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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)

**LIMITED RESPONSE OF THE LIQUIDATING TRUSTEE AND PLAN
ADMINISTRATOR TO MOTION OF SENTYNL THERAPEUTICS, INC. TO (I)
ENFORCE THE ZOKINVY SALE ORDER AND (II) FOR CONTEMPT AGAINST
EIGER INNOTHERAPEUTICS, INC.
(Relates to Docket Nos. 779/781)**

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 “Debtors” or “Eiger”), by and through its undersigned counsel, and the Plan Administrator

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.



appointed pursuant to the Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates hereby file this limited response (this “Response”) to the Motion (I) To Enforce the Zokinvy Sale Order and (II) For Contempt Against Eiger InnoTherapeutics, Inc. [Docket Nos. 779 and 781]² (the “Motion”) filed by Sentynl Therapeutics, Inc. (“Sentynl”). In support of this Response, the Liquidating Trustee refers to the *Declaration of Joshua Nahas in Support of Objection and Response of the Liquidating Trustee and Plan Administrator to Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 778³] (the “Nahas Decl.”); and submits the *Declaration of James Vollins in Support of the Liquidating Trustee and Plan Administrator’s Limited Response to the Motion (I) To Enforce the Zokinvy Sale Order and (II) For Contempt Against Eiger InnoTherapeutics, Inc. filed by Sentynl Therapeutics, Inc.* (the “Vollins Decl.”), which are each fully incorporated by reference herein, and respectfully represent as follows:

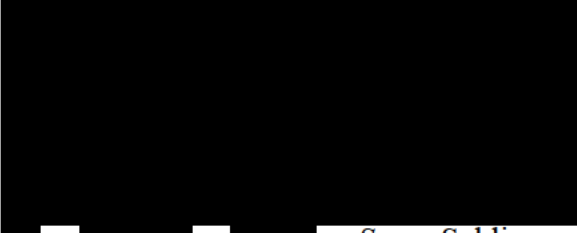


CORRECTION OF MISSTATEMENTS AND OMISSIONS

1. Initially, the Liquidating Trustee and Plan Administrator note that the Motion seeks no relief against the estate or the Liquidating Trust. Rather, it seeks relief against Eiger InnoTherapeutics, Inc. (“Inno”). However, the Liquidating Trustee and Plan Administrator wish to address certain material omissions and misstatements presented by Sentynl in the Motion insofar as they may impact on the Liquidating Trustee’s and Plan Administrator’s pending objection to Sentynl’s *Motion For Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 777], currently scheduled for a hearing before this Court on April 15, 2025. The estate provides the following clarifications regarding these material misstatements, misleading statements and/ or omissions:

² The same Motion appears to have been filed twice with the Court at Docket No. 779 and Docket No. 781.

³ The sealed Nahas Declaration can be found at Docket No. 785.

Sentyln Misstatement / Sentyln Omission	Fact
<p>1. Motion, at ¶ 7: The Sentyln APA “<i>prohibit[s]</i> Eiger Bio from assigning the Retained Agreements in a manner that would or reasonably could adversely affect Sentyln’s ability to Commercialize Zokinvy.” (emphasis added).</p> <p>Motion, at ¶ 8: “[T]he terms of the Sublicense Agreement <i>preclude</i> assignment of the Lonza Bend MSA in a manner that adversely affects Sentyln’s ability to Commercialize Zokinvy.” (emphasis in original).</p>	<p>1. Both of these statements are false. Pursuant to the Sentyln APA (via the Sublicense Agreement), Eiger was neither prohibited nor precluded from assigning the Lonza Bend or Corden agreements. Indeed, [REDACTED]. Instead, the Debtor was responsible only for [REDACTED]. See Sublicense Agreement, at Section 3.7 (emphasis added), <u>Exhibit B</u> to the Nahas Decl.</p>
<p>2. Motion, at ¶ 8: “Debtor Eiger Bio represented and warranted to Sentyln that the Lonza Bend MSA is necessary for the manufacture, supply, and Commercialization of Zokinvy, ...”</p>	<p>2. This is presented out of context and is therefore misleading. The Sentyln APA states that [REDACTED]. See Sublicense Agreement, at §11.2(w) (emphasis added), <u>Exhibit B</u> to the Nahas Decl.</p> <p>More specifically, however, section 3.7 provides that [REDACTED]. And, section 11.2(j)(ii) provided that [REDACTED].</p>

