




CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.


United States Bankruptcy Judge

Signed September 5, 2024

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

In re:

EIGER BIOPHARMACEUTICALS, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**ORDER (I) AUTHORIZING THE DEBTORS TO REJECT THE MERCK LICENSE
AND (II) GRANTING RELATED RELIEF**

Upon the motion to reject executory contracts under Section 365 of the Bankruptcy Code incorporated into the proposed chapter 11 plan (“Motion”)² of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”), the Debtors seek entry of an order (this “Order”) as set forth in the Plan (a) authorizing the Debtors to reject the Merck License, and (b) granting related relief, each as more fully set forth in the Motion; and this

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 *Fourth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, Article V. [Dkt. No. 606-1.] (“Plan”) Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Plan.



Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and that no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at the Confirmation Hearing before this Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Code section 365, the Merck License is rejected by the Debtors effective immediately upon entry of this Order. The effective time of the rejection of the Merck License shall be governed solely by the terms of this Order notwithstanding any provision of the Plan that otherwise governs the effectiveness of contract rejection thereunder, including the provisions of Article V of the Plan, and without regard to the occurrence or nonoccurrence of the Effective Date or any stay or appeal of the Confirmation Order.
3. This Order is binding on the Debtors and any contract counterparty to the Merck License.

4. Any contract counterparty to the Merck License shall have thirty (30) days from the date of entry of this Order (the “Rejection Damages Bar Date”) to file any claim for damages arising from the rejection of the Merck License. If proofs of claim are not received by KCC on or before the Rejection Damages Bar Date, the holder of the underlying claim shall be barred from asserting such claim against the Debtors and/or receiving distributions from the Debtors on account of such claim in these chapter 11 cases.

5. Nothing herein shall prohibit the Debtors from filing additional motions to reject executory contracts or unexpired leases.

6. Nothing herein shall impair, prejudice, waive, or otherwise affect any rights of the Debtors to object to any claim related to or arising out of the Merck License, including, without limitation, to argue that any claim for damages arising from the rejection of the Merck License is limited to the remedies available under any applicable termination provisions of the Merck License. The Debtors’ right to argue that the Merck License is not an executory contract of the Debtors is specifically reserved.

7. Notice of the Motion as set forth therein shall be deemed good and sufficient notice of such Motion and the requirements of the Bankruptcy Rules, including Bankruptcy Rule 6004(a), and the Bankruptcy Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rules 6004(h), 7062 or 9014, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Order shall be deemed (a) an admission as to the amount of, basis for, priority, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any party in interest’s rights to dispute any

claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this order or any other order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) an approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

10. The Debtors are authorized to take all such reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER