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

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

**LIQUIDATING TRUSTEE'S EMERGENCY MOTION
FOR ENTRY OF AN ORDER AUTHORIZING THE FILING OF
(I) THE OBJECTION AND RESPONSE OF THE LIQUIDATING TRUSTEE AND
PLAN ADMINISTRATOR TO MOTION FOR ALLOWANCE OF ADMINISTRATIVE
EXPENSE CLAIM OF SENTYNL THERAPEUTICS, INC., AND
(II) DECLARATION AND DECLARATION EXHIBITS IN SUPPORT OF THE
OBJECTION AND RESPONSE UNDER SEAL**

Emergency relief has been requested. Relief is requested not later than 4:00 p.m. prevailing Central Time on March 10, 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.

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 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 March 7, 2025, the Liquidating Trustee, together with the Plan Administrator (defined below) filed their objection and response (the “Objection”)² to the *Motion for Allowance of Administrative Expense Claim* [Docket No. 729] filed by Sentynl Therapeutics, Inc. (“Sentynl”). To comply with confidentiality provisions in the numerous agreements and related documents involved, the Objection and the contemporaneously filed *Declaration of Joshua A. Nahas in Support of the Liquidating Trustee’s Objection and Response to Administrative Expense Claim of Sentynl Therapeutics, Inc.* (the “Declaration”) were redacted and various documents which are attached to the Declaration 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, Declaration and the Declaration Exhibits (defined below), 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

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

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. The success of these cases revolved around the sale of three assets during the pendency of the chapter 11 proceeding: (1) Zokinvy, a commercial progeria therapeutic, to Sentynl; (2) Avexitide, a drug being developed to treat post-bariatric hypoglycemia (PBH) and congenital hyperinsulinism, to Amylyx Pharmaceuticals; and (3) lonafarnib for hepatitis D virus (HDV), to Eiger InnoTherapeutics, Inc. ("Inno").³ On April 24, 2024, the Court entered an order [Docket No. 162] authorizing and approving entry into an asset purchase agreement to sell Zokinvy to Sentynl for \$42.2 million (the "Sentynl APA"), and the sale closed on May 3, 2024 ("Closing Date"). *See* Docket No. 214.

7. 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

³ Notably, both Zokinvy and lonafarnib for hepatitis D virus (HDV) are comprised of the same molecule: lonafarnib, but simply used for different indications.

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”).

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

9. 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.

10. Certain transition services were called for under the Sentynl APA, and since the Closing Date, the estate has worked closely with Sentynl to ensure that representatives of the estate fulfilled all obligations to Sentynl. These efforts have continued unabated post Effective Date with the Liquidating Trustee and the Plan Administrator cooperating to assist Sentynl with all requested transition issues Sentynl alleges it is encountering (whether such services have been required by the Sentynl APA or not).

11. On November 1, 2024, Sentynl, the purchaser of the Debtors’ asset, Zokinvy, filed a Motion for Allowance of Administrative Expense Claim [Docket No. 729] (the “Sentynl Administrative Claim”). If the Sentynl Administrative Claim is meritorious, the stellar results achieved in these chapter 11 cases which were expected to pay unsecured creditors in full and return a substantial dividend to equity will not happen.

12. Unfortunately, notwithstanding the fact that both the Debtors, pre-Effective Date,

and the estate's post-Effective Date representatives have met, completed and exceeded all of the contractually required transition services under the Sentynl APA, Sentynl presents to this Court the Sentynl Administrative Claim far in excess of the total asset value of this estate.

13. Of note, the Sentynl Administrative Claim essentially seeks return of the entire \$42.2 million purchase price it paid for Zokinvy (an amount that is almost four times larger than the cash currently in reserve with the Liquidating Trustee and intended for distribution to unsecured creditors and equity holders). By the Objection, the Liquidating Trustee and Plan Administrator request that the Court expunge/dismiss Sentynl's baseless claim in order to allow the Liquidating Trustee to make distributions consistent with its duties and responsibilities under the Plan.

14. Various documents related to the transactions with Sentynl and the Objection are attached to the Declaration, and include the Sublicense Agreement (**Exhibit B**), the PVA (**Exhibit H**), and Ms. Bondy's log of data transferred to Sentynl (**Exhibit I**) (collectively, the "**Declaration Exhibits**") and are quoted in the Objection.

15. Because the Declaration Exhibits contain confidentiality provisions prohibiting the parties from publicly disclosing the terms, or contain confidential information, including sensitive business data, the Liquidating Trustee and Plan Administrator have redacted certain portions of the Objection and did not file the Declaration Exhibits with the Declaration.

16. 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 Declaration Exhibits, under seal.

Basis for Relief Requested

17. 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.

18. 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”).

19. 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.

20. Here, the information contained in the Objection, the Declaration and attached to the Declaration as exhibits (the “Confidential Information”), may be proprietary and warrant protection under section 107(b) of the Bankruptcy Code.

21. The language of the various Declaration Exhibits restricts sharing of the information with third parties. They contain restrictive confidentiality provisions, which would arguably be breached if described or published.

22. Moreover, this Court has previously sealed documents related to the various sale transactions. *See* Docket Nos. 188 and 773.

23. 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.

24. Accordingly, the Liquidating Trustee asserts that good cause exists to authorize it and the Plan Administrator to file the Objection, the Declaration and Declaration Exhibits under seal.

Emergency Consideration

25. The Sentyln Administrative Claim essentially seeks return of the entire \$42.2 million purchase price it paid for Zokinvy. 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

26. 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) Sentynl 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: March 7, 2025

Respectfully submitted,

MCKOOL SMITH, PC

/s/ S. Margie Venus

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Counsel for the Liquidating Trustee

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 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:

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Counsel to Eiger InnoTherapeutics, Inc.

/s/ S. Margie Venus
S. Margie Venus

Exhibit A

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

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

**ORDER AUTHORIZING THE LIQUIDATING TRUSTEE TO FILE
(I) THE OBJECTION AND RESPONSE OF THE LIQUIDATING TRUSTEE AND
PLAN ADMINISTRATOR TO MOTION FOR ALLOWANCE OF ADMINISTRATIVE
EXPENSE CLAIM OF SENTYNL THERAPEUTICS, INC., AND
(II) DECLARATION AND DECLARATION EXHIBITS IN SUPPORT OF THE
OBJECTION AND RESPONSE
UNDER SEAL**

Upon the motion (“Motion”)² of Dundon Advisers LLC, c/o Joshua Nahas, in its capacity

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 Ave., Dallas, Texas 75201.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

as liquidating trustee (the “Liquidating Trustee”) of the liquidating trust of Eiger 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, the Declaration, and Declaration Exhibits 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 Declaration, and the Declaration Exhibits 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, the Declaration, the Declaration Exhibits, 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, Sentyln, and Inno, and their successors or assigns; or (ii) further order of the Court after notice to the

Liquidating Trustee, the Plan Administrator, Sentynl, 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:

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