

**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)

**DECLARATION
OF MICHAEL SHANAHAN
IN SUPPORT OF CONFIRMATION OF THE FOURTH
AMENDED JOINT PLAN OF LIQUIDATION OF EIGER
BIOPHARMACEUTICALS, INC. AND ITS DEBTOR AFFILIATES
PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

I, Michael Shanahan, hereby declare under penalty of perjury as follows:

1. I am a Managing Director at Alvarez & Marsal (“A&M”) with over twenty (20) years of accounting, audit, and investigative experience. I hold a B.S. in Accountancy from Villanova University. I am a Certified Public Accountant (“CPA”), a Certified Fraud Examiner (“CFE”), and Certified in Financial Forensics (“CFF”). I have consulted on a variety of financial matters in various industries advising both plaintiffs and defendants. During my tenure with A&M, I have conducted numerous investigations to develop, understand, and evaluate information in connection with potential avoidance and other causes of action, including breach of fiduciary duty claims.

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.

2. I am over the age of 18 years and am authorized to submit this declaration on behalf of the Debtors. If called to testify, I could and would testify competently to the facts set forth herein.

3. I submit this declaration in support of the request for entry of an order approving the Debtors' *Amended Disclosure Statement for Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 476-1] (as modified, amended, or supplemented from time to time hereafter, the "Disclosure Statement") and confirming the *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 606-1] (as modified, amended, or supplemented from time to time hereafter, the "Plan").²

4. I am not being specifically compensated for this testimony other than through payments received by A&M as a professional retained by the Debtors.

5. Except where explicitly noted, all statements in this Declaration are based upon (a) my personal knowledge of the Debtors' operations, business affairs, financial performance, and restructuring efforts; (b) information learned in my review of relevant documents; (c) information I have been provided from other members of the Debtors' management or advisors; and (d) my professional experience.

ASSIGNMENT

6. As part of the Debtors' retention of A&M to provide the Debtors a Chief Restructuring Officer and certain additional personnel, I was asked to conduct an investigation to assist counsel in evaluating whether potential claims existed related to the fiduciary duties of the

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

Debtors' directors and officers, including in connection with the concerns raised by *The Official Equity Security Holders' Committee's ("Equity Committee") Objection to the Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 589] ("Equity Committee Objection").

SCOPE OF INVESTIGATION

7. In connection with my assignment, counsel for the Debtors provided me with access to more than 8,300 documents, totaling more than 58,000 pages, collected from the following individuals, across a two-year period:

- a. David Apelian, Chief Executive Officer ("Dr. Apelian")
- b. James Vollins, General Counsel
- c. Bill Kachioff, Chief Financial Officer
- d. Ingrid Chong, Head of Business Development
- e. Eldon Mayer, President
- f. Richard Franco, VP, Clinical Strategy
- g. Colin Hislop, SVP, Clinical & Development Operations
- h. Thomas Dietz, Chairman of the Board of Directors
- i. Christopher Kurtz, Head of Manufacturing
- j. Jeffrey Glenn, founder, former Board member
- k. David Cory, former Chief Executive Officer

8. I also reviewed the available minutes and materials from meetings of the Debtors' Board of Directors for the period March 2022 through March 2024.

9. The documents provided by counsel were searchable and I was also assisted by others at A&M in reviewing and synthesizing the documents.³ I understand that all of these documents also were produced to the Equity Committee. In addition, I spoke numerous times with Dr. Apelian, who was available on an as-needed basis and provided additional context or clarification around certain documents.

EQUITY COMMITTEE CLAIMS

10. The Equity Committee cited that their preliminary investigation revealed “numerous red flags, that warrant at minimum, further investigation.”⁴ Specifically, the Executive Committee Objection identified four broad categories of such “red flags”:⁵

- a. Improper safety reporting and monitoring;
- b. Mismanagement regarding data integrity and public disclosures;
- c. Mismanagement regarding cash management and the prepetition Zokinvy sale process; and
- d. Significant insider payments approved on the eve of the filing of these Chapter 11 Cases apparently made in an effort to avoid bankruptcy court oversight.

11. In addition to the four items listed above, the Equity Committee also noted their desire to investigate circumstances around other potential transactions, including but not limited to, the proposed \$25 to \$40 million private investment in public entity (“PIPE”) that was proposed to the Debtors by Propel Bio Management LLC (“Propel”) that was never consummated.⁶

³ All documents cited herein are either publicly available or have been produced to the Equity Committee and can be made available to the Court at its request.

⁴ Equity Committee Objection at Section II.

⁵ Equity Committee Objection at Section II.

⁶ Equity Committee Objection at para. 36

KEY OBSERVATIONS

12. The business affairs of the Debtors are managed under the direction of its Board of Directors (“Board”). The Board is comprised of seasoned experts with relevant industry experience and expertise. The Board relies on its sub-committees and, at times, independent experts in making business decisions.

13. Based on a review of the available documents, I did not identify any information that suggests the Directors and Officers were conflicted or prioritized their own self-interest over that of the Debtors at any time.

14. The evidence cited by the Equity Committee in support of its claim of improper safety reporting and monitoring practices is part of normal communications with the Department of Health. The Debtors promptly responded to the inquiry and was not subject to any further action.

15. There is no evidence to support the Equity Committee’s claim of mismanagement regarding data integrity and public disclosures. The evidence cited by the Equity Committee shows the Debtors and Board properly responded to a whistleblower complaint, conducted an internal investigation, notified its auditors, and determined, in consultation with its auditors, that no disclosure was required as a result of the internal investigation.

16. In an effort to maximize value, the Debtors engaged with multiple parties related to the potential sale of its Zokinvy asset prior to the bankruptcy proceeding.

17. Bonuses paid prior to the bankruptcy filing were properly approved by the Compensation Committee and Board based, in part, on advice received from independent compensation consultants.

