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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)

**RESPONSE OF THE LIQUIDATING TRUSTEE TO EMERGENCY MOTION OF
SENTYNL THERAPEUTICS, INC. FOR ENTRY OF AN ORDER (I) SETTING STATUS
CONFERENCE AND CONTINUING EVIDENTIARY HEARING; (II) AUTHORIZING
ADDITIONAL PAGES FOR SENTYNL'S REPLY BRIEF IN SUPPORT OF ITS
MOTION FOR ALLOWANCE AND (III) AUTHORIZING SENTYNL TO FILE ITS
REPLY BRIEF IN SUPPORT OF ITS MOTION FOR ALLOWANCE AND
SUPPORTING EXHIBITS UNDER SEAL**

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”), appointed pursuant to the Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates, by and through its undersigned counsel, hereby submits this response (the “Response”) to the *Omnibus Emergency Motion of Sentynl Therapeutics, Inc.* (“Sentynl”) for Entry of an Order (I) Setting Status Conference and Continuing Evidentiary Hearing; (II) Authorizing Additional Pages for Sentynl’s Reply Brief in Support of its Motion for Allowance; and (III) Authorizing Sentynl to File its Reply Brief in Support of its Motion for Allowance and Supporting Exhibits Under Seal [Docket No. 797] (the “Emergency Motion”).

RESPONSE TO REQUEST FOR CONTINUANCE

A. Sentynl Has Had Months to Prepare to Litigate the Administrative Claim Motion

1. Sentynl filed its Administrative Claim Motion² over 5 months ago on **November 1, 2024**.³ Sentynl’s Administrative Claim alleges claims in connection with the assignment, approved by this Court and on notice to Sentynl, of two contracts to Eiger InnoTherapeutics (“Inno”): (1) the Lonza Contract;⁴ and (2) the IQVIA Contract.⁵ The estate filed its objection to the Administrative Claim four weeks ago on **March 7, 2025**. On March 21, 2025, this Court set down the hearing on the Administrative Claim for April 15, 2025 at 9:30 a.m. *See Notice of Hearing for April 15, 2025* [Docket No. 786].

² See *Motion for Allowance of Administrative Expense Claim* [Docket No. 729] (“Administrative Claim Motion”).

³ It was filed after the Liquidating Trustee provided a consensual extension of the administrative claim bar date, which has now passed.

⁴ Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in 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 / Docket No. 784 (sealed)] (the “Administrative Claim Objection”).

⁵ Sentynl recently raised a new complaint, i.e., pertaining to the assignment of the Corden Contract, but this new claim was raised well after the administrative claim bar date.

2. On September 5, 2024, the bankruptcy case was confirmed, a result that was rightfully touted as an unabashed success: creditors would be paid in full, and equity holders would receive a substantial distribution. Assuming that there would be quick work to resolve any unsecured creditor claim disputes, Article III(B)(4)(b) of the confirmed Plan provides for interest to run on all unsecured claims until the date of distribution. But then Sentyln filed its Administrative Claim, essentially claiming that it failed to receive the entire benefit of its bargain and seeking the return of its \$45 million purchase price, an amount which is more than three times what the Liquidating Trustee is holding in trust for stakeholders pursuant to the Confirmation Order and Plan. Sentyln did not submit a proposed form of Order with its Administrative Claim Motion, such that the motion was not set for a hearing until the Liquidating Trustee and Plan Administrator filed their Objection. The Liquidating Trustee has now resolved and settled all creditor claim disputes that could hold up distribution, and is ready, willing and able to make distributions to creditors,⁶ but for the massive claim of this 363 sale purchaser, seeking the return of its entire purchase price. As a result, this estate and each of its stakeholders are being harmed every day that goes by without a distribution, as interest continues to run. Simply put, this dispute needs to be addressed quickly.

3. There is one, and only one, narrow issue the Court must decide with respect to Sentyln's Administrative Claim,⁷ which is whether the estate used [REDACTED]

[REDACTED]

⁶ The last remaining unliquidated claim (by Merck) has been resolved, with the resolution of such claim to be formally documented in a stipulation between Merck and the Liquidating Trustee in short order.