	<p> See Sublicense Agreement, at §11.2(j) (emphasis added), <u>Exhibit B</u> to the Nahas Decl. Said differently, the Retained Agreements were in fact represented as being necessary or useful to commercialize Zokinvy, but Sentyln made its own decision to close without them with the express understanding  </p>
<p>3. Motion, at ¶ 8: “Importantly, Sentyln cannot transfer SDD manufacturing to another entity without major risk of a supply outage, which would jeopardize progeria patients, and without incurring significant cost. The transfer of technology (i.e., process and methods) to a new manufacturing facility is not guaranteed to result in supply, and there is limited amount of raw materials to utilize. Sentyln cannot both transfer the technology and manufacture for patients in the near term.”</p>	<p>3. This is misleading. Sentyln omits how much product they currently have on hand to supply to Progeria patients, i.e., what they mean by “limited.” Based upon internal Debtor records, Sentyln was sold a multiple years-long supply of product. Upon information and belief, the supply in hand will provide more than enough runway to switch to other manufacturers. Further, any related cost to transfer to another manufacturer was a risk that Sentyln undertook when it closed on the Sentyln APA without the Retained Agreements. Whether the agreements were assigned to Inno or not, the estate could not (and did not) guarantee that Sentyln would be able to contract with either Lonza or Corden in the future.</p>
<p>4. Motion, at ¶ 9: “Sentyln attempted, over numerous months, to negotiate an arrangement permitting a direct relationship between Sentyln and Lonza with respect to services and materials required to Commercialize Zokinvy, however, Eiger Inno refused to allow such direct relationship and <i>failed to articulate a justifiable reason for doing so.</i>” (emphasis added).</p>	<p>4. This is false. The reason for Inno refusing to agree to allow Sentyln to contract directly with Lonza (which Inno had the right to do given the exclusivity provision in the Lonza Contract), is stated in Exhibit 5 to Sentyln’s Motion, i.e., an email from the Liquidating Trustee’s counsel to Sentyln’s representatives: “Inno wanted your agreement in connection with any cross-field sales agreement that your parent would also not compete in the Lonafarnib for HDV space, which you were clearly unwilling to give.”</p>

<p>5. Motion, at ¶ 13: “None of the Corden agreements were assigned to Sentynl as part of the Zokinvy APA or related transaction documents despite Sentynl’s requests that they be assigned to Sentynl, given Sentynl’s need to ensure uninterrupted supply of Zokinvy.”</p>	<p>5. This is false and/or misleading. The Debtors were willing to consider an assignment of any of the Retained Agreements to Sentynl, but were never asked for such assignment prior to the closing on the Sentynl APA, with respect to either Lonza or Corden. <i>See</i> Vollins Decl., at ¶¶ 5-10.</p>
<p>6. Motion, at ¶ 16: “Considering the foregoing, in January 2025, Sentynl turned to the Liquidating Trustee for assistance in addressing Eiger Inno’s improper intervention and obstruction of the transfer of Required Data and Information from Corden to Sentynl and the future manufacture of API for the Zokinvy product. Despite some effort by the Liquidating Trustee, little to no progress has been made.”</p>	<p>6. This is misleading. Sentynl first contacted the Liquidating Trustee on December 31, 2024, to identify certain regulatory data / information that Sentynl believed it purchased and/or licensed via its APA and that it had not yet received. It advised that it believed that this information was held by Corden. For the next few weeks, the Liquidating Trustee hired, at his own expense, former Eiger Bio employee and expert Charissa Bondy to resend materials to Sentynl that had previously been shared (that Sentynl either misplaced or did not review), and to further identify and deliver any further documents that the Debtors might inadvertently have failed to send. <i>See</i> Nahas Decl., at ¶¶ 23-25. The Liquidating Trustee also communicated with Inno and received certain information that was held by Corden, which was also passed on to Sentynl. <i>See id.</i> After that, the Liquidating Trustee <i>heard nothing from Sentynl</i> about any other issues with Corden until the Liquidating Trustee reached out to Sentynl representatives to inquire about the status of the pending Sentynl administrative claim on <i>March 1, 2025</i>, and only then heard that Sentynl was having new problems with Corden. Six days later, on <i>March 7</i>, Sentynl filed the Motion.</p>
<p>7. Motion at ¶ 7: “Sentynl was specifically advised by Eiger Bio’s general counsel of the potential for a third party purchaser to <i>improperly</i> use the Lonafarnib Assets (including the Retained Agreements) to interfere with Sentynl’s use and enjoyment of the Zokinvy Assets it purchased ‘free and clear.’”(emphasis added.)</p>	<p>7. This is false and misleading. While Section [REDACTED] at no time did Eiger’s general counsel expressly or impliedly suggest that any third party would <i>improperly</i> interfere with Sentynl’s use and enjoyment of the Zokinvy Assets. <i>See</i> Vollins Decl., at ¶ 11.</p>