BOARD OF DIRECTORS AND COMMITTEES

18. The business affairs of the Debtors are managed under the direction of its Board.⁷

The Board is currently comprised of the below six members, each having relevant industry experience and expertise:

- a. Thomas J. Dietz, PHD, serves as Chairman of the Board and has more than 30 years of life-sciences industry experience.⁸
- b. David Apelian, MD, PHD, MBA, serves as the Debtors' Chief Executive Officer and Board member.⁹ Dr. Apelian has 25 years of clinical development and regulatory compliance relating to pharmaceutical products, and has served in numerous leadership positions for various companies within the life sciences industry.¹⁰
- c. Evan Loh, MD, serves as the Chief Executive Officer of Paratek Pharmaceuticals, Inc. and has experience in senior executive management roles with large, international biopharmaceutical companies.¹¹
- d. Amit K. Sachdev, JD, serves as the Executive Vice President, Chief Patent Officer and Chief of Staff to the CEO of Vertex Pharmaceuticals, a global biotechnology company.¹² Mr. Sachdev is an experienced senior executive in the biopharmaceutical industry and experienced in healthcare public policy, global regulatory affairs and market access.¹³

⁷ Form 10-K/A for the fiscal year ended December 31, 2023 filed by Eiger BioPharmaceuticals, Inc. on April 29, 2024 at p.3 ("Amended 10K").

⁸ Amended 10K at p. 4.

⁹ *Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 19] ("Apelian First Day Declaration") at ¶2.

¹⁰ Apelian First Day Declaration at ¶2.

¹¹ Amended 10K at p. 3.

¹² Amended 10K at p. 3.

¹³ Amended 10K at p. 3.

- e. Kim Sablich, MBA, served as Executive Vice President, General Manager of North America of Jazz Pharmaceuticals, plc., a global biopharmaceutical company, from June 2020 to December 2023.¹⁴ Ms. Sablich has served in a number of senior executive leadership roles for large, international biopharmaceutical companies throughout her career.¹⁵
 - f. Lisa Kelly-Croswell, MA, serves as Senior Vice President and Chief Human Resources Officer at Boston Medical Center Health System and has more than 30 years of experience in a wide range of global human resources leadership roles.¹⁶
19. In addition to the aforementioned individuals, the below individuals resigned from the Board in 2024:
- a. Jeffrey S. Glenn, MD, PhD, served as a member of privately-held Eiger BioPharmaceuticals, Inc.'s ("Private Eiger") Board of Directors since his appointment in 2008 until the completion of the Private Eiger's business combination with Celladon Corporation in March 2016, with the surviving entity changing its name to Eiger BioPharmaceuticals, Inc. (the "Merger").¹⁷ Dr. Glenn, a Professor of Medicine at Stanford University School of Medicine, served on the Board through his resignation on April 1, 2024.¹⁸

¹⁴ Amended 10K at p. 4.

¹⁵ Amended 10K at p. 4.

¹⁶ Amended 10K at p. 4.

¹⁷ Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934 filed by Eiger BioPharmaceuticals, Inc. on April 26, 2023 ("Proxy Statement") at p. 8.

¹⁸ Amended 10K at p. 6.

- b. Christine Murray, MS, RAC, served as a member of the Board from January 2019 through her resignation on March 15, 2024.¹⁹ Ms. Murray has global regulatory expertise and senior management experience in the biopharmaceutical industry.²⁰

20. The Board met twelve times during the fiscal year ending December 31, 2023.²¹ Based on available records, each Board member attended 75% or more of the aggregate number of meetings of the Board and of the committees on which he or she served, held during the portion of the last fiscal year for which he or she was a director or committee member.²²

21. Based on available minutes, the Board met three times between January 2024 and March 2024.²³ However, I understand the Board met many times in 2024 based on discussions with Dr. Apelian, and that not all meetings with the Board warranted documentation of the discussions (*i.e.*, discussion, updates, and instances where no action was taken).

22. The Board has three standing committees: an Audit Committee, a Compensation Committee, and a Nominating and Governance Committee.²⁴

- a. The Audit Committee was established by the Board in accordance with Section 3(a)(58)(A) of the Exchange Act, to oversee the Debtors' corporate accounting and financial reporting processes and audits of its financial statements.²⁵
- b. The Compensation Committee is responsible for, among others:
 - i. determining the compensation and other terms of employment of the Debtors' Chief Executive Officer and other executive officers

¹⁹ Proxy Statement at p. 10; Amended 10K at p.6.

²⁰ Proxy Statement at p. 10.

²¹ Amended 10K at p. 5.

²² Amended 10K at p. 5.

²³ EIGER-EC-00001012; EIGER-EC-00001014; EIGER-EC-00001016.

²⁴ Amended 10K at p. 5.

²⁵ Amended 10K at p. 6.

- ii. reviewing and approving corporate performance goals and objectives relevant to such compensation; and
 - iii. evaluating and administering equity incentive plans, compensation plans, including pension and profit-sharing plans and deferred compensation plans, and other similar plans and programs, as well as reviewing and recommending the adoption, modification or termination of plans and programs to the Board.²⁶
- c. The Nominating and Governance Committee is responsible for identifying, reviewing and evaluating candidates to serve as directors of the Debtors (consistent with criteria approved by the Board), reviewing and evaluating incumbent directors, selecting or recommending to the Board for selection candidates for election to the Board of Directors, making recommendations to the Board regarding the membership of the committees of the Board, assessing the performance of the Board and developing a set of corporate governance principles for the Debtors.²⁷

23. The composition of the standing committees and numbers of meetings held during the fiscal year ended December 31, 2023, and through Petition Date in 2024, is shown below in **Table 1**.²⁸

²⁶ Amended 10K at p. 7.

²⁷ Amended 10K at p. 8.

²⁸ Amended 10K at p. 6; The number of meetings held in 2024 is based on review of the available documents.

Table 1: Composition of Standing Committees and Meetings Held

| Name | Audit | Compensation | Nominating and Governance |
|----------------------------------|----------|--------------|---------------------------|
| Thomas Dietz, M.D. Ph.D. | Chair | ✓ | ✓ |
| Jeffrey S. Glenn, M.D. Ph.D.* | ✓* | ✓* | |
| Lisa Kelly-Croswell | | | ✓ |
| Evan Loh, M.D. | | Chair | ✓ |
| Christine Murray, M.S., R.A.C.** | ✓** | | ✓** |
| Kim Sablich, M.B.A. | ✓ | | |
| Amit K. Sachdev, J.D. | | ✓ | Chair |
| Total Meetings in 2023 | 4 | 7 | 3 |
| Total Meetings in 2024 | 1 | 2 | 1 |

*Dr. Glenn resigned from the Board on April 1, 2024.

**Ms. Murray resigned from the Audit Committee and the Nominating and Governance Committee on September 27, 2023 and the Board on March 15, 2024.

