 Debtor, so I'm going to have to give my answer based on my own
14 knowledge and as counsel that was not involved in the 4 West
15 case when it was actually presiding in front of Judge Hale.
16 So, my understanding, given what I can understand from the
17 docket, what I understand from my client, and giving opposing
18 party the benefit of the doubt here because they say they did
19 not have notice of the bankruptcy, my understanding is that
20 residents were probably not noticed with the bankruptcy.
21 There were 42 facilities with how many hundreds of residents
22 each, many of whom were not creditors, or at least were not
23 known to be creditors at that time.

24 So my assumption would be probably -- I'm not -- I don't
25 want to make an assumption, but I would, if the Court's

1 question is did they have notice, I don't know. But if they
2 didn't have notice, the plan at Article 10(b) does release the
3 released parties, of which OHI is one, from all claims and
4 liabilities, whether known or unknown, arising from or related
5 in any way to the business or contractual arrangements between
6 any Debtor and a released party.

7 So that language seems to foresee that there may be some
8 unknown claims out there. But in any case, the confirmation
9 order and the plan do release them with respect to the
10 released parties.

11 THE COURT: So I guess that kind of ties in to some
12 of my other thoughts and questions. Under the release
13 provision, this is in Section -- or, Article 10, Section B(2),
14 which appears to be the primary section that you're relying on
15 -- I know there's related injunctions in the plan that enforce
16 the release -- but the Article 10, Section B(2) appears to be
17 the operative release provision, and the one thing that jumped
18 out when I first read it is the clause at the beginning of
19 that paragraph which says that, effective as of the effective
20 date, to the fullest extent permitted by applicable law, and
21 then it goes on to say that the releases were deemed to have
22 been given.

23 So my take on that is, to the fullest extent permitted by
24 applicable law, there does not appear to have been a
25 determination, either in the confirmation order or since, on

1 whether in fact the opt-out releases are permitted by
2 applicable law. So I think I have today to decide whether or
3 not the releases are permitted under applicable law. So I
4 guess that was one of my next questions.

5 MS. SMILEY: And Your Honor, to that, I can say the
6 applicable law, as I understand it, would be the Fifth Circuit
7 has ruled on the appropriateness of third-party nondebtor
8 releases. And when parties are given the ability to formally
9 opt out of such releases and those parties have that option,
10 that the Court can then confirm enforceable third-party
11 releases, which is why this confirmation order containing
12 these third-party releases was entered.

13 THE COURT: All right. So I've read a lot of cases
14 just to get ready for the hearing. I haven't seen any cases
15 in the Northern District where any of our local judges have
16 actually written on this issue of the opt-out releases. I
17 have seen -- there are several opinions out there in New York
18 and Delaware, Southern District of Texas. Some approve opt-
19 out releases and some do not. I guess I will have some
20 thoughts on that, but I guess one way I'm looking at this is
21 the plan provides, towards the end, it's in the Jurisdiction
22 section, that it's governed by Texas law. So I think it says
23 to the extent, unless otherwise governed by the Federal
24 Bankruptcy Rules or Federal Civil Rules or the Code, the plan
25 is governed by Texas law. And I guess the way I'm looking at

1 this is that there are no Federal Bankruptcy Rules or Federal
2 Civil Rules that govern whether or not somebody can assent
3 through silence to a deemed release like this. So I think
4 that's the way I have to look at this, is under Texas law,
5 because I'm not aware of any federal law or code section or
6 rule that specifically governs deemed releases through silence
7 like this. So that's one concern that I have.

8 The third major concern that I have is another paragraph
9 in the release provision. And it's in the bottom half of that
10 Paragraph 2. After releases are given, there's a pretty
11 significant proviso. It says, "Provided, however, that the
12 foregoing provisions in this third-party release shall not
13 operate to waive, release, or otherwise impair," and then
14 there's a list. Number one on the list is any causes of
15 action arising from willful misconduct, actual fraud, or gross
16 negligence of such applicable released party. And when I go
17 to the copy of the complaint that's attached to your motion
18 that was filed by Ms. Frazier's representative, it has a
19 handful of causes of action. The first one -- I'm scrolling
20 down -- is for negligence/gross negligence. And then the
21 language of the paragraph uses language -- uses both of those
22 phrases, including gross negligence. And gross negligence is
23 one of the specific carve-outs to the release.

24 The second cause of action is negligence per se. I don't
25 know what the elements of negligence per se are under North

1 Carolina law or South Carolina law. But, again, in Paragraph
2 54, it relies on phrases regarding recklessness, willfulness,
3 and wantonness.

4 The third cause of action is for unfair trade practices
5 under the South Carolina Unfair Trade Practices Act, and it
6 references various conduct that is unfair and deceptive and
7 knowing. And I guess I think a fair reading of that was that
8 that would be covered by -- arguably would be covered by the
9 willful misconduct carve-out from the release.

10 The fourth cause of action is for fraud, fraud and
11 misrepresentation, which, again, is one of the express carve-
12 outs to the release.

13 The fifth cause of action is for negligence/survivorship.
14 I don't know the specifics of that cause of action, but at
15 least in Paragraph 76 it relies on allegations of negligence,
16 recklessness, willfulness, carelessness, negligence per se,
17 and gross negligence. So all those are kind of thrown in
18 together for that fifth cause of action.

19 The sixth cause of action is for negligence/wrongful
20 death. And, again, it uses all the -- well, the same phrases:
21 negligence, carelessness, gross negligence, recklessness.

22 And then the seventh cause of action is for punitive
23 damages based on reckless, willful, and wanton conduct.

24 So help me with this one. It appears that several of the
25 counts in that complaint would be expressly carved out from

1 the release in the plan.

2 MS. SMILEY: Your Honor, whether or not South
3 Carolina law would hold the landlord in this situation, which
4 is all OHI is -- it is the entity that owns the building; it
5 does not operate the rehabilitation center where Ms. Frazier
6 was living until the time of her death -- so I don't know
7 under South Carolina law, I cannot represent to you that I
8 know whether or not someone purely sitting as the owner of the
9 building can be held liable for gross conduct, fraud, or any
10 of these other sorts of intentional conduct under any of these
11 theories.

12 But I would support and would submit to the Court that it
13 was the intention of the parties at the time that this
14 language was drafted that the landlords should be released
15 from tortious conduct, because torts are specifically released
16 under the language of the release paragraph. Let's see, this
17 is in 10(b). It does list claims, causes of action. It does
18 list torts in here. I'm trying to find where that language
19 is.

20 But all this is to say the parties contemplated that the
21 landlords should not -- should have a release from any torts
22 and all other claims arising from the leases that they had
23 with the Debtors. And whether there are any sorts of conduct
24 that a landlord could be liable for under South Carolina, you
25 know, I don't know the answer to that question. But I can say

1 that it was -- it was, based on this language, the intent of
2 the parties that the landlords -- you know, and that's the
3 position that OHI is in; it just owned the building -- should
4 have a full release from torts, from tortious claims.

5 THE COURT: So, first, my comments should not be
6 taken as any kind of a comment on the actual merits of the
7 complaint. So I understand your client's position that
8 they're merely the landlord; they were not operating. But
9 that issue is really not for me.

10 But just looking at this plan language, there's general
11 release language and then there's a specific carve-out. The
12 general release language does say it releases all these
13 claims, whether for tort, contract, and other things. Tort is
14 a pretty broad category. That would include negligence, for
15 example, which would not be covered by the more specific
16 carve-out. And the carve-out is pretty specific that it
17 carves out willful misconduct, actual fraud, and gross
18 negligence of the applicable released parties.

19 So I guess, as I'm sitting here, it appears that the more
20 specific carve-out would govern over the more general release.
21 So that's probably the third fundamental concern that I have
22 with the motion. So I'll open up the floor. So those are my
23 concerns, and I'll kind of open up the floor to you to address
24 anything else you'd like or to make any other arguments that
25 you may have.

1 MS. SMILEY: Thank you, Your Honor. And I do have a
2 short presentation, I'll try and get through it fairly
3 quickly, just to substantiate why, in this situation, with the
4 opposing party not being here, OHI is really just asking the
5 Court to simply clarify that a previous order that it entered,
6 which is the 4 West confirmation order, it just simply means
7 what it says it means, and acknowledging that OHI has
8 attempted on many occasions to communicate with the claimant,
9 which is Ms. Frazier as the representative of her mother's
10 estate, and explain that the confirmation order and the plan
11 that the Court confirmed releases OHI from the claims and that
12 OHI -- and explain to the claimant that they brought this
13 lawsuit in South Carolina that we have not responded to on
14 this basis, but they haven't responded. We're the only one
15 who has -- who has sought affirmative relief in this Court to
16 confirm -- to enforce the terms of this confirmation order.
17 And we've made them aware that we're here, and they simply
18 haven't responded.

