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

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

WITNESS AND EXHIBIT LIST FOR APRIL 15, 2025 HEARING ON EIT PHARMA, INC.'S EMERGENCY MOTION TO CONFIRM TERMS OF LONAFARNIB/LAMBDA SALE ORDER

Sentynl Therapeutics, Inc. ("Sentynl"), submits this Witness and Exhibit List for the hearing to be held April 15, 2025, at 9:30 a.m. (prevailing Central Time) (the "Hearing") on EIT Pharma, Inc., Formerly Known as Eiger InnoTherapeutics, Inc.'s Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order [Docket No. 787].

WITNESS LIST

Sentynl may call the following witnesses at the Hearing:

1. Eileen Banaga.

2. Joshua Naha, as representative of Dundon Advisors LLC, in its capacity as Liquidating Trustee.

3. Any witness called by any other party.

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4. Any witness(es) necessary to rebut the testimony of any witness(es) called or designated by any other party.

EXHIBIT LIST

Exhibit	Description	Offer	Object	Admit	Disposition
1.	Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief [Docket No. 162] (the "Zokinvy Sale Order") *including* the Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, dated as of March 31, 2024, annexed as Exhibit 1 to the Zokinvy Sale Order (the "Zokinvy APA")				
2	Sublicense Agreement by and between Eiger BioPharmaceuticals, Inc. and Sentynl Therapeutics, Inc., dated as of the May 3, 2024 [sealed Docket No. 785-2] (the "Sublicense Agreement")				
3	Notice of Closing of Zokinvy Transaction [Docket No. 214]				
4	Lonafarnib Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, dated as of August 1, 2024 [Docket No. 490-1] (the "Lonafarnib APA")				
5	Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief [Docket No. 558] (the "Lonafarnib/Lambda Sale Order")				
6	Notice of Closing of Lonafarnib/Lambda Sale Transaction [Docket No. 616]				
7	Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc. [Docket No. 729] (the "Motion for Allowance")				
8	Settlement Agreement, dated December 18, 2024, by and between Joshua Nahas of Dundon Advisers, LLC, the Liquidating Trustee on behalf of the Liquidating Trust created pursuant to the Fifth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (the "Plan") and Liquidating Trust Agreement, and (ii) Eiger InnoTherapeutics, Inc. [sealed Docket No. 785-5] (the "Settlement Agreement")				

Exhibit	Description	Offer	Object	Admit	Disposition
9	Objection and Response of the Liquidating Trustee and Plan Administrator to Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc. [sealed Docket No. 774] (the "LT & PA's Objection to Motion for Allowance")				
10	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. [sealed Docket No. 785] (the "Nahas Declaration")				
11	Sentynl Therapeutics, Inc.'s Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc. [Docket Nos. 779, 781] (the "Motion to Enforce")				
12	Notice of Hearing for April 15, 2025 Setting [Docket No. 786]				
13	EIT Pharma, Inc., Formerly Known as Eiger InnoTherapeutics, Inc.'s Emergency Motion to Confirm Terms of the Lonafarnib/Lambda Sale Order [Docket No. 787] ("Motion to Confirm")				
14	Sentynl Therapeutics, Inc.'s Response to EIT Pharma, Inc., Formerly Known as Eiger InnoTherapeutics, Inc.'s Emergency Motion to Confirm Terms of the Lonafarnib/Lambda Sale Order and (II) Request for Status Conference Pursuant to 11 U.S.C. § 105(d) [Docket No. 790]				
15	Limited Response of 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. [sealed Docket No. 793] (the "LT & PA's Limited Response to Motion for Allowance")				
16	Declaration of James Vollins in Support of the Liquidating Trustee and the Plan Administrator's Limited Response to Motion of Sentynl Therapeutics, Inc to (I) Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc. [Docket No. 795] (the "Vollins Declaration")				
17	Sentynl Therapeutics Inc.'s Omnibus Emergency Motion 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]				

Exhibit	Description	Offer	Object	Admit	Disposition
18	Response of the Liquidating Truste 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 [Docket No. 799]				
19	Reply in Support of Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc. [sealed Docket No. 801] ("Sentynl's Reply ISO Motion for Allowance")				
20	Lonafarnib Supply Chain Flow Chart [sealed Docket No. 801, Ex. A]				
21	October 21, 2024 Email [sealed Docket No. 801, Ex. B]				
22	December 18, 2024 Email [sealed Docket No. 801, Ex. D]				
23	November 5, 2024 Email [sealed Docket No. 801, Ex. E]				
24	December 18, 2024 Email [sealed Docket No. 801, Ex. F]				
25	Draft Sublicense Agreement Schedules [sealed Docket No. 801, Ex. G]				
26	Zokinvy Supply Gant Chart Scenarios [sealed Docket No. 801, Ex. H]				
27	December 23, 2024 Email [sealed Docket No. 801, Ex. I]				
28	November 3, 2024 Email [sealed Docket No. 801, Ex. J]				
29	July 29, 2024 Email [sealed Docket No. 801, Ex. K]				
30	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. 802]				
31	Draft Letter Agreement Regarding Authorization and Direction to Corden to Provide Select Materials and Information to Sentynl				
	Any exhibit identified or offered by any other party.				
	Any exhibit necessary for impeachment and/or rebuttal purposes.				

RESERVATION OF RIGHTS

Sentynl reserves the right to call or to introduce one or more, or none, of the witnesses and exhibits listed above, and further reserve the right to supplement this Witness and Exhibit List before the Hearing.

Dated: April 11, 2025

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

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CERTIFICATE OF SERVICE

I certify that, on April 11, 2025, I caused a copy of the foregoing to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas and unredacted copies of any sealed exhibits to be emailed to the following parties:

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/s/ Hugh M. Ray, III
Hugh M. Ray, III

EXHIBIT 1

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

Signed April 24, 2024

United States Bankruptcy Judge

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

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

ORDER (I) APPROVING THE SALE OF THE DEBTORS' ZOKINVY ASSETS, (II) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO, AND (III) GRANTING RELATED RELIEF

Upon consideration of the Motion[2] of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") for entry of an order (this "Zokinvy Sale

[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.

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Order"), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the "Bankruptcy Local Rules"), and Section E of the *Procedures for Complex Chapter 11 Cases in the Northern District of Texas* (the "Complex Case Procedures"), authorizing (a) the Debtors' sale of certain of their property free and clear of liens, claims, encumbrances, and interests on the terms set forth in that certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc, as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024,* (the "Zokinvy Stalking Horse APA") [Docket No. 13, Ex. A-2]; (b) the assumption and assignment of the Designated Contracts in connection with the Amended Zokinvy Stalking Horse APA; and (c) granting related relief, all as more fully set forth in the Motion; and this Court having previously entered the *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; And (III)*

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[2] Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtors' Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; And (III) Granting Related Relief* [Docket No. 13] (the "Motion") or the Amended Zokinvy Stalking Horse APA (defined herein).

