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

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>EIGER BIOPHARMACEUTICALS, INC., et al.<sup>1</sup></b>	§	<b>Case No. 24-80040 (SGJ)</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>

**LIQUIDATING TRUSTEE'S EMERGENCY MOTION  
FOR ENTRY OF AN ORDER AUTHORIZING THE FILING OF  
(I) THE LIQUIDATING TRUSTEE'S AND PLAN ADMINISTRATOR'S OBJECTION  
TO CLAIM NOS. 83 AND 43 FILED BY MERCK SHARP AND DOHME LLC,  
(II) MERCK LICENSE, AND (III) SIDE LETTER  
UNDER SEAL**

**Emergency relief has been requested. Relief is requested not later than 4:00 p.m. prevailing Central Time on February 26, 2025. If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

<sup>1</sup> 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 Ave., Dallas, Texas 75201.



Dundon Advisers LLC, c/o Joshua Nahas, in its capacity as liquidating trustee (the “Liquidating Trustee”) of the liquidating trust of Eiger BioPharmaceuticals, Inc., *et al.* (the “Debtor” or “Eiger” or “Eiger Bio”), states as follows in support of this motion (the “Motion”):

### **Relief Requested**

1. On February 23, 2025, the Liquidating Trustee, together with the Plan Administrator (defined below) filed their objection (the “Objection”) to the proofs of claim [Claim Nos. 83 & 43] filed by Merck Sharp and Dohme LLC (“Merck”). To comply with confidentiality provisions in the Merck License and Side Letter (defined below), the Objection was redacted and the Merck License and Side Letter were not publicly filed. By this Motion, the Liquidating Trustee seeks entry of an order (the “Proposed Order”), substantially in the form attached hereto as **Exhibit A**, authorizing the Liquidating Trustee and Plan Administrator to file the unredacted version of the Objection and the Declaration (defined below) with exhibits, Merck License and Side Letter, under seal.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Liquidating Trustee confirms its consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court’s entry of a final order in connection with this motion.

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

4. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”) and rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

5. On April 1, 2024 (the “Petition Date”), the Debtors petitioned this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) commencing these cases (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

6. On May 1, 2024, this Court entered the *Order Authorizing the Debtors to File the Merck Motion, Merck License, and Sublicense Under Seal* [Docket No. 188] (the “Seal Order”) in connection with the Zokinvy sale transaction.

7. Merck is the title owner of the intellectual property behind the Sarasar/Lonafarnib molecule pursuant to which the Debtor under exclusive license from Merck (the “Merck License”) developed both: (i) the commercialized Zokinvy product line, which was sold to Sentynl Therapeutics, Inc. (“Sentynl”) following bankruptcy court approval on May 3, 2024, and (ii) the pre-commercialization Lonafarnib for Hepatitis Delta Virus (HDV) product line, which was sold to Eiger Inno Therapeutics, Inc. (“Inno” or “Eiger Inno”) following bankruptcy court approval on September 5, 2024.

8. On September 3, 2024, Merck, Eiger and Inno executed the Side Letter (the “Side Letter”) in the event that the Merck License Rejection Order (defined below) was entered by the Court.

9. On September 5, 2024, the Bankruptcy Court entered the *Order (I) Authorizing the Debtors to Reject the Merck License and (II) Granting Related Relief* [Docket No. 638] (the “Rejection Order”).

10. On September 5, 2024, the Court entered the *Order Approving the Debtors’ Amended Disclosure Statement and Confirming the Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates* [Docket No. 639] (the “Confirmation”).

Order”) confirming the *Fifth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 635-1] (as amended or supplemented from time to time, the “Plan”).

11. The Plan became effective on September 30, 2024 (the “Effective Date”). *See Notice of Occurrence of Effective Date* [Docket No. 685].

12. Pursuant to the Plan, the Liquidating Trustee was appointed with consent of the Debtors and the respective committees in this case to administer the liquidating trust and was tasked with (1) preserving and liquidating the Debtors’ remaining assets, (2) litigating and resolving any disputed claims, (3) making distributions to allowed claims pursuant to the Plan, and (4) procuring necessary insurance for the wind-down of the Debtors’ estate. *See the Plan, Article IV, Section D(1), p. 95.*

13. Because both the Merck License and Side Letter contain confidentiality provisions prohibiting the parties from publicly disclosing the terms, the Liquidating Trustee and Plan Administrator have redacted certain portions of the Objection and did not file the Merck License and Side Letter, which are exhibits to the *Declaration of Joshua Nahas in Support of the Liquidating Trustee’s and Plan Administrator’s Objection to Claim Nos. 83 and 43 Filed by Merck Sharpe and Dohme LLC* (the “Declaration”).

14. The Liquidating Trustee has filed the instant Motion on an emergency basis requesting authority to file an unredacted version of the Objection, and the Declaration with the Merck License and Side Letter as exhibits, under seal.