19 So we feel like we can cleanly ask the Court to simply
20 enforce the terms of the confirmation order as it's written.
21 I understand that the Court has concerns and is reluctant in a
22 number of ways, and appreciate those concerns, but we're --
23 we're simply asking the Court to enforce the confirmation
24 order language as it's written. And as the other side, Ms.
25 Frazier's representative, has not come forward with any kind

1 of a response, we're not sure how, you know, we stand with
2 respect to the lawsuit that they're continuing to prosecute on
3 the other side.

4 Our position is that we have releases under a plan. If
5 the releases in the confirmation order are not enforced, then
6 we have to go answer a lawsuit in South Carolina that, as we
7 understand, is for claims that we're no longer or can't be
8 liable for because they are released and enjoined by this
9 Court's order.

10 So it makes our status a little bit unclear as well if we
11 don't simply have an order from this Court enforcing the
12 confirmation order as it's written.

13 THE COURT: All right. Thank you, Ms. Smiley. Do
14 you have anything else before I -- I'm going to take a short
15 recess, and then I'm planning to come back and rule. Anything
16 else you'd like to add?

17 MS. SMILEY: I don't think so, Your Honor. I think,
18 Your Honor, you know, I could present -- I could walk through
19 the language and how all the releases work, but I think Your
20 Honor has clearly prepared for that and understands the
21 releases, so I don't see any reason to take the Court's time
22 with that.

23 If Your Honor had any additional questions or any other
24 items that I can at least provide, you know, to my
25 understanding of the situation or my understanding of the law

1 or of the confirmation order, I'm happy to do that before the
2 Court goes into recess.

3 THE COURT: I don't think so. I mean, I think I've
4 tipped you off to three of the concerns that I had. But
5 before I rule, I just want to take a couple minutes, and then
6 I'll come back out and rule. So we'll take a brief maybe
7 five-minute recess.

8 (A recess ensued from 1:50 p.m. until 1:59 p.m.)

9 THE COURT: Okay. We're back on the docket in the
10 4 West Holdings case. So, I've considered the Motion to
11 Enforce at Docket #2077. I have considered the motion, all of
12 the attachments to that motion, and I've considered the
13 arguments of counsel.

14 This is a little bit strange, given that there's a lack of
15 response by the opposing counsel. But in this specific case,
16 I will look to the *SunEdison* case out of the Southern District
17 for guidance there. Judge Bernstein, even though no party --
18 that Court addressed this issue at the confirmation stage, and
19 he raised *sua sponte* whether he should approve an opt-out
20 release under those circumstances. Here, we're way past the
21 confirmation stage. But as I'll explain in my ruling, that
22 issue, I think, has been reserved. I don't think it has been
23 ruled on. So I do think, given the serious nature of the
24 sanctions that are being requested, I don't think I could just
25 -- can or should enter a default based on the lack of a

1 response. Given that this is a sanctions hearing, I have to
2 be comfortable that it is appropriate to award sanctions and
3 to interpret the Court's prior orders in that context.

4 So I'll start with the *Pacific Lumber* case, which is the
5 Fifth Circuit case from 2009. That's at 584 F.3d 229. And
6 there have been other Fifth Circuit cases since then that have
7 made clear that, at least in the Fifth Circuit, nonconsensual
8 releases and related injunctions are not permitted. So that's
9 kind of the baseline. Nonconsensual releases are not
10 permitted.

11 There does appear to be wiggle room in that case and other
12 cases that provide -- that would allow for consensual releases
13 under appropriate circumstances. And so I have to determine
14 today whether or not this is a consensual release, and if so,
15 whether it's effective.

16 So, the plan, at Article 12(1), provides that -- and I'll
17 pull up the exact language. This is the Governing Law
18 provision of the plan, and it's Article 12(1), styled,
19 Governing Law. It provides, "Except to the extent that the
20 Bankruptcy Code, the Bankruptcy Rules, or other federal law is
21 applicable, or to the extent that a restructuring document or
22 an exhibit or schedule to this plan provides otherwise, the
23 rights and obligations under this plan shall be governed by
24 and construed and enforced in accordance with the laws of
25 Texas, without giving effect to the principles of conflicts of

1 law of such jurisdiction."