Granting Related Relief [Docket No. 94] (the "Bid Procedures Order"), authorizing and approving, among other things, the Debtors' designation of Sentynl Therapeutics, Inc. (the "Zokinvy Stalking Horse Purchaser"), as the Zokinvy Stalking Horse Purchaser for the Transferred Assets and certain Bid Protections; and the Debtors having filed the *Second Revised Notice of Selection of Winning Bid* [Docket No. 139] (the "Notice of Winning Bid"), pursuant to the Bid Procedures Order, announcing the Zokinvy Stalking Horse Purchaser as the highest or otherwise best bidder for the Transferred Assets (the "Purchaser") pursuant to the Zokinvy Stalking Horse APA following the Auction and the Purchaser having submitted the highest or otherwise best offer for assets to be sold to the Purchaser as identified in the Zokinvy Stalking Horse APA (the "Transferred Assets"), as reflected in the Zokinvy Stalking Horse APA and as from time to time amended in accordance with this Zokinvy Sale Order or further order of this Court, including by the Amended Zokinvy Stalking Horse APA, pursuant to which the Debtors have agreed, among other things, to sell the Transferred Assets to the Purchaser, including the Designated Contracts that will be assumed and assigned to the Purchaser on the terms and conditions set forth in the Amended Zokinvy Stalking Horse APA inclusive of the Zokinvy Purchase Price (as defined below) (collectively, the "Zokinvy Sale Transaction"); and the Debtors having filed the *Notice of Cure Amounts and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Zokinvy Sale Transaction* [Docket No. 116] (the "Cure Notice") and served the *Notice of Assumption and Assignment of Designated Contracts* (the "Assignment Notice") in accordance with the Bid Procedures Order; and this Court having conducted the Zokinvy Sale Hearing to consider approval of the Zokinvy Sale Transaction, at which time all interested parties were offered an opportunity to be heard with respect to the Zokinvy Sale Transaction; and this Court having reviewed and considered (i)

the Motion and the exhibits thereto, (ii) the First Day Declaration [Docket No. 27], (iii) and the Supplemental Victor Declaration [Docket No. 141], and the arguments and representations of counsel made, and the evidence proffered or adduced at the Zokinvy Sale Hearing; and it appearing that due and proper notice of the Motion, the Zokinvy Stalking Horse APA, the Amended Zokinvy Stalking Horse APA, the Cure Notice, the Assignment Notice, the Bid Procedures Order, and this Zokinvy Sale Order having been provided in accordance with the Bid Procedures Order; and all objections, if any, to approval of the Zokinvy Sale Transaction having been withdrawn, resolved (including by separate agreement between the objecting party and the Debtors), adjourned, or overruled as provided in this Zokinvy Sale Order; and it appearing entry of this Zokinvy Sale Order and consummation of the Zokinvy Sale Transaction are in the best interests of the Debtors, their estates and creditors, and all parties in interest in these chapter 11 cases; and upon the record of the Zokinvy Sale Hearing and these chapter 11 cases; and after due deliberation thereon; and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052**. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. This Court's findings shall also include any oral findings of fact and conclusions of law made by this Court during or at the conclusion of the Zokinvy Sale Hearing. To the extent of any conflict, the oral rulings control.

B. **Jurisdiction and Venue**. This Court has jurisdiction over the Motion and the Zokinvy Sale Transaction described therein, and in the Amended Zokinvy Stalking Horse APA, including, without limitation, the sale of the Transferred Assets, pursuant to 28 U.S.C. §§ 157 and 1334. The Debtors have asserted that venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. § 1408.[3] This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

C. **Statutory Predicates**. The statutory authorization for the relief granted herein is found in sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 9014, Rule 9013-1 of the Bankruptcy Local Rules, and Section E of the Complex Case Procedures.

D. This Zokinvy Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Time is of the essence in closing the Zokinvy Sale Transaction referenced herein, the Debtors and the Purchaser intend to close the Zokinvy Sale Transaction as soon as practicable, and there is no just reason for delay in the implementation of this Zokinvy Sale Order. Specifically, the Zokinvy Sale Transaction must be approved and consummated promptly to preserve the viability of the business in the hands of the Purchaser as a going concern, and to maximize the value to the Debtors, their estates, their creditors, and all other parties in interest. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just

[3] On April 11, 2024, The Office of the United States Trustee filed the *United States Trustee's Emergency Motion to Transfer Venue or Dismiss under 28 U.S.C. §§ 1406 and 1408 and Fed. R. Bankr. P. 1014(a)(2)* [Docket. No. 111] (the "Venue Motion"). The Venue Motion is set to be heard and determined on May 7, 2024. All parties rights are hereby expressly reserved as to the determination of whether venue is proper in this District.

reason for delay in the implementation of this Zokinvy Sale Order, waives any stay, and expressly directs entry of judgment as set forth herein.

E. **Incorporation By Reference**. Findings of fact and conclusions of law in the Bid Procedures Order are incorporated herein by reference.

F. **Marketing Process & Auction**. The Debtors and their professionals adequately marketed the Transferred Assets to all Potential Bidders in accordance with the Bid Procedures Order. The sale process set forth in the Bid Procedures Order afforded all Potential Bidders a full, fair, and reasonable opportunity to submit a higher or otherwise better offer to purchase the Transferred Assets and participate in the sale process. The Auction was conducted in a reasonable and fair manner in accordance with the Bid Procedures. No other person, or group of persons, has offered to purchase the Transferred Assets for an amount that would give greater value to the Debtors than the value provided by the Purchaser pursuant to the Amended Zokinvy Stalking Horse APA, which reflects the final bid during the Auction of a Base Price in the amount of $46,100,000 *less* a credit in the amount of $900,000 for the Termination Fee resulting in a net Base Price in the amount of $45,200,000 (assuming a Closing on April 24, 2024) (the "Zokinvy Purchase Price"), which constitutes the highest and best bid for the Transferred Assets. Under the circumstances, the marketing process was robust and sufficiently tested the market to determine the highest and best offer for the Transferred Assets.

G. **Sale Hearing**. This Court conducted the Zokinvy Sale Hearing on April 23, 2024, at which time this Court considered the Motion, the evidence and testimony presented, and the statements and argument of counsel, as applicable, in support of the Motion, the Amended Zokinvy Stalking Horse APA, and the Zokinvy Sale Transaction. Except as otherwise expressly provided in this Zokinvy Sale Order, all objections to the Zokinvy Sale Transaction and the relief

requested in the Motion, whether timely or untimely and whether written or made orally at the Zokinvy Sale Hearing, if any, were heard and considered by this Court. All such objections, if any, were either overruled by this Court, are resolved by the terms hereof or by separate agreement between the objecting party and the Debtors, or were adjourned or withdrawn as a result of an agreement between the objecting party and the Debtors.

H. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for consummation of the Zokinvy Sale Transaction pursuant to the Amended Zokinvy Stalking Horse APA and all other agreements, instruments, certificates, and other documents to be entered into or delivered by any party in connection with the Zokinvy Sale Transaction, including, without limitation, any assumption and assignment agreements entered into in connection therewith (collectively, the "Transaction Documents"), outside of the ordinary course of business and in accordance with the requirements of section 363(b) of the Bankruptcy Code. Consummation of the Zokinvy Sale Transaction prior to and not as part of a chapter 11 plan is (i) justified under the circumstances, (ii) an appropriate exercise of the Debtors' business judgment, and (iii) in the best interests of the Debtors, their estates, and their creditors.

I. The Debtors' decision to enter into the Zokinvy Stalking Horse APA with the Zokinvy Stalking Horse Purchaser, subject to higher and better offers, was a due and proper exercise of the Debtors' business judgment and was authorized pursuant to the Bid Procedures Order. The Bid Protections contained in the Zokinvy Stalking Horse APA (i) were necessary to preserve the value of the Debtors' estates by inducing the Zokinvy Stalking Horse Purchaser to enter into the Zokinvy Stalking Horse APA and (ii) are in compliance with the Bid Procedures and authorized by the Bid Procedures Order.

J. Following a robust marketing process and Auction consistent with the Bid Procedures Order, the Amended Zokinvy Stalking Horse APA at the Zokinvy Purchase Price, constitutes the highest or otherwise best offer for the Transferred Assets. No other person, or group of persons, has offered to purchase the Transferred Assets for an amount that would give greater value to the Debtors than the value provided by the Zokinvy Purchase Price. The Zokinvy Sale Transaction is the best means available to the Debtors to maximize the return to their creditors and limit the losses to counterparties to the Designated Contracts. No alternative to the Zokinvy Sale Transaction exists that would provide a greater value to the Debtors, their creditors, or other parties in interest.

K. Approval of the Zokinvy Sale Transaction is necessary to maximize the value the Debtors' estates will receive for the Transferred Assets. It is important to the Debtors' customers and suppliers that the transition from the Debtors to the Zokinvy Stalking Horse Purchaser occurs smoothly and without unnecessary delay, so that any customer and vendor issues may be minimized. It is also important that the Zokinvy Sale Transaction be consummated as expeditiously as possible to avoid any disruption to the patients who depend on Zokinvy to treat progeria, a rare and fatal genetic condition that may result from continued uncertainty about the future of the Transferred Assets.

L. Accordingly, the sale of the Transferred Assets pursuant to sections 105(a) and 363 of the Bankruptcy Code upon the terms and conditions set forth in the Amended Zokinvy Stalking Horse APA is the optimal means to create value for the benefit of the Debtors' estates. The Zokinvy Sale Transaction maximizes the value of the Transferred Assets because the Transferred Assets are being sold as part of a going concern, thereby preserving the continuity and remaining goodwill value associated with the Transferred Assets. Unless the sale is

concluded expeditiously, as provided for in the Motion and the Amended Zokinvy Stalking Horse APA, creditor recoveries may be substantially diminished.

M. **Fair Purchase Price**. The Zokinvy Purchase Price provided by the Purchaser as set at the Auction (i) is fair and adequate; (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (iii) will provide an equal or greater recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative. The terms of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, and the Zokinvy Sale Transaction are fair and reasonable under the circumstances of the Debtors' chapter 11 cases, and the Debtors' determination to proceed with such transaction constitutes a valid and sound exercise of the Debtors' business judgment.

N. **Adequate and Reasonable Notice**. As evidenced by the affidavits of service filed with this Court [Docket Nos. 42, 114, 126, 127, 128, 140], and based upon the record of the Zokinvy Sale Hearing, and as previously determined by this Court in the Bid Procedures Order, (i) due, proper, timely, adequate, and sufficient notice of the Motion, the Zokinvy Auction, the Zokinvy Sale Hearing, the Amended Zokinvy Stalking Horse APA, and the Zokinvy Sale Transaction has been provided to all parties in interest, (ii) such notice was and is good, sufficient, and appropriate under the circumstances, and reasonably calculated to reach and apprise all holders of Liens, claims, encumbrances, and other Interests (as defined herein), including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities, and was provided in accordance with the applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case

Procedures, and the procedural due process requirements of the United States Constitution, and (iii) no other or further notice of the Motion, the Zokinvy Auction, the Zokinvy Sale Hearing, the Amended Zokinvy Stalking Horse APA, the Zokinvy Sale Transaction, or of the entry of this Zokinvy Sale Order is necessary or shall be required.

O. In accordance with the Bid Procedures Order, the Debtors filed with this Court and served the Cure Notice, containing (i) the list of all Designated Contracts to potentially be assigned in connection with the Zokinvy Sale Transaction, (ii) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of potentially assigned contracts that may be Designated Contracts and rights thereunder, (iii) Cure Amounts, where applicable, and (iv) the procedures for objecting thereto, on all counterparties to such potentially assigned contracts and any party that has requested notice pursuant to Bankruptcy Rule 2002 ("Rule 2002 Notice List"), and caused such notice to be published on the website of the Debtors' noticing agent, Kurtzman Carson Consultants LLC. ("KCC") [Docket No. 116]. The Cure Notice (a) included the Debtors' good faith calculation of the Cure Amounts with respect to each potentially assigned contract; (b) stated that assumption or assignment of any potentially assigned contract is not guaranteed and is subject to this Court's approval; (c) prominently displayed the deadline to file a Cure Objection; and (d) prominently displayed the dates, times, and location of the Sale Hearing. The service and provision of the Cure Notice was good, sufficient, and appropriate under the circumstances and no other or further notice need be given.

P. In accordance with the Bid Procedures Order, the Debtors also served the Assignment Notices on the counterparties to the Designated Contracts, which contained (i) the list of Designated Contracts selected by the Purchaser, (ii) information necessary and appropriate

to provide notice of the relevant proposed assumption and assignment of the Designated Contracts and rights thereunder, (iii) the Cure Amounts, and (iv) the procedures for objecting thereto, on all counterparties to the Designated Contracts and all parties on the Rule 2002 Notice List. The service and provision of the Notice of Designated Contracts was good, sufficient, and appropriate under the circumstances and no other or further notice need be given in connection with the assumption and assignment of the Designated Contracts.

Q. A reasonable opportunity to object and to be heard with respect to the sale of the Transferred Assets, the assumption and assignment of the Designated Contracts, and the determination of defaults and Cure Amounts related thereto, as well as the Amended Zokinvy Stalking Horse APA and the entry of this Zokinvy Sale Order has been given to all interested Persons.