24. In addition to the standing committees, the Board formed a Transaction Committee, among others, as evidenced by meeting minutes.²⁹ The Transaction Committee met at least 11 times in 2023 and several times in 2024.³⁰ Based on discussions with Dr. Apelian, not all meetings warranted documentation of discussions (*i.e.*, discussion, updates, and instances where no action was taken).

DETAILED DISCUSSION OF EQUITY COMMITTEE CLAIMS

25. The detail on my investigation into the purported issues identified by the Equity Committee Claims is set forth below.

A. Allegedly Improper Safety Reporting and Monitoring

26. The Equity Committee claims that there are questions about the Debtors’ practices and procedures about reporting serious safety incidents in patients in their clinical trials, including,

²⁹ See, e.g. EIGER-EC-00000985.

³⁰ The number of meetings held is based on review of the available documents.

but not limited to, questions concerning whether Debtors’ investigators and medical reviewers had received appropriate training on how to report serious safety incidents.³¹

27. The Equity Committee cited to a June 1, 2023, memo issued by the Department of Health & Human Services, Division of Antivirals, Food and Drug Administration (“DOH”),³² noting that the DOH expressed concern over whether the Debtors were properly reporting “hepatic safety events” and that Debtors’ investigators and medical safety reviewers may not be adequately trained on safety event reporting in regards to the Lambda Phase 3 clinical studies.³³

28. Eiger provided detailed responses to the DOH memo on June 16, 2023 that included, among other responses:³⁴

- a. Regarding “hepatic safety events”, Eiger noted that both the Investigator Brochure (“IB”) and Drug Safety Update Reports (“DSUR”) indicate that hepatic events are an identified risk.³⁵
- b. Eiger explained to the DOH that investigators and medical safety reviewers³⁶ for the Phase 3 clinical study were trained on safety event reporting.³⁷ The response detailed a specific case example where the initial data did not contain all relevant data but the medical safety reviewer was able to subsequently access the data and prepared a safety follow-up report accordingly.³⁸

³¹ Equity Committee Objection , para. 20.

³² EIGER-EC-00020288.

³³ Equity Committee Objection, para. 21.

³⁴ EIGER-EC-00020351.

³⁵ EIGER-EC-00020352, pg. 3.

³⁶ These are 3rd party industry experts and not employees of Eiger. For example, Eiger partners with Biorasi and IQVIA Biotech that supply investigators and medical safety reviewers. Both companies are full-service contract research organizations (CRO) that assist pharmaceutical companies globally on clinical trials. See <https://biorasi.com/phase-ib-iii-trials/> and Clinical Development Solutions for Biotech Innovators - IQVIA Biotech.

³⁷ EIGER-EC-00020352, pg. 3

³⁸ EIGER-EC-00020352, pg. 4.

29. Based on a search of the available documents, I did not identify other instances where the DOH expressed concern over the Debtors' safety reporting and monitoring practices. Further, based on discussions with Dr. Apelian and independent research, the DOH did not take any further action subsequent to the Debtors' response.³⁹

30. Additionally, the Data Safety & Monitoring Board ("DSMB") was actively involved in reviewing safety data from the Lambda Phase 3 clinical studies.⁴⁰

- a. "The DSMB is an independent, external data and safety monitoring committee for the Hepatitis Delta Virus clinical study program."⁴¹
- b. Eiger employees are not DSMB members.⁴²

31. Safety data was reviewed and discussed in a June 1, 2023, meeting with the DSMB.⁴³ The DSMB recommended that the study continue without modification after an additional meeting on June 30, 2023.⁴⁴

32. The Equity Committee also notes "despite test results showing severe liver injuries, the Debtors did not shut down its clinical study until the DSMB recommended its discontinuance on September 7, 2023."⁴⁵

³⁹ The FDA publishes warning letters they have sent to companies on their website. Based on a search Eiger does not appear in any results See <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/compliance-actions-and-activities/warning-letters>. Additionally, Eiger was not published in any findings published on the DOH website in 2023. See <https://public3.pagefreezer.com/browse/HHS.gov/31-12-2023T04:01/https://www.hhs.gov/about/news/index.html?page=1>

⁴⁰ As stated in the DSMB charter, the Chairman determined the timing of each meeting, but Eiger anticipated that the DSMB would meet approximately twice a year depending on the rate of patient recruitment. At any point in time Eiger or DSMB could request additional reviews during the course of the study. Additionally, the DSMB would receive the data at least one week in advance of any scheduled meeting. See EIGER-EC-00046779 pg. 9.

⁴¹ Eiger BioPharmaceuticals HDV Clinical Study Program, DSMB Charter. See EIGER-EC-00046779, pg. 4.

⁴² Eiger BioPharmaceuticals HDV Clinical Study Program, DSMB Charter. See EIGER-EC-00046779, pg. 5.

⁴³ EIGER-EC-00007787.

⁴⁴ EIGER-EC-00046453.

⁴⁵ Equity Committee Objection, pg. 8.

- a. Eiger announced the termination of Lambda’s Phase 3 clinical study within five working days of receiving the DSMB recommendation to discontinue.⁴⁶
- b. This was only a few months after the DSMB met on June 1 and 30, 2023, to review safety data and recommended that “the study continues as planned” and was signed off by Dr. Adrian M. Di Bisceglie (“Dr. Di Bisceglie”), Eiger HDV Program DSMB Chairperson.⁴⁷
- c. Dr. Di Bisceglie wrote an email on June 30, 2023, describing that the DSMB committee had met to review additional data provided by Eiger, as well as some new analyses generated by Biorasi.⁴⁸ He noted that “*the committee did not want to make any change to their recommendation to allow the study to continue and are satisfied with leaving our next meeting to be held in September, as scheduled*”.⁴⁹
- d. There is a process for cases to be further reviewed by the DSMB and Hepatic Adjudication Committee (“HAC”) to better understand the causes of each adverse event.⁵⁰ The HAC is “comprised of an expert panel of hepatologists who are responsible for reviewing and adjudicating events of potential Drug-Induced Liver

⁴⁶ The DSMB recommended that the study be discontinued on September 6, 2023, and Eiger formally notified the FDA on September 12, 2023. See EIGER-EC-00021899.

⁴⁷ EIGER-EC-00020352, pg. 52 and EIGER-EC-00046453.