2 Here, there really is no Bankruptcy Code section that
3 governs consensual releases. We know, according to the Fifth
4 Circuit, there are Code provisions governing nonconsensual
5 releases, but there's no Code section, there's no Bankruptcy
6 Rule, there's no Federal Civil Rule that governs whether or
7 not silence can be deemed assent or consent to a release under
8 a plan like this. So I think this issue today is resolved by
9 Texas law.

10 The only other potential federal law that would apply
11 would be the law of due process under the Constitution, and
12 there are some issues that are implicated there, as I'll
13 address in just a few minutes.

14 So, the Movant relies primarily on Plan Article 10,
15 Section B(2), which is the general provision regarding the
16 releases at issue here. And as I mentioned during my
17 comments, the Court only approved the releases "to the fullest
18 extent permitted by applicable law." And, again, applicable
19 law here would be Texas law, and there does not appear to have
20 been any prior court determination of whether or not the
21 deemed releases are permitted by applicable law.

22 So, the way I'm looking at this is the plan is a contract,
23 and the Movant, I think, is effectively arguing that Ms.
24 Frazier or her estate somehow consented to the release by not
25 opting out. So there are three fundamental problems with this

1 argument.

2 Number one, did the Debtors or anybody else send notice of
3 the offer -- that is, the plan -- to Ms. Frazier or her
4 estate? And there is no evidence that the Debtors gave notice
5 to Ms. Frazier of the bankruptcy filing or gave notice of the
6 plan and the ballot to either Ms. Frazier or her estate after
7 she died.

8 I understand, Ms. Smiley, you indicated that she may be an
9 unknown claimant. There's just no evidence that she's an
10 unknown claimant. At the end of the day, even if she was an
11 unknown claimant, for the reasons I'll explain, I don't think
12 that matters.

13 But to the extent the Movant is relying on kind of a
14 contract analysis for a deemed release, there's no evidence
15 that the other party got the offer of the release. And so
16 there is also a federal due process concern or violation if
17 there is an argument that somehow Ms. Frazier or her estate
18 are deemed to have consented to the release when the Debtors
19 didn't provide her or her estate notice of the offer or of the
20 plan.

21 And I understand there are cases in different contexts
22 that provide for what type of notice you have to provide to
23 known creditors and what you have to do when there are unknown
24 creditors. I don't know, sitting here today, if she was an
25 unknown creditor or not. But I think the rest of my ruling

1 will make clear, I'm not sure that that really matters in this
2 specific case.

3 So, number two, even if the Debtors had provided notice to
4 Ms. Frazier or her estate, the second fundamental problem I
5 have is did Ms. Frazier or her estate consent or assent to the
6 release by virtue of not opting out? And as I mentioned
7 earlier, there are a growing a number of opinions on this
8 issue of the opt-out releases, none that I'm aware of in the
9 Northern District of Texas. The one that I've found that to
10 me is the most persuasive is the *SunEdison* case. That's 576
11 B.R. 453. That's an opinion from the Bankruptcy Court from
12 the Southern District of New York, 2017. That Court applied
13 New York law to determine the effectiveness of an opt-out
14 release. And, again, in that case, Judge Bernstein raised the
15 issue *sua sponte* at the plan confirmation stage. And here, I
16 am raising the issue *sua sponte* even though we're past the
17 plan confirmation stage because, given the language of the
18 release that provides that it's only permitted to the extent
19 permitted by applicable law, I am now making that
20 determination.

21 So, Judge Bernstein looked to New York law to determine
22 the effectiveness of the opt-out release in that case, and the
23 Court relied on the *Restatement of Contracts* and also a
24 contract treatise by Calamari, a fairly well-known contract
25 treatise. And there are, likewise, Texas cases that follow

1 the *Restatement of Contracts* and other contract treatises like
2 *Williston on Contracts* on this exact point -- that is, whether
3 assent through silence [Court correction] is appropriate. And
4 I'll just cite to you the *Texas Association* case, 52 S.W.3d
5 128, 132. That's a Texas Supreme Court case from 2000. Also,
6 the *Advantage Physical Therapy* case, 165 S.W.3d 21, 26.
7 That's a Texas Appellate Court case from 2005.