R. **Good Faith Purchaser**. The Debtors, the Purchaser, and their respective principals, counsel, and advisors have negotiated, proposed, and entered into the Amended Zokinvy Stalking Horse APA, the Transaction Documents, and each of the transactions contemplated therein in good faith, without collusion and from arm's-length bargaining positions. The Purchaser is a "good faith purchaser" and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Zokinvy Sale Transaction and, as such, is entitled to all the protections afforded thereby. The Purchaser has proceeded in good faith in all respects. The terms of the Zokinvy Sale Transaction, including the Zokinvy Purchase Price, were not controlled by any agreement among Potential Bidders and neither the Debtors nor the Purchaser have engaged in collusion or any conduct that would cause or permit the Amended Zokinvy Stalking Horse APA to be challenged, avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code or any other law of the United States, any

state, territory, possession thereof, or the District of Columbia, or any other applicable law. The Amended Zokinvy Stalking Horse APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States, any state, territory, or possession, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser entered into the Amended Zokinvy Stalking Horse APA or are consummating the Zokinvy Sale Transaction with any fraudulent or otherwise improper purpose. The Purchaser is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Purchaser and the Debtors.

S. The Zokinvy Sale Transaction, which includes the sale of the Transferred Assets pursuant to the Amended Zokinvy Stalking Horse APA and all covenants in and conditions thereto, is an integrated transaction, meaning that each component is an essential part of every other component and that the Zokinvy Sale Transaction can be consummated only if all of the components are consummated. Accordingly, each component of the Zokinvy Sale Transaction is subject to, and is protected by, the provisions of section 363(m) of the Bankruptcy Code.

T. **Sale Free and Clear under Section 363(f)**. The Purchaser would not have entered into the Amended Zokinvy Stalking Horse APA and would not consummate the Zokinvy Sale Transaction without entry of this Zokinvy Sale Order approving the Zokinvy Sale Transaction pursuant to section 363(f) of the Bankruptcy Code. Except as expressly provided otherwise in the Amended Zokinvy Stalking Horse APA or this Zokinvy Sale Order, the Debtors have satisfied the standard set forth in section 363(f) of the Bankruptcy Code for selling the Transferred Assets free and clear of all of the following (collectively, "Interests"): Liens, claims (including, but not limited to, those that constitute a "claim" as defined in section 101(5) of the

Bankruptcy Code), encumbrances, obligations, liabilities, pledges, charges, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, royalties, hypothecations, preferences, debts, easements, suits, licenses, rights of recovery, judgments, orders and decrees of any court or foreign domestic governmental entity, taxes (including foreign, state, and local taxes), covenants, indentures, instruments, leases), claims for reimbursement or subrogation, contribution, indemnity or exoneration, encumbrances, or interests of any kind or nature whatsoever against the Debtors, or any of the Transferred Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employment or labor law claims or liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against the Debtors or against any property of the Debtors, claims arising under state or federal antitrust laws, any indemnification claim or liabilities relating to any act or omission of the Debtors or any other person prior to the Closing Date or any Excluded Liabilities, any derivative, vicarious, transferee or successor liability claims, alter ego claims, de facto merger claims, rights or causes of action (whether known or unknown, legal or equitable, contingent, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfect or unperfected, allowed or disallowed, noticed or unnoticed, recorded or unrecorded, material or non-material, statutory or non-statutory, and asserted or unasserted, whether arising prior to or subsequent to the commencement of the Debtors' chapter 11 cases (other than Permitted Liens and the Assumed Liabilities), whether imposed by

agreement, understanding, law, equity or otherwise, including without limitation (i) those Interests that purport to give to any party a right or option to effect a setoff against or any forfeiture, modification, or termination of the Debtors' interests in the Transferred Assets, or any similar rights, if any, (ii) those Interests arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, hypothecations, liens, judgments, demands, encumbrances, rights of first refusal or charges of any land or nature, if any, (iii) those Interests that are Excluded Liabilities as set forth in the Amended Zokinvy Stalking Horse APA; (iv) those Interests held by the Prepetition Term Loan Secured Parties (as defined in the Interim Cash Collateral Order) in the Transferred Assets, including as provided in the order entered by the Court at Docket No. 93 (the "Interim Cash Collateral Order") and (v) those Interests arising under or out of, in connection with, or in any way related to the Debtors or any of the Debtors' predecessors, Affiliates, or representatives, any of the Sellers' interests in the Transferred Assets, or the operation of any of the Debtors' businesses before the applicable Closing Date, including, without limitation, Interests based on successor liability, transferee liability, derivative liability, vicarious liability, de facto merger, continuation or continuity, or any similar theories under applicable state or federal law or otherwise. The Prepetition Term Loan Secured Parties have, subject to the terms and conditions of this Zokinvy Sale Order, consented to the relief requested in the Motion with respect to the Zokinvy Sale Transaction. Each other holder of an Interest in the Transferred Assets (a) has, subject to the terms and conditions of this Zokinvy Sale Order, consented or shall be deemed to have consented to the relief requested in the Motion and with respect to the Zokinvy Sale Transaction, (b) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest, or (c) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those

holders of Interests that did not object to, or withdrew their objections, if any, to, the relief requested in the Motion, the Amended Zokinvy Stalking Horse APA, the Zokinvy Sale Transaction, or the Assignment Notices are deemed to have consented to the relief requested in the Motion, including, without limitation, the sale of the Transferred Assets and the assumption and assignment of the Designated Contracts to the Purchaser, pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests that did object that have an Interest in the Transferred Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest pursuant to section 363(f)(5) of the Bankruptcy Code or fall within one or more of the other subsections of 363(f) of the Bankruptcy Code and, therefore, are adequately protected by having their Interests that constitute interests in the Transferred Assets, if any, attach solely to the proceeds of the Zokinvy Sale Transaction ultimately attributable to the property in which they have an Interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Zokinvy Sale Transaction, subject to any defenses of the Debtors.