⁴⁸ Biorasi had a representative acting as the Unblinded CRO Reporting Statistician. See Appendix 1 of DSMB Charter at EIGER-EC-00020352, pg. 31.

⁴⁹ *Certification of Warren J. Martin Jr. in Support of the Official Equity Security Holders’ Committee’s Objection to the Third Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 593-4].

⁵⁰ In fact, according to the DSMB Charter, the DSMB is “unblinded and will review unblinded data. In order to protect the integrity of the study, this process must be tightly controlled to ensure access to any unblinded data is limited to the appropriate unblinded personnel. In any circumstance, all parties involved in any potential unblinding must be independent of Eiger and the management of the study. The details of any unbinding requests must be appropriately archived to provide a suitable audit trail. The DSMB members may not unilaterally amend the protocol nor alter the conduct of the study (including termination) for safety reasons... The decision to amend the protocol or alter the conduct of the trial for safety reasons will be made jointly by Eiger, the DSMB, and, as appropriate, the principal investigators.” Regarding Urgent Safety Updates, the charter states that Eiger will discuss with the DSMB Chair appropriate measures and a meeting of the entire DSMB may be convened. See EIGER-EC-00046779 pgs. 12-13.

Injury (“pDILI”) occurring in patients chronically infected with Hepatitis Delta Virus (HDV)”⁵¹ in Eiger’s sponsored studies conducted in patients with chronic HDV infection.

33. Per discussion with Dr. Apelian, Eiger followed protocols to share safety data on hepatic events and maintained a communication channel with DSMB and HAC between June 2023 and September 2023.⁵²

34. Lastly, the Equity Committee points out that the FDA criticized the Debtors for failure to timely report the DSMB recommendations.⁵³

a. While the drafted minutes cited by the Equity Committee do identify this criticism, Eiger was within the FDA guidance which states that the sponsor of ongoing investigations have five working days after making a determination that a study should be discontinued to notify the FDA.⁵⁴

b. Eiger received the docusigned recommendation letter from the DSMB chair on Friday, September 8, 2023, at 12:34am PT.⁵⁵ The document was shared amongst the Eiger team that same day.⁵⁶

c. On the evening of September 8, 2023, Eiger accepted the DSMB recommendation to discontinue the study and then informed the FDA in writing on September 12, 2023, or within two working days.⁵⁷

⁵¹ Eiger BioPharmaceuticals Hepatic Adjudication Committee (HAC) Charter, effective January 31, 2023. See EIGER-EC-00020352, pg. 2.

⁵² Discussion with Dr. Apelian on September 2, 2024.

⁵³ Equity Committee Objection, para. 25.

⁵⁴ EIGER-EC-00021627; 12.C.F.R. §312.56(d). *See also* <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/cfrsearch.cfm?fr=312.56>

⁵⁵ EIGER-EC-00021641.

⁵⁶ EIGER-EC-00021633.

⁵⁷ EIGER-EC-00021646; EIGER-EC-00021708. The document the Equity Committee cites, identifies September 11, 2023, as the date Eiger notified the FDA. “DB” (Debra Birnkrant, Director at FDA) is referenced saying “DSMB issued on sept 6, but you only told us on sept 11”. See EIGER-EC-00021953.

B. Alleged Mismanagement Regarding Data Integrity and Public Disclosures

35. The Equity Committee claims there were concerns and formal complaints about the Debtors' Management, Data Integrity and Public Disclosures.⁵⁸

36. Specifically, the Equity Committee notes the concerns “were significant enough to warrant action by Eiger’s Board.”⁵⁹

37. The Equity Committee references the December 3, 2022, Board Approved Resolution whereby it delegated the Nominating and Governance Committee the authority to, amongst other powers, investigate, review and evaluate the facts and circumstances regarding Eiger’s management, data integrity, and public disclosures, evaluate and approve new or modified procedures, and remove or appoint officers.⁶⁰

38. The Debtors have a whistleblower hotline that is maintained by outside counsel and tested quarterly to ensure complaints could be filed accordingly.⁶¹

39. The whistleblower complaints are reported to the Audit Committee, as evidenced by the quarterly Audit Committee meeting materials.

- a. In the Audit Committee meeting materials for Q4 2022, it was noted that were “*no new whistleblower activity*”, “*no findings of violations of Eiger compliance policies or codes of business conduct to date*”, “*no findings of violations of applicable laws, rules, or regulations to date*”, and “*no reported cyber incidents to date*”.⁶²

⁵⁸ Equity Committee Objection, para. 27

⁵⁹ Equity Committee Objection, para. 27

⁶⁰ Equity Committee Objection, para. 27.

⁶¹ See whistleblower screenshots in Audit Committee meeting presentations Q1 2022 EIGER-EC-00002254, pg. 4; Q4 2022 EIGER-EC-00000149, pg. 6; Q1 2023 EIGER-EC-00000214, pg. 6; Q2 2023 EIGER-EC-00000430, pg. 4; Q3 2023 EIGER-EC-00000525, pg. 4; Q4 2023 EIGER-EC-00000608, pg. 4.

⁶² EIGER-EC-00000149, pg. 4.

- b. The available presentations prepared for the Audit Committee meetings for Q4 2022 and each of the quarterly meetings in 2023⁶³ include the same notations noted above for Q4 2022.⁶⁴

40. A screenshot of the dashboard from the whistleblower system reflects a complaint on July 7, 2022, that references David Cory as the subject.⁶⁵ This screenshot also reflects three “Telephone Message Recorded” in 2022, two items on January 31, 2022 and one item on March 24, 2022.⁶⁶

41. It appears the issue highlighted by the Equity Committee relates to the whistleblower complaints from July 2022 regarding David Cory.⁶⁷

42. During the December 3, 2022 meeting of the Nominating and Governance Committee, Hartley West of Dechert LLP (“Dechert”) led a discussion about delegating certain authority to the Nominating and Governance Committee in connection with employee complaints regarding the Debtors’ management, data integrity, and public disclosures.⁶⁸

- a. Ms. West is the co-chair of Enforcement and Investigations practice group for Dechert.⁶⁹
- b. Based on a discussion with Dr. Apelian, I understand Dechert conducted an internal investigation in or around the time of this meeting.⁷⁰

⁶³ The presentations for Q2 and Q3 2022 have not been located to date.