⁷ Sentyln admits that the issues raised in the Administrative Claim relating to the IQVIA Contract have been resolved, leaving only the assignment of Lonza contract at issue. *See Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* [Docket Nos. 779, 781] (the "Motion to Enforce"). And even if the Court decides that it should also consider evidence relating to the assignment of the Corden contract, the narrow issue for consideration remains the same, i.e., whether the estate used "reasonable" efforts with the meaning of Section 3.7 quoted above.

[REDACTED]

[REDACTED] See Sublicense Agreement, Section 3.7, attached under seal as Exhibit B to *the Declaration of Joshua Nahas in Support of the Administrative Claim Objection* (“Nahas Decl.”) at Docket No. 778 / Docket No. 785 (sealed).

4. To narrow the issue before the Court even further, there is a threshold question the Court will be asked to consider and decide at the April 15 hearing- one that would eliminate the need for the Court to consider any evidence whatsoever. Specifically, “Commercialize,” as used in section 3.7 as cited above, is a defined term under the Sentynl Sublicense Agreement which expressly does not include “Manufacturing,” which is itself separately defined in the Agreement. Given this, and construing the contract, which this Court is well placed to do, the “reasonable efforts” obligation with respect to assignment of the Retained Agreements applied only with respect to the IQVIA contract, which governs compliance, maintenance of safety data and government reporting. Insofar as the Lonza and Corden contracts are all about the manufacturing process, they were therefore expressly excluded from the contractual “reasonable efforts” obligation. Any dispute respecting assignment of the IQVIA contract was resolved in the Settlement Agreement, as conceded by Sentynl.

5. Even if the Court gets past this threshold issue, Sentynl knew prior to closing on the Sublicense Agreement on **May 3, 2024**, that the Lonza Contract as well as all other “Retained Agreements” under Section 3.7 of the Sublicense Agreement would not be assigned to it. Rather, such contracts would either to be rejected or assigned to a third party. *See* Sublicense Agreement, Section 3.7. On **September 4, 2024**, the Debtors noticed all parties, including Sentynl, that it would be assigning the Lonza Contract to Inno. *See Notice of Closing of Lonafarnib/Lambda Sale*

Transactions, [Docket No. 616] (“Inno Notice of Closing”). Sentynl did not object to the proposed assignment.

6. On **November 3, 2024**, all Retained Agreements, including the Lonza Contract and the Corden Contract, would be automatically assigned to Inno based upon the Court’s approved asset purchase agreement with Inno. *See* Docket No. 490, Exhibit A, Section 2.1; Docket No. 558. This date precisely matched the time period set forth in Section 3.7, which had been negotiated to allow Sentynl to make alternate arrangements to obtain whatever benefits it knew it would not be receiving under the Retained Agreements.

7. Shortly prior to the **November 3, 2024** date set for the automatic assignment of the Retained Agreements to Inno, Sentynl suddenly raised issues to the Liquidating Trustee related to the proposed assignment of the Lonza Contract. The Liquidating Trustee then went above and beyond the required “reasonable efforts” by: (i) negotiating a delay of the automatic assignment Inno was entitled to have take place on November 3, 2024; (ii) spending weeks working through the issues raised and delayed the assignment of the Lonza Contract; and (iii) reaching a settlement with Inno on **December 18, 2024** which assured Sentynl would receive what it otherwise couldn’t under its negotiated contract. *See* Settlement Agreement, Section 1, attached as Exhibit E to the Nahas Decl.⁸ Not only were these efforts “reasonable,” but they succeed in providing Sentynl with pharmacovigilance, i.e., access to the Safety Data Base maintained by IQVIA, and in obtaining a source of supply for Lonza’s spray dispersion service. “Success” is a requirement that is clearly and decidedly **not** contained in Section 3.7 or anywhere else in the Sentynl APA, 363 Sale Order,

⁸ The suggestion that the estate’s Settlement Agreement with Inno put Sentynl in a worse position than what it previously negotiated in its asset purchase agreement is wrong. Without the Settlement Agreement, Sentynl would not be able to obtain product from Lonza, their alleged preferred SDD manufacturer.

or related documents; said another way, the only requirements of the Liquidating Trustee were to use “reasonable” efforts, not “successful”.

8. Although there was no requirement for this estate to engage in post-Effective Date work to assist Sentynl with its own problems related to IQVIA, Lonza, and even Corden, it did so, and at a cost of hundreds of thousands of dollars in professional fees, all for the benefit of Sentynl.