U. Except as expressly provided otherwise in the Amended Zokinvy Stalking Horse APA or this Zokinvy Sale Order, neither the Purchaser nor any of the Purchasers' Affiliates (including any subsidiary of the Purchasers, any person or entity that could be treated as a single employer with the Purchasers pursuant to Section 4001(b) the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended ("IRC"), and any of their respective managed funds or accounts, any of their respective lenders or investors, and, in each case of the foregoing, each of their respective former, current, or future, shareholders, equity holders, owners, members, managers, employees, representatives, officers, limited or general partners, directors, agents,

professionals, successors, affiliates, or permitted assignees, (collectively with the Purchaser, the "Purchaser Group") shall be responsible for any Interests, including in respect of, based on, relating to, and/or arising under, without limitation, the following: (i) any labor, collective bargaining, or employment agreements; (ii) any mortgages, deeds of trust, or security interests; (iii) any intercompany loans and receivables between one or more of the Seller and any Debtor; (iv) any pension, multiemployer (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare plan participation or benefit trust, compensation or other employee benefit plans, agreements, practices and programs (including any Employee Benefit Plan) of or related to any of the Debtors or any of the Debtors' Affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) the Debtors' business operations or cessation thereof; (vi) any litigation involving one or more of the Debtors; (vii) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the Multi-Employer Pension Plan Amendments Act of 1980, including all amendments thereto, (f) the Worker Adjustment and Retraining Notification Act of 1988 or any similar state or local law ("WARN"), (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the IRC and of any similar state law (collectively, "COBRA"), (i) the National Labor Relations Act, (j) the Age Discrimination and Employment Act of 1967 and Age Discrimination

in Employment Act, as amended, (k) state harassment, discrimination, or retaliation laws, (l) state unemployment compensation laws or any other similar state laws, or (m) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, or relating to any wages, benefits, employment, or termination of employment with any or all Debtors or any of their predecessors; (viii) any liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the applicable Closing Date; (ix) any product liability law; (x) any antitrust laws; (xi) any bulk sales or similar law; (xii) any Employee Benefit Plan) of or related to any of the Debtors or any of the Debtors' Affiliates or tax statutes or ordinances, including, without limitation, the IRC; and (xiii) any Excluded Liabilities.

V. **No Successor, Transferee, or Similar Liability**. Except for the Assumed Liabilities, as expressly set forth in the Amended Zokinvy Stalking Horse APA or this Zokinvy Sale Order, the Purchaser has not expressly or impliedly assumed any obligation of the Debtors, or any other party, with respect to the Interests and the Excluded Liabilities, whether at law or in equity, whether by payment, setoff, recoupment, or otherwise, directly or indirectly, and whether from the Transferred Assets or otherwise, including, without limitation, based on successor, transferee, derivative, or vicarious liability.

W. The Zokinvy Sale Transaction described by the Amended Zokinvy Stalking Horse APA and the Transaction Documents does not amount to a consolidation, merger, or de facto merger of the Purchaser and any of the Debtors and/or any of the Debtors' estates.

X. There is no continuity between the Purchaser and any of the Debtors. The Purchaser is not holding itself out to the public as a continuation of any of the Debtors or their

respective estates, businesses, or operations. The Purchaser is not a mere continuation of any of the Debtors or their respective estates, businesses, or operations. There is no common identity between any of the Debtors and the Purchaser. The Purchaser does not constitute a successor to any of the Debtors or their estates.

Y. The Purchaser and the Debtors are not entering into the Amended Zokinvy Stalking Horse APA and Transaction Documents or consummating the Zokinvy Sale Transaction for the fraudulent purpose of escaping liability for the Debtors' obligations or to defraud creditors in any way.

Z. **Sale Free and Clear and Continuation of Existing Approvals Required by the Purchaser**. The Purchaser expressly negotiated for the protection of obtaining the Transferred Assets free and clear of all Interests, including, without limitation, any potential successor liability claims (other than Permitted Liens and the Assumed Liabilities). The total consideration to be provided under the Amended Zokinvy Stalking Horse APA reflects the Purchaser's reliance on this Zokinvy Sale Order to provide it, pursuant to sections 105(a) and 363 of the Bankruptcy Code, with title to and possession of the Transferred Assets free and clear of all Interests of any kind or nature whatsoever (including, without limitation, any potential successor liability claims (other than Permitted Liens and the Assumed Liabilities)). The Purchaser would not have entered into the Amended Zokinvy Stalking Horse APA and would not consummate the Zokinvy Sale Transaction, if the sale of the Transferred Assets to the Purchaser and the assumption and assignment of the Designated Contracts to the Purchaser by the Debtors, were not free and clear of all Interests of any kind or nature whatsoever (other than the Permitted Liens and the Assumed Liabilities), as contemplated by this Zokinvy Sale Order, except as otherwise set forth herein, or if the Purchaser would, or in the future could, be liable for any of

the Interests, including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities. The Purchaser would not have entered into the Amended Zokinvy Stalking Horse APA and would not consummate the Zokinvy Sale Transaction if the Purchaser would not be authorized, as of the Closing Date, to operate under or renew any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Transferred Assets (subject, in each case, to the terms of the Stalking Horse APA); if such licenses, permits, registrations, and governmental authorizations or approvals would not be deemed to have been transferred to the Purchaser as of the Closing Date; or if existing licenses or permits applicable to the business would not remain active and in place for the Purchaser's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred.

AA. **Assumption and Assignment of the Designated Contracts**. The Assumption and Assignment Procedures approved pursuant to the Bid Procedures Order are integral to the Amended Zokinvy Stalking Horse APA, do not constitute unfair discrimination, are in the best interests of the Debtors, their estates and creditors, and all other parties in interest, and are based on the reasonable exercise of sound business judgment by the Debtors. At the Closing and pursuant to Section 365 of the Bankruptcy Code and this Zokinvy Sale Order, the Debtors shall assume and, subject to the terms in the Amended Zokinvy Stalking Horse APA, assign to the Purchaser, and Purchaser shall take assignment from the Debtors of, the Designated Contracts.

BB. On or before the Closing Date, the Purchaser will pay all Cure Amounts with respect to the Designated Contracts proposed to be resolved after the Closing Date in accordance with Paragraph 20 below. Accordingly, the Debtors or the Purchaser, as applicable, will have, to the extent necessary, (i) cured any default existing prior to the Closing with respect to the

Designated Contracts, and (ii) provided compensation, if any, to each counterparty to a Designated Contract for any actual pecuniary loss to such party resulting from a default prior to the Closing with respect to the Designated Contract with such counterparty, all within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code.

CC. Pursuant to section 365(f) of the Bankruptcy Code, each Designated Contract required to be assumed and assigned under the Amended Zokinvy Stalking Horse APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding any provision in such contract or other restrictions prohibiting its assignment or transfer. No section of any of the Designated Contracts that would directly or indirectly prohibit, restrict, or condition the assumption or assignment of any of the Designated Contracts or would permit termination or modification of such Designated Contracts, or rights and obligations thereunder, by a party other than the Debtors, on account of assignment of such shall have any force or effect in connection with the Transferred Assets.

DD. The assumption and assignment of the Designated Contracts (i) is necessary to sell the Transferred Assets to the Purchaser, (ii) allows the Debtors to sell the Transferred Assets to the Purchaser as a going concern, (iii) limits the losses suffered by counterparties to the Designated Contracts, and (iv) maximizes the recoveries to other creditors of the Debtors by limiting the amount of claims against the Debtors' estates by avoiding the rejection of the Designated Contracts. For these reasons, the Debtors have exercised sound business judgment in assuming and assigning the Designated Contracts and such assumption and assignment is in the best interests of the Debtors' estates.