⁶⁴ Q4 2022 EIGER-EC-00000149 (Q4 2022), pg.4; EIGER-EC-00000214 (Q1 2023),pg 4; EIGER-EC-00000430 (Q2 2023), pg. 5; EIGER-EC-00000525 (Q3 2023), pg. 5; EIGER-EC-00000608 (Q4 2023), pg.5.

⁶⁵ See whistleblower screenshots in Audit Committee meeting presentations EIGER-EC-00000149 (Q4 2022) pg. 6.

⁶⁶ See whistleblower screenshots in Audit Committee meeting presentations EIGER-EC-00000149 (Q4 2022), pg. 6.

⁶⁷ EIGER-EC-00000149, pg. 6.

⁶⁸ EIGER-EC-00000772

⁶⁹ Dechert LLP, *Hartley M.K. West* <https://www.dechert.com/people/w/hartley-m-k--west.html>

⁷⁰ Discussion with Dr. Apelian on September 2, 2024.

43. KPMG International Limited (“KPMG”) audited the Debtors’ financial statements for the fiscal years ending December 31, 2016, through 2023.⁷¹

- a. On March 13, 2023, KPMG discussed the audit results for the year ended December 31, 2022 and identified “*difficult or contentious matters for which the auditor [was] consulted*” as a “*previously communicated national office consultation during Q2’22 interim review in connection with a whistleblower matter*”.⁷² This evidences that Eiger disclosed whistleblower complaints to KPMG.
- b. Additionally, KPMG’s report noted no matters to report in relation to financial statement presentation and disclosure omissions, non-GAAP policies and practices, other financial reporting matters, or disagreements with management.⁷³

44. Based on the March 13, 2023 meeting regarding the audit for the year ended December 31, 2022, there were no omitted disclosures, indicating all necessary disclosures were properly made by Eiger.^{74,75}

45. I did not identify any disclosures related to an internal investigation based on a review of the Debtors’ public filings.⁷⁶ This suggests the internal investigation did not uncover any issues that the Debtors were required to publicly disclose.

46. Based on a review of the available documents, it appears the Debtors handled the whistleblower complaint appropriately in this instance. Whistleblower complaints were elevated

⁷¹ Eiger Form 10Ks for the years ending December 31, 2016 through 2023. KPMG issued an unqualified opinion in all years, except for the year ending 2023 when a going concern was identified.

⁷² Eiger-EC-00000121, pg. 6.

⁷³ Eiger-EC-00000121, pg. 6.

⁷⁴ Eiger-EC-00000121, pg. 6.

⁷⁵ We did not observe any public disclosures related to the matters raised by the Equity Committee.

⁷⁶ Based on a review of the Debtors’ public filings with the SEC for the period 2022 to 2023 available at <https://www.sec.gov/edgar/browse/?CIK=1305253&owner=exclude>

to the Board, an investigation was conducted, the auditors were notified, and, in consultation with its auditors, the Debtors determined no public disclosure was required.

C. Alleged Mismanagement Regarding Cash Management and the Prepetition Zokinvy Sale Process

47. The Equity Committee claims that there was mismanagement regarding cash management and the potential prepetition sale of Zokinvy.⁷⁷ The Board and its Transaction Committee were involved with the Debtors' potential divestment of its Zokinvy asset.

48. Lonafarnib ("LNF") is sold under the brand name Zokinvy and was Eiger's only FDA-approved product on the market.⁷⁸ The product was originally developed by Merck & Co. ("Merck").⁷⁹ Eiger had an exclusive license from Merck to develop and commercialize LNF.⁸⁰

49. On May 15, 2018, the Debtors entered into a Collaboration and Supply Agreement with the Progeria Research Foundation ("PRF").⁸¹

- a. PRF is a non-profit organization founded by the family and friends of a child with progeria that is dedicated to developing treatments and, ultimately, a cure for progeria.⁸²
- b. Under the PRF Collaboration Agreement, PRF granted the Debtors a nonexclusive, world-wide, royalty-free, sub-licensable license pertaining to all intellectual

⁷⁷ Equity Committee Objection, para. 32.

⁷⁸ *Debtors' Emergency Motion for Authority to Conduct Examinations Under Federal Rule of Bankr. Proc. 2004* [Docket No. 178] ("Innovatus 2004 Motion") at par. 8.

⁷⁹ Innovatus 2004 Motion at par. 8.

⁸⁰ Innovatus 2004 Motion at par. 8; License Agreement between Schering Corporation and Eiger Biopharmaceuticals, Inc. dated September 3, 2010 available at EIGER-EC-00058311 ("Merck License Agreement").

⁸¹ Collaboration and Supply Agreement by and between Eiger Biopharmaceuticals, Inc. and The Progeria Research Foundation, Inc. dated May 15, 2018 available as Exhibit 10.17 to the December 31, 2023 Annual 10K ("PRF Collaboration Agreement").

⁸² Innovatus 2004 Motion at par. 14.

property and data controlled by PRF to prepare and file any new drug application for a product containing LNF for progeria.⁸³

- c. PRF was critical to identifying and serving the population of children who suffer from progeria.⁸⁴ As such, the Debtors wanted to ensure that there would be no interruption in drug availability for treatment for that population in the event the Debtors divested the Zokinvy asset.⁸⁵

50. The Debtors did not intend to divest its Zokinvy asset in mid-2023.⁸⁶ Eiger was focused on commercializing Zokinvy, its only FDA approved and revenue generating drug, while it evaluated the reprioritization of the Debtors' portfolio in order to create the best possible outcome for the Debtors.⁸⁷

51. If Eiger decided to divest the Zokinvy asset and actively market in search of potential buyers, it was Eiger's interpretation that it would be obligated to provide Merck a right of first negotiation ("ROFN") for a period of 120 days pursuant to the Merck License Agreement.⁸⁸

52. Following the issuance of a press release in June 2023 regarding its portfolio reprioritization, Eiger received inbound interest from multiple third parties related to its Zokinvy asset.⁸⁹ It is my understanding that this inbound interest did not trigger the Merck ROFN.⁹⁰ Per

⁸³ Innovatus 2004 Motion at par. 15

⁸⁴ Innovatus 2004 Motion at par. 32.

⁸⁵ Discussion with Dr. Apelian on August 28, 2024.

⁸⁶ Discussion with Dr. Apelian on August 28, 2024.