9. Sentynl provided only two bases for its continuance request: (1) the parties will not have had time to conduct adequate discovery; and (2) Sentynl will be forced to conduct and defend duplicative discovery and depositions from Inno and the Liquidating Trustee over the same subject. As described above, there is no reasonable basis for Sentynl to argue that it has not had time to prepare for this narrow issue related to estate obligations with respect to the Retained Agreements – the Lonza Contract in particular. The Administrative Claim was initially docketed in November 2024, and the contracts at issue were assigned no later than mid-December, 2024. The estate is prepared to present its witnesses and to exchange discovery prior to the April 15th hearing date.

B. Sentynl Is Improperly Attempting to Conflate the Sentynl Administrative Claim Against the Estate with its Dispute with Inno

10. The Sentynl Contempt Motion raises a hornet’s nest of disputes between two commercial parties steeped in business tort accusations, rumor, and innuendo about who is interfering with whom, and ultimately having no impact on this estate. Although pursuant to paragraph 166 of the Confirmation Order [Docket No. 639] this Court can assert jurisdiction over such non-debtor dispute between Sentynl and Inno, it need not do so. This Court retained jurisdiction but not exclusive jurisdiction “over all matters related to” the Debtors’ chapter 11 proceeding.

11. Sentynl wrongly claims that “the Court is being asked to address identical legal and factual issues, identical arguments, and the same evidence in the Motion for Allowance and Motion to Enforce.” *See* Emergency Motion, at ¶ 15. While admittedly there would be some crossover of witnesses, if the Administrative Claim actually gets to evidence, i.e., proceeds beyond the threshold issue of “commercialization” vs. “manufacturing,” the legal and factual issues are significantly narrower, and the failure to move expeditiously on the Administrative Claim is hurting stakeholders. By contrast, the separate dispute among two 363 sale bidders/purchasers has no impact on the estate.

12. With respect to the Administrative Claim and the Administrative Claim Objection, to the extent we proceed to evidence, this Court is simply being asked to determine whether the estate complied with its “reasonable efforts” obligation in connection with its assignment of certain Retained Agreements, on notice to Sentynl, to Inno. While it may be true that Sentynl’s Motion to Enforce relates to Lonza and Corden, that does not necessitate that there are any “identical” (or even related, for that matter) legal and factual issues. *Compare* [whether the estate used reasonable efforts not to assign the Lonza and Corden Contracts consistent with Section 3.7 of the Sublicense Agreement], *see* Administrative Claim and Administrative Claim Objection, *with* [“ordering Eiger Inno to show cause why it should not be held in contempt of Court for interfering with Sentynl’s commercialization rights in violation of the Zokinvy Sale Order; ...”], *see* Motion to Enforce, at p. 1].⁹

⁹ The Motion to Enforce seeks entry of an order: (i) enjoining Inno from enforcing certain provisions in its Lonza Contracts or taking actions to prevent Lonza from providing services to Sentynl related to Zokinvy; (ii) directing Lonza to provide Sentynl with information related to Zokinvy inventory; (iii) enjoining Inno from taking actions to prevent Corden from providing services to Sentynl related to Zokinvy; (iv) directing Corden to provide Sentynl with information related to Zokinvy inventory; (v) enjoining Inno from challenging Sentynl’s rights to existing Zokinvy inventories purchased by Sentynl. None of this relates to whether the estate breached any obligation to use reasonable efforts not to assign the Retained Agreements in a particular manner.

13. Let's look at the Commercialization/Manufacture threshold issue in more detail. The Administrative Claim relates solely to whether the estate, after the expiration of the negotiated term for the estate to retain the Retained Agreements, used [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See Sublicense Agreement, Section 3.7, attached under seal as Exhibit B to the Nahas Decl.

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See id., Definition 1.6.

15. But "manufacture" is defined separately and that word is nowhere to be found in the definition of Commercialization or Commercialize. Instead, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] See id., at Definition 1.35.

16. *This was the agreement Sentynl made and only obligation Sentynl negotiated for.* Sentynl was always going to have to contract separately with manufacturers, whether it be with

the parties to the Retained Agreements or others in order to implement any plans related to their commercial and manufacturing supply chain. **Specifically to the point, Sentynl did not place onto the estate any obligation not to assign any Retained Agreements in a manner that would or could impact Sentynl's ability to "manufacture"**¹⁰ Zokinvy.