EE. **Adequate Assurance of Future Performance**. Counterparties to the Designated Contracts were provided with the Assignment Notice and had the opportunity to request and review information with respect to the Purchaser's adequate assurance of future performance (*see* Docket No. 94, Ex. 5) and were required to file any objections to the Purchaser's ability to provide adequate assurance of future performance as contemplated under sections 365(b)(l)(C), 365(b)(3) (to the extent applicable) and 365(f)(1) of the Bankruptcy Code (each an "Cure Objection") on or prior to April 16, 2024 at 4:00 P.M. Central Time. Counterparties to Designated Contracts that failed to timely file a Cure Objection are hereby forever barred from objecting to the assumption and assignment of Designated Contracts on the grounds of a failure to provide adequate assurance of future performance. Based on evidence adduced at the Zokinvy Sale Hearing and based on the record in these chapter 11 cases, to the extent necessary, the Debtors have satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(l)(A), 365(b)(l)(B), 365(b)(l)(C), 365(b)(3) (to the extent applicable) and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Designated Contracts to the extent provided under the Amended Zokinvy Stalking Horse APA. Accordingly, subject to payment of the Cure Amounts, the Designated Contracts may be assumed by the Debtors and assigned to the Purchaser as provided under the Amended Zokinvy Stalking Horse APA and this Zokinvy Sale Order.

FF. **Sale Order Required by the Purchaser.** Entry of this Zokinvy Sale Order approving the Amended Zokinvy Stalking Horse APA is a requirement of the Amended Zokinvy Stalking Horse APA and such requirement is a reasonable and appropriate condition precedent to the Purchaser's consummation of the Zokinvy Sale Transaction.

GG. **Transferred Assets Property of the Estates**. The Transferred Assets constitute property of the selling Debtors' estates and title thereto is vested in the selling Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The selling Debtors have all title, interest, and/or rights in the Transferred Assets required to transfer and to convey the Transferred Assets to the Purchaser, as required by the Amended Zokinvy Stalking Horse APA.

HH. **Corporate Authority**. Subject to the entry of this Zokinvy Sale Order, (i) the Debtors have full corporate power and authority to perform all of their obligations under the Amended Zokinvy Stalking Horse APA and the Transaction Documents, and the Debtors' prior execution and delivery of, and performance of obligations under, the Amended Zokinvy Stalking Horse APA and the Transaction Documents is hereby ratified, (ii) the Debtors have all of the corporate power and authority necessary to consummate the Zokinvy Sale Transaction, (iii) the Debtors have taken all corporate actions necessary to authorize, approve, execute, and deliver the Amended Zokinvy Stalking Horse APA and the Transaction Documents and to consummate the Zokinvy Sale Transaction, except for the closing conditions expressly provided in the Amended Zokinvy Stalking Horse APA and the Transaction Documents, and (iv) no consents or approvals are required to consummate the Zokinvy Sale Transaction or otherwise perform the obligations under the Amended Zokinvy Stalking Horse APA or the Transaction Documents, except for the closing conditions expressly provided therein.

II. **Sale in Best Interests**. The relief requested in the Motion and set forth in this Zokinvy Sale Order is in the best interests of the Debtors, their respective creditors, estates, and all other parties in interest in the Debtors' chapter 11 cases.

JJ. **Prompt Consummation**. To maximize the value of the Transferred Assets, it is essential that the Zokinvy Sale Transaction occur within the timeframe set forth in the Amended

Zokinvy Stalking Horse APA and Bid Procedures. Time is of the essence in consummating the Zokinvy Sale Transaction. Accordingly, there is cause to lift the stays established by Bankruptcy Rules 6004 and 6006 with regards to the Zokinvy Sale Transaction and the assignment of the Designated Contracts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion Is Granted**. The Motion and the relief requested therein, and entry into and performance under the Amended Zokinvy Stalking Horse APA, is GRANTED and APPROVED, as set forth herein.

2. **Objections Overruled**. Except as stated otherwise herein, all objections to, or reservation of rights regarding, the relief requested in the Motion, the entry of this Zokinvy Sale Order, or the relief granted herein, including, without limitation, any objections to Cure Amounts or relating to the cure of any defaults under any of the Designated Contracts or to the assumption and assignment of any of the Designated Contracts to the Purchaser by the Debtors, that have not been withdrawn, waived, settled, or adjourned as provided in Paragraph 20 below or otherwise, or that have not otherwise been resolved pursuant to the terms hereof are hereby denied and overruled on the merits with prejudice. All Persons that failed to timely object, or withdrew their objections, to the Motion or the entry of this Zokinvy Sale Order are deemed to consent to the relief granted herein for all purposes, including, without limitation, pursuant to section 363(f)(2) of the Bankruptcy Code. No appeal, motion to reconsider, or similar pleading has been filed with respect to the Bid Procedures Order, and the Bid Procedures Order is a final order of this Court, has not been vacated, withdrawn, rescinded, or amended and remains in full force and effect.

3. **Notice**. Notice of the Motion and Zokinvy Sale Hearing was adequate, appropriate, fair, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006, the Bankruptcy Local Rules and the Bid Procedures Order, and as such no further or other notice is required.

4. **Approval and Authorization**. The sale of the Transferred Assets to the Purchaser on the terms and conditions contained in the Amended Zokinvy Stalking Horse APA and the Transaction Documents, including, without limitation, the Closing of the Zokinvy Sale Transaction as required by the Amended Zokinvy Stalking Horse APA, is hereby approved in all respects pursuant to sections 105(a), 363(b) and (f), and 365 of the Bankruptcy Code and Bankruptcy Rule 6004. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform all obligations under and make all payments required by the Amended Zokinvy Stalking Horse APA and the Transaction Documents as and when due thereunder without further order of this Court. The Debtors, the Purchaser, and each of their respective officers, employees, and agents are hereby authorized to (i) execute the Amended Zokinvy Stalking Horse APA and the Transaction Documents, including that certain *Amended Asset Purchase Agreement by and between Sentynl Therapeutics, Inc, as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated April 22, 2024*, attached hereto as **Exhibit 1** (the "Amended Zokinvy Stalking Horse APA"), and any prior execution of such agreements, documents, and instruments, including the Transaction Documents, is hereby ratified, (ii) perform all obligations under the Amended Zokinvy Stalking Horse APA and the Transaction Documents, to consummate each of the foregoing, including, without limitation, deeds, assignments, and other instruments of transfer, and to consummate the Zokinvy Sale Transaction, and any prior performance of such obligations or any prior consummation of such

Zokinvy Sale Transaction is hereby ratified, (iii) assume and assign the Designated Contracts to the Purchaser, and (iv) take all other and further actions as may be reasonably necessary to consummate and implement the Zokinvy Sale Transaction and to perform all obligations under the Amended Zokinvy Stalking Horse APA and the Transaction Documents and the consummation thereof, without any further corporate action or order of this Court. The Purchaser shall not be obligated to proceed with the Closing under the Amended Zokinvy Stalking Horse APA until all conditions precedent to its obligation to do so thereunder have been satisfied or waived.