⁸⁷ Discussion with Dr. Apelian on August 28, 2024.

⁸⁸ Merck License Agreement at §2.5(b); EIGER-EC-00058311.

⁸⁹ Discussion with Dr. Apelian on August 28, 2024; June 29, 2023, Eiger BioPharmaceuticals, Inc., *Eiger BioPharmaceuticals to Focus on Metabolic Diseases with Avexitide; David Apelian Takes Helm as CEO* (June 29, 2023). (<https://ir.eigerbio.com/news-releases/news-release-details/eiger-biopharmaceuticals-focus-metabolic-diseases-avexitide>)

⁹⁰ Discussion with Dr. Apelian on August 28, 2024.

conversations with Dr. Apelian, Eiger did not wish to solicit bids related to Zokinvy based on this provision in the Merck License Agreement given the inbound interest.⁹¹

53. The Equity Committee cites the Debtors' lack of retaining an investment banker as an example of the Debtors' lack of management related to any potential transaction.⁹² However, Debtors believed that doing so would have triggered the Merck ROFN.

54. As early as July 2023, Eiger received its first unsolicited non-binding term sheet from Sentynl Therapeutics, LLC ("Sentynl"), for the purchase of the Zokinvy asset for \$40 million, and due diligence began shortly thereafter.⁹³

- a. The Debtors engaged L.E.K. Consulting ("LEK") in February 2023 to assist with addressing the Debtors' portfolio strategy. This engagement included a valuation of the Debtors' portfolio, including its Zokinvy asset.⁹⁴ LEK calculated the net present value of Zokinvy as of June 12, 2023, to be \$31.7 million.⁹⁵

55. On July 28, 2023, Eiger discussed the interest in the possible sale of the Debtors' Zokinvy asset with the Transaction Committee.⁹⁶

56. On August 7, 2023, Sentynl began due diligence for the proposed transaction and was provided access to a data room by Eiger.⁹⁷ Sentynl followed up with an extensive diligence request on August 14, 2023, that included questions related to regulatory requirements, financial data, manufacturing information, commercial information, legal information, and medical information.⁹⁸

⁹¹ Discussion with Dr. Apelian on August 28, 2024.

⁹² Equity Committee Objection, para. 35.

⁹³ EIGER-EC-00031502; EIGER-EC-00033526

⁹⁴ EIGER-EC-00008967

⁹⁵ EIGER-EC-00008024

⁹⁶ EIGER-EC-00000983

⁹⁷ EIGER-EC-00033526

⁹⁸ EIGER-EC-00033526, EIGER-EC-00033528

57. On October 4, 2024, Eiger executed a non-binding term sheet with Sentyln dated October 3, 2024 that included a purchase price of \$37.5 million.⁹⁹ At the time of this execution, this was the highest offer and Sentyln was well advanced in their due diligence, having begun in August 2023.¹⁰⁰

- a. The term sheet included a 30-day exclusivity period whereby Eiger was prohibited from soliciting and/or initiating discussions with any other third party concerning the sale, licensing or co-promotion of Zokinvy.¹⁰¹

58. Also on October 4, 2023, Eiger received a competing offer from Eton Pharmaceuticals, Inc. (“Eton”) of \$30 million.¹⁰² Eton later increased their offer to \$40 million on October 9, 2023; however, Eiger was prohibited from entering into discussions with other interested parties as a result of the exclusivity provisions of the Sentyln term sheet at this time.¹⁰³

59. Per Dr. Apelian, once the exclusivity period expired with Sentyln, he was “opportunistic” and wanted to take advantage of all offers.¹⁰⁴

60. Specifically, after the expiration period expired with Sentyln, Eiger reengaged in discussions for the sale of Zokinvy as evidenced by email correspondence with Eton and Zevra Therapeutics (“Zevra”), on November 17, 2023 and November 21, 2023, respectively.¹⁰⁵

- a. On November 17, 2023, Dr. Apelian reached out to Eton’s Dr. Krempa, stating
“Thanks for reaching out, and I’m aware of the expiry of your current proposal. If

⁹⁹ EIGER-EC-00044149

¹⁰⁰ EIGER-EC-00044149; EIGER-EC-00033526

¹⁰¹ EIGER-EC-00044149

¹⁰² EIGER-EC-00034964

¹⁰³ EIGER-EC-00049708

¹⁰⁴ Discussion with Dr. Apelian on August 28, 2024.

¹⁰⁵ EIGER-EC-00050243; EIGER-EC-00053912

you are free on Monday let's discuss what level of diligence you are interested in doing on Zokinvy.”¹⁰⁶

- b. On November 21, 2023, Dr. Apelian reached out to Zevra, stating *“Thanks for reaching out. Our process remains active and we are re-opening diligence and would be willing to engage after an NDA is in place. Eldon can facilitate this going forward.”¹⁰⁷*

61. The Equity Committee states that Eton was not the only party that was denied the opportunity to pursue a Zokinvy transaction.¹⁰⁸ They make specific reference to inbound interest from Oliver While of Bourne Partners (“Bourne Partners”) on October 10, 2023.¹⁰⁹

- a. This communication occurred during the 30-day exclusivity period with Sentynl.
- b. Dr. Apelian did re-engage in conversations with Bourne Partners following the expiration of the Sentynl exclusivity period on December 15, 2023, stating *“Thanks for reaching out. My assistant Matthew will schedule a 30 min call for Monday if you are available.”¹¹⁰*

62. The Equity Committee cited a specific discussion in January 2024 between Eton’s David Krempa and Dr. Apelian wherein Mr. Krempa expressed frustration over the lack of responsiveness and missed deadlines by the Debtors over the course of the negotiations.¹¹¹

- a. As described above, these delays were caused in part due to the exclusivity period.

¹⁰⁶ EIGER-EC-00050243

¹⁰⁷ EIGER-EC-00053912

¹⁰⁸ Equity Committee Objection at para. 34.

¹⁰⁹ Equity Committee Objection at para. 34.

¹¹⁰ EIGER-EC-00043154

¹¹¹ Equity Committee Objection at para. 33

- b. Further, at no point did Eiger sign a letter of intent (“LOI”) with Eton.¹¹² Mr. Krempa’s claim of “missed deadlines” is not based on a contractual “deadline” in an executed LOI between Eton and Eiger.¹¹³

63. Throughout 2023 and 2024, Debtors discussed the potential interest in the divestiture of its Zokinvy assets, and interest in a “whole company acquisition” with the Board and its Transaction Committee, as further described below.

- a. Internally, Debtors continued to discuss the summary of inbound interest from Eton and Sentylnl in materials presented to the Board on December 12, 2023.¹¹⁴
- b. On December 27, 2023, the Transaction Committee met and discussed the out licensing of Zokinvy and interactions with both Sentylnl and Eton.¹¹⁵ The Transaction Committee further discussed Sentylnl’s interactions with PRF for necessary consent to the transaction and Eton’s accelerated efforts and engagement.¹¹⁶
- c. In January 2024, Eiger Board materials outline interested parties in the Zokinvy asset, and other parties interested in a “whole company acquisition”.¹¹⁷
- d. On February 29, 2024, the Board discussed its efforts on amending and restating the current License and Collaboration Agreement with PRF, noting that Sentylnl had reviewed such revisions and was supportive of the amended and restated agreement.¹¹⁸

¹¹² Discussion with Dr. Apelian on August 28, 2024.

¹¹³ Discussion with Dr. Apelian on August 28, 2024.

¹¹⁴ EIGER-EC-00050784

¹¹⁵ EIGER-EC-00000981

¹¹⁶ EIGER-EC-00000981

¹¹⁷ EIGER-EC-00051542

¹¹⁸ EIGER-EC-00001016

64. Based on my discussions with Dr. Apelian, the Debtors ultimately preferred Sentynl’s bid to that of Eton’s, in part because Sentynl, unlike Eton, agreed to engage with the Debtors’ partners at PRF, which gave the Debtors more confidence in Sentynl’s ability to continue to supply the Debtors’ vulnerable patient population.¹¹⁹
65. Ultimately, during the course of this bankruptcy, the Zokinvy assets were sold to Sentynl, who outbid Eton for a net base price of \$45,200,000.¹²⁰

D. Allegedly Improper Insider Retention Payments

66. The Equity Committee claims that there was significant insider payments approved and paid leading up to the bankruptcy filing in an effort to avoid Bankruptcy Court oversight.¹²¹ Specifically, the Equity Committee details its specific concerns that Eiger management “used Eiger funds to pay themselves \$2,204,831.44 in bonuses”, as shown in **Table 2** below:¹²²

Table 2: Bonus Payments Identified in Equity Committee Objection

| | Spot | Discretionary | | Retention | | Total |
|--|-------------------|-------------------|-------------------|-------------------|-------------------|------------------|
| | Nov-23 | Jul-23 | Mar-24 | Jan-24 | Mar-24 | |
| 1 Apelian, David | \$ 78,000 | \$ 175,216 | \$ 139,866 | \$ 195,000 | \$ 487,500 | \$ 1,075,582 |
| 2 Kurtz, Christopher James | 31,000 | | 130,832 | 76,960 | 96,200 | 334,992 |
| 3 Vollins, James Andrew | 34,000 | | 105,307 | 85,000 | 318,750 | 543,057 |
| 4 Mayer III, Eldon Cunningham | 35,000 | | - | 44,000 | - | 79,000 |
| 5 Total | \$ 178,000 | \$ 175,216 | \$ 376,005 | \$ 400,960 | \$ 902,450 | 2,032,631 |
| 6 Paid Prior to 1-Year Period Inadvertently included on Statement of Financial Affairs | | | | | | 172,200 |
| 7 Total Bonuses per Equity Committee Objection | | | | | | \$ 2,204,831 |

67. The bonuses reflected in **Table 2** above were approved by the Compensation Committee and Board.

¹¹⁹ Discussion with Dr. Apelian on August 28, 2024.

¹²⁰ *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*, filed April 24, 2024 [Docket 162].

¹²¹ Equity Committee Objection at para. 19.

¹²² Equity Committee Objection at para. 37., 44-47.

68. The Compensation Committee was charged with acting on behalf of the Board in fulfilling the Board's responsibilities to oversee the Debtors' compensation policies, plans and programs, and to review and recommend to the Board the compensation to be paid to the Debtors' executive officers and the non-employee members of the Board.¹²³

69. The Compensation Committee met at least once a quarter in 2023 and 2024, and more frequently in the months leading to the Petition Date.¹²⁴

70. Additionally, the Compensation Committee engaged and relied upon expert advice rendered by two different compensation consultants: Pearl Meyer & Partners LLC ("Pearl Meyer") and A&M.

71. Pearl Meyer was engaged by the Compensation Committee in September of 2022, as an independent compensation consultant, to provide advice to the Committee regarding various executive and director compensation matters, including advice regarding compensation disclosures, equity plans and executive and director compensation levels.¹²⁵ Pearl Meyer prepared numerous evaluations regarding the compensation and bonus programs for the Debtors' personnel, including its directors and officers.

72. Specifically, in January of 2023, Pearl Meyer prepared an "Executive Compensation Review" whereby they assessed Eiger's executive compensation levels versus the market.¹²⁶ This analysis was relied on throughout 2023 and the months leading to the Petition Date in assessing bonuses paid to the Debtors' personnel.

¹²³ Eiger Charter of the Compensation Committee (<https://ir.eigerbio.com/static-files/37418dee-67c9-48ea-af7c-012ef8d485ef>)

¹²⁴ Based on review of the available documents.

¹²⁵ EIGER-EC-00000692

¹²⁶ EIGER-EC-00000025

73. On July 24, 2023, the Compensation Committee discussed and approved the 1H 2023 corporate goal achievement of 100% for Dr. Apelian as interim-CEO.¹²⁷ On July 26, 2023, the Board approved the discretionary bonus of \$175,216 paid to Dr. Apelian as shown in **Table 2** above.¹²⁸

74. In November 2023, the Compensation Committee expressed concern regarding Eiger's ability to fund its "2023 Corporate Bonus pool" given Eiger's performance over the year,¹²⁹ and considered the proposed addition of certain Eiger employees to the retention program as well as considerations regarding executive officer retention programs if the program were to enter bankruptcy.¹³⁰ The Compensation Committee noted a "time-based cash retention program would be in the best interests of the Debtors and their stockholders to retain key employees" and noted "its approval to recommend the proposed revisions to the cash retention program, subject to Pearl Meyer and management reviewing non-executive multiples, for approval by the Board."¹³¹

75. Pearl Meyer subsequently prepared two analyses: a spot bonus proposal for non-executive employees to be paid by December 31, 2023,¹³² and proposed revisions to Eiger's retention program.¹³³

76. In early December 2023, the Board approved the spot bonus program, which included \$178,000 to be paid to certain executives based on Pearl Meyer's analysis, as shown in **Table 2** above.¹³⁴

¹²⁷ EIGER-EC-00001001

¹²⁸ EIGER-EC-00000971

¹²⁹ EIGER-EC-00001006

¹³⁰ EIGER-EC-00001006

¹³¹ EIGER-EC-00001006

¹³² EIGER-EC-00001006

¹³³ EIGER-EC-00000912 at Exhibit A.