8 Those cases, like the authorities in Judge Bernstein's
9 opinion, note that, absent a duty to speak, silence does not
10 constitute consent. An example that -- a variation of the
11 example that Judge Bernstein gave in his case is you can't
12 send a letter to somebody saying, I offer to buy your dog for
13 \$25 and if you fail to respond by next Friday you are deemed
14 to have consented to the sale of your dog. So, he gave a
15 slightly different example, but that's basically the general
16 rule, I think, which is that, unless there's an exception,
17 silence -- or, unless there's a duty to speak, silence does
18 not constitute consent.

19 Courts have recognized three exceptions to that general
20 rule. Judge Bernstein noted them, and the Texas authorities
21 likewise following the *Restatement of Contracts* note those
22 same three exceptions.

23 First, assent by silence will arise where, number one, it
24 is supported by the parties' ongoing course of conduct. And
25 as to that specific example or exception, there's no evidence

1 here that there was any ongoing course of conduct that would
2 be applicable here that would give rise to an assent.

3 Number two, assent by silence will arise where the offeree
4 accepts the benefits of the offer, despite a reasonable
5 opportunity to reject them, and understands that the offeror
6 expects compensation. The facts here simply don't support
7 that second exception to the general rule. There's no
8 evidence that Ms. Frazier or her estate accepted the benefits
9 of the offer or the plan, despite an opportunity to reject
10 them, and there's no evidence that she understood that the
11 offeror, which here would be the Movant, expects compensation.

12 Number three, the offeror -- this is the third exception
13 to assent by silence, which is where the offeror has given the
14 offeree reason to understand that silence will constitute
15 acceptance, and the offeree, in remaining silent, intends to
16 accept the offer. And under that last exception, Judge
17 Bernstein noted that silence operates as an assent because the
18 assent is misleading, and the exception does not apply absent
19 some element of deception or dishonesty.

20 And the facts here do not support assent by silence under
21 either one of those three exceptions to the general rule.

22 So the Movant appears to argue that the warning in the
23 plan and the ballot regarding the potential effect of silence
24 gave rise to a duty to speak, and that Ms. Frazier's failure
25 to object to the plan or to opt out should be treated as

1 deemed consent to the release. So, Ms. Smiley, you didn't
2 make that exact argument, but I'm kind of constructing the
3 only argument that I think could be made to support a deemed
4 release. And here, there is simply no evidence that Ms.
5 Frazier even knew about the bankruptcy or that her estate
6 representative ever saw the plan and the ballot. So I don't
7 know how they could have deemed consent through silence when
8 they never saw the plan or there's no evidence that they saw
9 the plan or the ballot.

10 And even if the estate representative had seen the plan or
11 the ballot, given Ms. Frazier's passing away by plan
12 confirmation, there are other plausible inferences for the
13 failure to opt out, such as inadvertence. We don't even know
14 if anybody saw the plan, saw the ballot, or cared one way or
15 the other. There's simply no evidence that silence here was
16 misleading or that it signified consent or assent to release.

17 There are some cases in other jurisdictions that permit
18 opt-out releases under certain circumstances, but the
19 rationale of those cases to me is not persuasive. Probably
20 the best representative example would be the *Mallinckrodt*
21 case. That's M-A-L-L-I-N-C-K-R-O-D-T. That's 639 B.R. 837.
22 That's an opinion from the Delaware Bankruptcy Court in 2022.
23 One of the rationales that the Court gives for this idea of
24 assent through silence is that, in the judicial sphere, there
25 are examples where somebody's assent can lead to action being

1 taken against them. For example, and these are the examples
2 that were given by the *Mallinckrodt* court, if somebody files a
3 complaint against an individual and there's no answer, a
4 judgment can be taken against the defendant. The other
5 example is the failure to file a proof of claim despite the
6 bar date notice. A third example is the failure to respond to
7 a claim objection -- you know, if a claim is filed, the
8 failure to respond to the claim objection can lead [Court
9 correction] to the disallowance of that claim.

10 All of those examples involve specific Bankruptcy or
11 Federal Civil Rules that permit affirmative relief to be taken
12 against a party if they fail to act. Here, there are no
13 comparable rules allowing a deemed assent or consent to a
14 contractual release through silence. So I don't find the
15 rationale of those cases to be persuasive.

16 And there are -- even in Delaware, there's a split on this
17 issue. Other Delaware courts have followed *SunEdison*,
18 including the *Emerge Energy* case, which is 2019 WL 7634308,
19 out of Bankruptcy Court for Delaware in 2019.