5. **No Sub Rosa Plan**. The sale of the Transferred Assets, including, without limitation, the assignment of the Designated Contracts, pursuant to the Amended Zokinvy Stalking Horse APA outside a chapter 11 plan neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of the Debtors' subsequent chapter 11 plan. Neither the Amended Zokinvy Stalking Horse APA nor the Zokinvy Sale Transaction constitutes a sub rosa chapter 11 plan.

6. **Valid Transfer**. As of the Closing, the consummation of the Zokinvy Sale Transaction shall effect a legal, valid, and enforceable sale and transfer of the Transferred Assets to the Purchaser, and shall vest the Purchaser with all legal, equitable, and beneficial right, title, and interest in and to the Transferred Assets free and clear of all Interests of any kind or nature whatsoever. The Amended Zokinvy Stalking Horse APA and the Transaction Documents are valid and binding contracts between the Debtors and the Purchaser and shall be enforceable pursuant to their terms. The Amended Zokinvy Stalking Horse APA, the Transaction Documents, the Zokinvy Sale Transaction itself, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and

their respective Affiliates and subsidiaries and such parties' successors and assigns, the Debtors' estates, all creditors thereof (whether known or unknown), all holders of equity interests in any Debtor, holders of Interests in, against, or on all or any portion of the Transferred Assets, all non-Debtor parties to the Designated Contracts, the Purchaser and its respective successors and assigns, any chapter 11 trustee appointed in these chapter 11 cases or any chapter 7 trustee appointed upon a conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

7. **Free and Clear**. Except as expressly provided for in the Amended Zokinvy Stalking Horse APA or this Zokinvy Sale Order, pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Transferred Assets to the Purchaser and, upon the Closing, other than the Purchaser's assumption of the Assumed Liabilities and the Purchaser's obligations under the Amended Zokinvy Stalking Horse APA and the Designated Contracts, the Purchaser shall have and take title to and possession of the Transferred Assets free and clear of and shall have no obligation with respect to all Interests (other than Permitted Liens and the Assumed Liabilities) of any kind or nature whatsoever, including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities; de facto merger, continuation or continuity, or any similar theories under applicable state or federal law or otherwise. All holders of Interests fall within one or more of the subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests attach to the net proceeds ultimately received by the Debtors and attributable to the Transferred Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force, and effect, and in

the same order of priority that such Interests now have against the Transferred Assets or their proceeds as of Closing, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto, in addition to any limitations on the use of such proceeds pursuant to any provision of this Zokinvy Sale Order; *provided*, *however*, that setoff rights will be extinguished to the extent there is no longer mutuality of the parties after consummation of the Zokinvy Sale Transaction. This Zokinvy Sale Order: (a) is and shall be effective as a determination that other than Assumed Liabilities or as otherwise provided herein, upon the applicable Closing in accordance with the Amended Zokinvy Stalking Horse APA, all claims of any kind or nature whatsoever existing as to Transferred Assets, and any tax liability, prior to the applicable Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, with such Interests and liens attaching in order of priority to the proceeds of the Zokinvy Sale Transaction, and (b) is and shall be binding upon and shall authorize all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or unites, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Transferred Assets conveyed to the Purchaser. All recorded Interests against the Transferred Assets from their records, official and otherwise, shall be deemed stricken upon the Closing in accordance with the Amended Zokinvy Stalking Horse APA and the terms of this Zokinvy Sale Order. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtor may sell the Transferred

Assets free and clear of any liens, claims, and/or interests (other than Permitted Liens and the Assumed Liabilities).

8. The Prepetition Term Loan Secured Parties have, subject to the terms and conditions of this Zokinvy Sale Order, consented to the relief requested in the Motion with respect to the Zokinvy Sale Transaction. Those other holders of Interests or claims who did not object (or who ultimately withdrew their objections, if any) to the Zokinvy Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests or claims who did object that have an interest in the Transferred Assets fall within one or more of sections 363(f)(1), 363(f)(3), 363(f)(4), or 363(f)(5) of the Bankruptcy Code and are therefore adequately protected by having their Interests or claims that constitute interests in the Transferred Assets, if any, attach solely to the proceeds of the Zokinvy Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Zokinvy Sale Transaction, subject to any defenses of the Debtors.

9. As further adequate protection, the Prepetition Term Loan Agent, on behalf of itself and the other Prepetition Term Loan Secured Parties, shall receive at closing of the sale of the Zokinvy Assets (as defined in the Court's bid procedures order [Docket No. 94] (the "Bid Procedures Order"), the amount of $15 million from the net sale proceeds from the sale of the Zokinvy Assets (the "Adequate Protection Payment"). Additionally, as further adequate protection, the Debtors shall deposit the net proceeds from the sale of the Zokinvy Assets (less the Adequate Protection Payment) into a segregated bank account which account shall be subject to the liens in favor of the Prepetition Term Loan Secured Parties and shall not be used or

expended by the Debtors for any purpose, or otherwise disbursed or transferred, without further notice, hearing (if required), and order of this Court.

10. **Release of Interests**. Any and all Persons that have filed a financing statement, mortgage, mechanic's lien, *lis pendens*, or other document or agreement evidencing an Interest against or in the Transferred Assets shall deliver to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases, and/or any other similar documents necessary for the purpose of documenting all Interests that such Person has against or in the Transferred Assets. For any Person who has not delivered such termination statements to the Debtors prior to the Closing, then with respect to the holders of the Prepetition Liens, so long as the proceeds of the Zokinvy Sale Transaction shall have attached to the Prepetition Liens in the same order of priority as among such Prepetition Liens that existed prior to the Zokinvy Sale Transaction and with such Prepetition Liens retaining the same validity, force, and effect such Prepetition Liens had prior to the Zokinvy Sale Transaction, (i) the Debtors and/or the Purchaser are hereby authorized to execute and file such statements, instruments, releases, and/or other similar documents on behalf of such Person with respect to the Transferred Assets, *provided, however*, the Debtors and/or the Purchaser shall request written approval from the Prepetition Term Loan Agent (as defined in the Interim Cash Collateral Order) prior to executing or filing any document on behalf of the Prepetition Term Loan Secured Parties, (ii) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Zokinvy Sale Order that, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests of any kind or nature against or in the Transferred Assets, and (iii) the Purchaser may seek in this Court, or any other court of appropriate jurisdiction, to compel the appropriate parties to execute

termination statements, instruments of satisfaction, releases, and/or other similar documents with respect to all Interests that such Person has against or in the Transferred Assets. This Zokinvy Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Zokinvy Sale Order authorizing the sale and assignment of the Transferred Assets free and clear of Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Zokinvy Sale Order.