¹³⁴ EIGER-EC-00000912 at Exhibit B.

77. The Board also approved the retention plan revisions, which included cash retention payments at 50% in January 2024 and 50% in June 2024, based on Pearl Meyer’s analysis.^{135,136} The amounts paid in January 2024, of \$400,960, are shown in **Table 2** above.

78. On February 22, 2024, the Compensation Committee discussed a 2H 2023 corporate goal achievement of 70% and recommended a blended full year attainment of 85% to be paid as discretionary bonus payments.¹³⁷ These discretionary bonus payments were based on target bonus percentages that Pearl Meyer had evaluated in early January 2023.¹³⁸ On February 29, 2024, the Board approved the discretionary payments.¹³⁹ On March 6, 2024, Eiger paid discretionary bonuses totaling \$376,005 paid to certain executives as shown in **Table 2** above.

79. Since the December retention plan was authorized, Eiger continuously sought to retain talented individuals in order to maximize shareholder value. This meant evaluating personnel and distributing retention payments as necessary—including in the days and months leading up to these Chapter 11 Cases.¹⁴⁰

80. A&M was engaged by Eiger in February of 2024¹⁴¹ to, among other efforts, assist in the evaluation of a retention program designed to retain key executives, important to the Eiger’s restructuring efforts in a period of uncertainty and financial distress.

81. It is my understanding A&M assessed the reasonableness of the retention payments to key Eiger executives who were deemed critical to Eiger’s efforts and who posed a flight risk.

¹³⁵ EIGER-EC-00000912 at Exhibit A. The approved “Retention Plan Proposal” was prepared on a slide deck by Pearl Meyer.

¹³⁶ Per discussions with Dr. Apelian, the Compensation Committee engaged in comprehensive discussions regarding the future wellbeing of the Debtors and concluded, that to retain the talented executives necessary to maintain the value of Eiger’s diverse portfolio of late-stage products, retention payments were warranted for key employees.

¹³⁷ EIGER-EC-00000582

¹³⁸ EIGER-EC-00000025

¹³⁹ EIGER-EC-00001016

¹⁴⁰ Discussion with Dr. Apelian on September 2, 2024.

¹⁴¹ EIGER-EC-00000995

In March 2024, A&M presented an analysis to the Compensation Committee and Board, and the March retention plan bonuses were approved and paid, including \$902,450 as reflected in **Table 2** above.¹⁴²

82. According to Dr. Apelian, because January payments authorized in the December retention plan had already been paid, the only viable means to incentivize key personnel to remain employed by the Debtors was to implement a new plan that immediately paid bonuses contingent on continued employment.¹⁴³ At the time, there was widespread doubt at the Debtors as to whether the June payments would be paid under the December Retention Plan.¹⁴⁴ My understanding is that the Debtors have not sought authorization from the Court to pay the June retention bonuses.¹⁴⁵

E. PIPE Transaction

83. The Equity Committee noted their desire to investigate circumstances around other potential transactions, including but not limited to, the proposed \$25 to \$40 million PIPE that was proposed to the Debtors by Propel that was never consummated.¹⁴⁶

84. In October 2023, Propel reached out to Eiger in efforts to drive the support of Eiger's strategic focus on Lonafarnib.¹⁴⁷ Propel indicated that they were prepared to support the Debtors at this "critical juncture" and requested a meeting with the Board to discuss ideas to explore.¹⁴⁸

85. Shortly thereafter, Propel met with Debtors' personnel and began diligence in support of the proposed rights offering or PIPE in November 2023.¹⁴⁹

¹⁴² EIGER-EC-00001033

¹⁴³ Discussion with Dr. Apelian on September 2, 2024.

¹⁴⁴ Discussion with Dr. Apelian on September 2, 2024.

¹⁴⁵ Discussion with Dr. Apelian on September 2, 2024.

¹⁴⁶ Equity Committee Objection at para. 36

¹⁴⁷ EIGER-EC-00015340

¹⁴⁸ EIGER-EC-00015340

¹⁴⁹ EIGER-EC-00024537

86. The parties negotiated the terms and structure of potential deal from November 2023 through January 2024 based on available email documents.¹⁵⁰

87. On January 12, 2024, the Board approved a non-binding \$20 million PIPE Outline with Propel.¹⁵¹

88. Following the execution of the term sheet with Propel, Innovatus sent Eiger a Notice of Default dated January 17, 2024.¹⁵²

89. Continuing through the bankruptcy filing on April 1, 2024, Eiger and Propel attempted to re-negotiate the terms of the proposed PIPE as evidenced through multiple email discussions:

- a. January 18-19, 2024 – Propel meets with Eiger to review all of Eiger’s clinical programs.¹⁵³
- b. February 18, 2024 – email communication from Propel outlining “actions” and “timelines” to be completed by March 8, 2024.¹⁵⁴
- c. March 6, 2024 – email communication on behalf of Propel stating that they are still “willing to explore” the transaction.¹⁵⁵

90. Despite the continued negotiations between Eiger in 2023 and 2024, Propel and Eiger were not able to successfully close a PIPE transaction prior to the bankruptcy filing.

¹⁵⁰ For example see EIGER-EC-00050364 and EIGER-EC-00051583

¹⁵¹ EIGER-EC-00043587; EIGER-EC-00001012

¹⁵² EIGER-EC-00043670. Note, the first page of the letter has the incorrect year (2023).

¹⁵³ EIGER-EC-00028203

¹⁵⁴ EIGER-EC-00052404

¹⁵⁵ EIGER-EC-00044769

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

Executed this 3rd day of September, 2024

/s/ Michael Shanahan
By: Michael Shanahan