8. Motion at ¶ 29: “Although the Settlement Agreement feigns compliance with the Sublicense Agreement under the section entitled “Inno’s Obligation to Supply Sentynl,” *there is absolutely no principled reason for Sentynl to remain at the mercy of a startup company that has no approved products* and no infrastructure for access to the same materials and services that Eiger Inno utilizes in the possible future manufacture and supply of its own products and *absolutely no doubt* that this intermediary arrangement will result in further disputes and litigation *if and when “complications” inevitably arise*. Similarly, there is *absolutely no principled reason* why Eiger Inno should be permitted to hold the Required Data and Information hostage and prevent Sentynl from delivering existing or future batches of Zokinvy manufactured by Corden. *Such ongoing actions put existing and future progeria patients at real risk of losing access to the only approved therapy to treat progeria,* which appears to be driven primarily by the pursuit of riches by an entity led by Eiger Bio’s former insiders and founders in search of a speculative indication of Lonafarnib for Hepatitis Delta Virus (HDV). These actions also put Sentynl at significant financial risk, including an inability to meet contractual commitments to the Progeria Research Foundation (PRF), Merck, ex-US distributors, licensors, and vendors that require certain minimum volumes.” (emphasis added).

8. **This is speculative and misleading, not to mention lacking in logic.** The reason Sentynl has no contract providing otherwise is that it is bound by the deal it made, and no other. Courts cannot act based on unsupported fears of future “complications”, *see Texas v. United States*, 523 U.S. 296, 300, 118 S. Ct. 1257, 1259, 140 L. Ed. 2d 406 (1998), citing *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 580-581 (1985), (“[a] claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all’”), especially where the contract a party negotiated did not assure protection from the concerns such party now raises. If Sentynl wishes to raise concerns regarding Progeria patients’ access to Zokinvy as a reason for ignoring contractual provisions, it should first disclose exactly how long its existing supply will last to treat current and projected future Progeria patients, and how long it will take to get another manufacturer up and running.

RELEVANT FACTUAL BACKGROUND

I. The Estate's Sole Obligation to Sentynl Regarding the Retained Agreements

2. Sentynl closed on its sale of Zokinvy for \$45.2 million on May 3, 2024. *See* Zokinvy Sale Order, Docket No. 162.

3. Sentynl, with the advice of its outside counsel, knowingly and willingly agreed in connection with its \$45mm purchase of Zokinvy that certain executory contracts would **not** be assigned to Sentynl,⁴ thus bearing the risk that it may not be successful in securing ongoing services related to these agreements. Instead, pursuant to Section 3.7 of the Sublicense Agreement,

[REDACTED]
[REDACTED]
[REDACTED]. *See* Vollins Decl., at ¶
4; *see also* Sublicense Agreement at Section 3.7, Exhibit B to the Nahas Decl. Such agreements, identified as “Retained Agreements”, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *See id.*

4. Quite simply, Sentynl did not bargain to acquire Eiger's contracts with Lonza and Corden. *See* Vollins Decl., at ¶¶ 2-8. After receiving certain manufacturing and quality agreements as part of the due diligence process, including, *inter alia*, agreements with Lonza and Corden,

⁴ Section 2.1(d) of the Sentynl APA clearly identifies the contracts that were assigned to Sentynl through reference of the contracts listed on Schedule 3.6 to the Sublicense Agreement. [REDACTED]

[REDACTED] No contracts with Corden or Lonza were included in the assignment to Sentynl. *See* Sentynl APA, Exhibit A to the Nahas Decl.

Sentynl decided that it would not assume the Debtors' preexisting agreements and instead intended to negotiate new direct contracts with Lonza and Corden and other manufacturers after the effective date of the Zokinvy sale transaction. *See id.*⁵

5. Thus, the Sublicense Agreement expressly provides that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] – which Sentynl apparently failed to do.

See id; *see also* Sublicense Agreement at Section 3.7, Exhibit B to the Nahas Decl.

6. On September 3, 2024, Eiger InnoTherapeutics, Inc. became a subsequent purchaser of the Debtors' remaining asset, lonafarnib for hepatitis D virus (HDV), with the terms of such sale embodied in the Inno APA. *See* Docket No. 558; *see* Inno APA, Exhibit C to the Nahas Decl.