17. The Debtors and its successors were always ready, willing and able to assist Sentynl with respect to the Retained Agreements (even beyond just with respect to "Commercialization"). This was proven both pre-Effective Date (with the Debtors assisting Sentynl with respect to a new Patheon contract since the Patheon manufacturing agreements were assigned to Inno), and post-Effective Date (with the Liquidating Trustee negotiating successfully with Inno to obligate it to provide Lonza product to Sentynl after Sentynl failed to timely object to the automatic assignment of the Lonza Contract to Inno, and only later identified Lonza as its preferred SDD manufacturer).

18. The mere fact that Sentynl has been unable to resolve its dispute with Inno and has come to the Court for separate relief should not impact the procedural posture of the Administrative Claim in any respect. The Liquidating Trustee highly doubts that the potentially much larger issues in dispute among Sentynl and Inno will be resolved- or their discovery completed in any reasonable time frame. Sentynl's attempt to use the Inno dispute to delay a resolution of its Administrative Claim in any respect must be rejected.¹¹

¹⁰ In a confusing statement, Sentynl puts forth in its Emergency Motion: "Likewise, the EIT Emergency Motion seeks confirmation that the 'Corden Contracts' were assigned to EIT, but does not mention that any assignment must be subject to Sentynl's right to **manufacture and commercialize** Zokinvy®, as set forth in the earlier Zokinvy APA and Zokinvy Sale Order." (emphasis added). But as set forth above, Sentynl did not contract for any **manufacturing** rights related to the Retained Agreements in any manner other than the 6-month period for the estate to retain such contracts. Secondarily, even had Sentynl included "manufacturing" in the assignment limitation language, the estate only had to make "reasonable efforts" related to an assignment of the Retained Agreements, which the estate did (indeed, both with respect to commercialization *and* manufacturing).

¹¹ Relatedly, the estate will be objecting in due course to the admittance of any evidence that extends beyond reasonable efforts of the estate not to assign the Retained Agreements in a manner that would adversely impact Sentynl's ability to "Commercialize" Zokinvy. In its discovery demands, Sentynl requests all documents and

19. The Court should recognize the game Sentynl is attempting to play in confounding the issues, by not allow Sentynl to artificially enlarge the Administrative Claim dispute and delay any resolution of same due to an unrelated non-debtor dispute. That puts pressure on the Liquidating Trustee, who is charged with husbanding resources for the benefit of stakeholders, vs acceding to Sentynl's massive demands to mop up the entirety of the assets of this estate, because it is unhappy with the deal it made.

RESPONSE TO ADDITIONAL PAGE ALLOWANCE AND AUTHORITY TO SEAL

20. The Liquidating Trustee has no objection to any appropriate redacting as related to confidential, commercially sensitive, and trade secret material, so long as the Liquidating Trustee is able to use any information with appropriate witnesses during the discovery process and then ultimately at trial. To the extent the Court also deems it appropriate to provide additional pages to respond to the Liquidating Trustee's Administrative Claim Objection, the Liquidating Trustee does not object.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests that this Court deny the relief sought in the Motion as related to a continuance of the April 15th evidentiary hearing date, and on April 15th, consider the threshold issue of Commercialization vs. Manufacture, and to the extent the decision on that issue does not eliminate the Sentynl Administrative Claim, immediately proceed to the presentation of evidence.

communications related to the Debtors' homework into (1) how long Sentynl's supply of Zokinvy would last and (ii) which manufacturers would be available to produce Zokinvy in the absence of Corden or Lonza. These requests decidedly relate to the due diligence **Sentynl** should have engaged in on its own prior to entering the Sentynl APA and, moreover, pertain to "Manufacturing" Zokinvy. The Debtors' manufacturing infrastructure was never being transferred to Sentynl as part of the Sentynl APA. This evidence being sought is simply irrelevant to the express contractual dispute with the estate and has no place at the hearing.

Dated: April 4, 2025

Respectfully submitted,

/s/ S. Margie Venus

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Certificate of Service

I hereby certify that on April 4, 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 via electronic mail:

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