20 So, the only other rationale that kind of jumped out at me
21 as we were getting ready for hearing was a case out of the
22 Southern District of Texas [Court correction], and there might
23 be one other, where they analogize to the *Wellness* Supreme
24 Court opinion for the proposition that silence can lead to
25 consent. And in that context, the consent would be consent to

1 Article I final adjudication of a matter. And I just don't
2 think that's a very persuasive analogy because the Supreme
3 Court in *Wellness* made clear that consent to Bankruptcy Court
4 final adjudications, even if they can be implied, and they can
5 be implied, must be knowing and voluntary. So, for example,
6 if you continue -- you don't have to say, I consent to
7 Bankruptcy Court final adjudication, but if you're there
8 litigating in front of the Bankruptcy Court and you don't say
9 anything, you are still taking action by your conduct.

10 So that analysis just doesn't work for me here because,
11 here, Ms. Frazier or her estate are not in a comparable
12 position. They're not doing anything affirmative. It's kind
13 of the converse, where she's doing nothing, and I'm being
14 asked to infer from doing nothing that she has voluntarily
15 consented or assented to a release.

16 So I just don't think that there's a knowing and voluntary
17 consent or assent to the extent *Wellness* is an appropriate
18 analogy.

19 And then the third and final problem that I had with the
20 motion is the issue of the carve-out. And I mentioned earlier
21 that there is broad language in the release, the releases in
22 Plan Article 10, Section B(2), where the non-releasing -- I'm
23 sorry, the nondebtor releasing parties are deemed to have
24 provided this release from any and all claims, and there is
25 "whether for tort, contract" or other items. So there is a

1 general release for torts. But there is a more specific
2 provision in this release paragraph that walks back that broad
3 release for torts, and it walks it back for intentional torts.
4 And that language is, "Provided, however, that the foregoing
5 provisions of this third-party release shall not operate to
6 waive, release, or otherwise impair," number one or Romanette
7 (i), "any causes of action arising from willful misconduct,
8 actual fraud, or gross negligence of such applicable released
9 party."

10 And, again, going to the complaint, several of the causes
11 of action appear to be covered under that carve-out. For
12 example, the first cause of action is negligence/gross
13 negligence, which is expressly carved out from the general
14 tort release. At least, the gross negligence part of that
15 count would be carved out. The third cause of action for
16 Unfair Trade Practices Act violations to me appeared to be --
17 that cause of action appears to contemplate knowing
18 violations, or knowing and willful misconduct, which would be
19 another carve-out from the release.

20 The fourth cause of action is for fraud and
21 misrepresentation. I think that again would be expressly
22 carved out from the general release.

23 And some of the other causes of action kind of flow back
24 and forth between negligence and gross negligence and
25 recklessness. So to the extent those causes of action

1 likewise would include elements of gross negligence or willful
2 misconduct or fraud, those likewise would be carved out of the
3 release.

4 So, for all of those reasons, given the serious nature of
5 the request, which is significant sanctions against the
6 alleged violating party, I can't just grant a default judgment
7 against them based on their failure to respond. I had to
8 become comfortable that it would be appropriate for me to
9 grant sanctions. In order for me to do that, I have to
10 interpret the Court's own order. And as I interpret the order
11 and the applicable governing law, which is Texas law, I find
12 that at least under the unique circumstances of this case,
13 maybe not in all cases but at least in this case, I don't find
14 that the opt-out release provisions were effective as against
15 Ms. Frazier or her estate.

16 So, Ms. Smiley, unless you have any questions or
17 clarifications, I'm going to have to ask you to prepare an
18 order -- well, don't worry about that. We will handle the
19 order denying the motion. The order will simply state that
20 I'm denying it for the reasons stated on the record. I don't
21 intend to write a ruling, a written opinion on this. So the
22 order will simply reflect or incorporate the Court's findings
23 of fact and conclusions of law on the record.

24 So, do you have any questions or clarifications about my
25 ruling?

1 MS. SMILEY: No, Your Honor.

2 THE COURT: All right. Well, I appreciate your time.
3 I do think it's unfortunate that the other side -- I do
4 appreciate the efforts that your firm made to bring the
5 alleged violations to the attention of the Frazier estate.
6 It's unfortunate that they elected not to respond to your --
7 but, given the consequences here, I'm going to deny the motion
8 for the reasons I've stated. So, with that said, we will be
9 in recess. Thank you.

10 MS. SMILEY: Thank you, Your Honor.

11 (Proceedings concluded at 2:22 p.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

10/31/2022

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Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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