7. The Inno APA was designed to seamlessly integrate with the Sentynl APA in terms of "Retained Agreements." Inno would be "automatically assigned" certain of the Retained Agreements, including the Lonza Contract and the Corden Contract, on November 3, 2024, the outside date pursuant to which such assignment would be permitted under the Sentynl APA and Sublicense Agreement. *See* Inno APA, Defined Terms, "Existing Manufacturing Contract Transfer Date"; *see also id.*, at Section 2.1(a), Exhibit C to the Nahas Decl.

⁵ Eiger was willing to discuss how rights and obligations under those manufacturing agreements could be assigned to or assumed by Sentynl. *See* Vollins Decl., at ¶5.

⁶ Section 11.2(j) of the Sublicense Agreement also included [REDACTED]

[REDACTED]. *See* Exhibit B to the Nahas Decl.

8. Despite Sentynl being on notice that certain of the Retained Agreements would now be assigned to another purchaser through this subsequent sale, at no point prior to the effective date of the Plan (September 30, 2024) did Sentynl object to this assignment (nor did it submit a bid to prevent another purchaser from getting the rights under these agreements; nor did it file an objection to the Inno sale). *See* Vollins Decl., at ¶¶ 9-10.

9. The Sublicense Agreement [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *See* Sublicense Agreement, Section 3.7, Exhibit C to the Nahas Decl.; *see also* Nahas Decl., at ¶ 9. As detailed below, the Liquidating Trustee asserts that the Debtors (and successors) have more than met their “reasonable efforts” obligations, including by imposing on Inno in the Inno APA an obligation to negotiate in good faith with Sentynl. *See* Inno APA, Section 7.12, Exhibit C to the Nahas Decl.; *see also* Vollins Decl., at ¶¶ 7-10.

10. Notwithstanding the estate’s belief that such obligation built into the Inno APA satisfied the estate’s “reasonable efforts” obligation (as negotiated by and between the estate and Sentynl), and notwithstanding Sentynl’s failure to raise any issues for six months as it relates to the Retained Agreements, *see* Vollins Decl., at ¶ 10, the Liquidating Trustee and Plan Administrator sought to further assist Sentynl, first by requesting (and receiving) multiple extensions of the automatic assignment date of the Lonza Contract from Inno, and then by negotiating extensively with Inno and Sentynl regarding the services provided under the Lonza Contract. *See* Nahas Decl., at ¶ 11. Such negotiations ultimately resulted in the Liquidating Trustee entering into an agreement with Inno (previously referred to herein as the “Settlement Agreement”)

that does more than obligate Inno to negotiate a Zokinvy Buyer Agreement in good faith with Sentynl – in fact, it obligates Inno to provide Sentynl with Lonza product. *See Id.*; *see also* Nahas Decl., Exhibit E.

II. Sentynl’s Administrative Claim and the Sentynl Claim Objection

11. On November 1, 2024, Sentynl filed the Sentynl Administrative Claim [Docket No. 729], outlining a purported \$45,200,000 administrative claim related to an alleged post-petition breach by the Eiger estate of the Sentynl APA. The claim alleges two APA breaches by the estate, each of which allegedly deprived Sentynl of the benefit of its bargain: (1) the automatic assignment of the Lonza Contract to Inno; and (2) the Debtors’ alleged failure to deliver certain “Regulatory Information” to Sentynl under the Sentynl APA.

12. On March 7, 2025, the Liquidating Trustee and the Plan Administrator filed the *Objection and Response of the Liquidating Trustee and Plan Administrator to Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 777]⁷ (the “Sentynl Claim Objection”).

13. The Sentynl Claim Objection provides an even more comprehensive description of the efforts undertaken by the Liquidating Trustee and the Plan Administrator that reflect estate representatives not only meeting but exceeding the negotiated “reasonable effort” standard.

[Remainder of page intentionally left blank.]

⁷ The sealed version of the Sentynl Claim Objection can be found at Docket No. 784.

Dated: March 27, 2025

Respectfully submitted,

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Plan Administrator

Certificate of Service

I hereby certify that on March 27, 2025, I caused a copy of the foregoing redacted 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 (i) Sentyln Therapeutics, Inc. and its counsel, and (ii) Eiger InnoTherapeutics, Inc and its counsel who will receive both the redacted as well as an unredacted version via electronic mail:

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