#### **Basis for Relief Requested**

15. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of a bankruptcy court and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Section 107(b) of the

Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes. Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. This section provides, in relevant part that, “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1). Local Rule 9077-1(b) provides that parties may request to file documents under seal even if no statute or rule requires them to be filed under seal.

16. Once the Court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b), the “court is required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (stating that section 107(b)(1) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public); *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (stating that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”).

17. Courts have also stated that commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See In re Meyrowitz*, No. 06-31660-bjh-11, 2006 WL 6544093, at \*2 (Bankr. N.D. Tex. Oct. 27, 2006); *Orion Pictures*, 21 F.3d at 28.

18. Here, the information contained in the Objection and attached to the Declaration as

exhibits, i.e., the Merck License and Side Letter (the “Confidential Information”), may be proprietary and warrant protection under section 107(b) of the Bankruptcy Code.

19. The language of the Merck License and Side Letter restrict sharing of the information with third parties. The Merck License and Side Letter contain restrictive confidentiality provisions, which would arguably be breached if described or published.

20. Moreover, this Court has previously determined by its Seal Order that this information should be maintained under seal. *See* Docket No. 188.

21. Further, the creditors and any parties-in-interest to these chapter 11 cases will not be prejudiced by allowing the Liquidating Trustee and Plan Administrator to file the Confidential Information under seal.

22. Accordingly, the Liquidating Trustee asserts that good cause exists to authorize it and the Plan Administrator to file the Objection, Merck License, and Side Letter under seal.

### **Emergency Consideration**

23. The claims filed by Merck are in an unliquidated amount. Until the Objection is resolved, the Liquidating Trustee is unable to make distributions to creditors. Failure to receive the relief requested herein on an emergency basis would jeopardize the timely resolution of the Objection. The Liquidating Trustee therefore requests that the Court approve the relief requested on an emergency basis.

### **Notice**

24. The Liquidating Trustee will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) all other parties-in-interest who are required to receive notice pursuant to the Plan; (c) Merck and its counsel; and (d) Inno and its counsel. No other or further notice is needed in light of the nature of the relief requested.

Dated: February 23, 2025  
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**MCKOOL SMITH, PC**

/s/ S. Margie Venus

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***Counsel for the Liquidating Trustee***

**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2025, 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, and upon the following via electronic mail:

Adam Gates  
Merck Sharp and Dohme LLC  
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/s/ S. Margie Venus  
S. Margie Venus



# **Exhibit A**

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

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>EIGER BIOPHARMACEUTICALS, INC., <i>et al.</i><sup>2</sup></b>	§	<b>Case No. 24-80040 (SGJ)</b>
	§	
<b>Debtors.</b>	§	<b>(Jointly Administered)</b>

**ORDER AUTHORIZING THE LIQUIDATING TRUSTEE TO FILE (I) THE  
LIQUIDATING TRUSTEE'S AND PLAN ADMINISTRATOR'S OBJECTION TO  
CLAIM NOS. 83 AND 43 FILED BY MERCK SHARP AND DOHME LLC,  
(II) MERCK LICENSE, AND (III) SIDE LETTER  
UNDER SEAL**

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Upon the motion ("Motion")<sup>3</sup> of Dundon Advisers LLC, c/o Joshua Nahas, in its capacity  
as liquidating trustee (the "Liquidating Trustee") of the liquidating trust of Eiger

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<sup>2</sup> 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 Ave., Dallas, Texas 75201.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

BioPharmaceuticals, Inc., *et al.* (the “Debtor” or “Eiger” or “Eiger Bio”), for entry of an order (this “Order”) authorizing the Liquidating Trustee to file unredacted versions of the Objection, Merck License and Side Letter under seal, as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtors’ estates, their creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Liquidating Trustee and Plan Administrator are authorized to file unredacted versions of the Objection, the Merck License, and Side Letter under seal, along with any other information or documents required by the Court related thereto, or otherwise necessary to submit to the Court in connection with the Objection as determined by the Liquidating Trustee and the Plan Administrator. The Objection, Merck License, Side Letter, other information or documents related thereto, and references thereto shall remain confidential, and shall not be made available to anyone, other than the Court and the United States Trustee, without (i) the prior written consent of the Liquidating Trustee, the Plan Administrator, Merck, and Inno, and their successors or assigns; or (ii) further order of the Court after notice to the Liquidating Trustee, the Plan Administrator, Merck, and Inno with an opportunity to object, and after a hearing. All parties are

directed to redact any Confidential Information which may be contained in any pleadings filed in these chapter 11 cases.

3. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion under the circumstances and the requirements of Bankruptcy Rule 6004(a) and the local rules for the Bankruptcy Court for the Northern District of Texas are satisfied by such notice.

4. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Liquidating Trustee and the Plan Administrator are authorized, but not directed, to take all such actions as are necessary or appropriate to implement the terms of this Order.

6. 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 ###**

Order Submitted by:

**MCKOOL SMITH, PC**

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