11. **Surrender of Transferred Assets**. All Persons that are presently or on the Closing Date may be in possession of some or all of the Transferred Assets are directed to surrender possession of such Transferred Assets to the Purchaser as of the Closing Date.

12. **Continuation of Existing Approvals**. The Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Transferred Assets (subject, in each case, to the terms of the Amended Zokinvy Stalking Horse APA), and all such licenses, permits, registrations, and governmental authorizations or any other approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date. All existing licenses or permits applicable to the business shall remain active, in place, and, as applicable, shall be renewed for the Purchaser's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the maximum extent permitted by section 525(a) of the Bankruptcy Code, no governmental unit (as defined in Bankruptcy Code § 101(27)) or any representative thereof may

revoke or suspend, or in any way challenge or fail to consent to any renewal of any permit or license relating to the operation of the Transferred Assets because of the filing or pendency of the Debtors' chapter 11 cases or the consummation of the Zokinvy Sale Transaction.

13. **Injunction**. All Persons are hereby prohibited and enjoined from taking any action that would adversely affect or interfere with, or that would be inconsistent with, the ability of the Debtors to sell and transfer the Transferred Assets to the Purchaser in accordance with the terms of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, or this Zokinvy Sale Order. Except as expressly permitted by the Amended Zokinvy Stalking Horse APA with respect to Permitted Liens and Assumed Liabilities or this Zokinvy Sale Order, all Persons (and their respective successors and assigns), including, without limitation, all holders of claims or Interests, lenders, debt security holders, governmental, tax and regulatory authorities, parties to executory contracts and unexpired leases, creditors, contract counterparties, customers, landlords, licensors, employees and former employees, litigation claimants, pension plans, labor unions, trade creditors, and other Persons holding Interests of any kind or nature whatsoever against or in the Debtors or the Transferred Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of the Debtors' chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the operation of the Debtors' businesses prior to the Closing, the Transferred Assets, or the transfer of the Transferred Assets to the Purchaser (including, without limitation, any rights or claims based on any successor, transferee, derivative, or vicarious liabilities), shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise

pursuing any Interests against the Purchaser, any of its Affiliates, officers, directors, members, partners, principals, or shareholders, any of their respective representatives, successors, designees, or assigns, the property of the foregoing, and the Transferred Assets transferred to the Purchaser or interests of the Debtors in such Transferred Assets (other than Permitted Liens and the Assumed Liabilities). Following the Closing, no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Debtors' former interests in the Transferred Assets, including, without limitation, taking any of the following actions with respect to or based on any Interest relating to the Transferred Assets or the transfer of the Transferred Assets to the Purchaser (other than Assumed Liabilities): (a) commencing or continuing in any manner any action or other proceeding against the Purchaser or its successors or assigns, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser or its successor, or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Interest against the Purchaser, its successors or assigns, assets (including the Transferred Assets), or properties; (d) asserting any Interest as a setoff, right of subrogation, or recoupment of any kind against any obligation due Purchaser or its successors or assigns: (e) commencing or continuing any action in any manner or place that does not comply or is inconsistent with the provisions of this Zokinvy Sale Order or the agreements or actions contemplated or taken in respect thereof; (f) interfering with, preventing, restricting, prohibiting, or otherwise enjoining the consummation of the Sale Transactions; or (g) enforcing any provision of any Designated Contract that prohibits, restricts or conditions, or which purports to terminate or modify, or permits a party other than the Debtors to terminate or modify, any such Designated Contract, or any right or obligation under such Designated Contract, because of the assumption and assignment of such Designated Contract by the Seller to

the Purchaser. For the avoidance of doubt, and without limiting the generality of the foregoing or the operability of any other relief obtained pursuant to this Zokinvy Sale Order, any provision in a Designated Contract, any other document, or any applicable law that prohibits, restricts, or otherwise impairs assignment of the Designated Contracts or the Purchaser's ability to utilize the Transferred Assets in Purchaser's business is hereby void and of no force and effect with respect to the Zokinvy Sale Transaction, including without limitation any provision that (a) terminates or modifies any right or obligation of the Purchaser under such Designated Contract; (b) cross-defaults to or from any other lease or executory contract that is not a Designated Contract; (c) contains operating covenants or "go-dark" provisions that would purport to terminate or modify any Designated Contract before assumption and assignment to the Purchaser; (d) requires a third party's consent prior to assignment of the Designated Contract to the Purchaser; or (e) restricts the Purchaser's use or assignment of any licenses or similar permits if transferred. Notwithstanding the foregoing or any other provision of this Zokinvy Sale Order or the Amended Zokinvy Stalking Horse APA to the contrary, solely with respect to post-Closing claims (and for the avoidance of doubt, other than with respect to pre-Closing claims or defaults or defaults and/or any claims that arise as a result of the Zokinvy Sale Transaction).

14. **General Assignment**. As of the Closing, this Zokinvy Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Transferred Assets and/or a bill of sale or assignment transferring indefeasible title and interest in the Transferred Assets, including the Designated Contracts, to the Purchaser. Each and every federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments

necessary and appropriate to consummate the Zokinvy Sale Transaction and to reflect the effectiveness of the Zokinvy Sale Transaction.

15. **No Successor, Transferee, or Similar Liability**. The Purchaser, its Affiliates, and any of their respective officers, directors, members, partners, principals, employees, independent contractors, and shareholders (or equivalent) and any of their respective representatives, agents, predecessors, successors, or assigns shall not be and shall not be deemed, as a result of the consummation of the Zokinvy Sale Transaction or otherwise, (i) to be a successor of, successor employer of, successor entity of, to have successorship obligations relating to, or to otherwise be deemed a successor, to the Debtors or the Debtors' estates, including with respect to any labor, employment, employee, personnel, or worker related matter, law, or agreement, including any collective bargaining agreement, works council agreement, union agreement, area labor agreement, multiemployer agreement, project labor agreement, construction agreement, contractor agreement, building agreement, regional agreement, work standards agreement, or other labor Contract (collectively, a "Collective Bargaining Agreement"), any employee benefit plans, any defined benefit pension plan, or any multiemployer plans, and the Purchaser and/or its Affiliates, as applicable, shall instead be, and be deemed to be, a new employer, including with respect to, among other things, any and all federal or state unemployment laws, including the Fair Labor Standards Act, any employee wage and hour law, privacy law, worker classification law, minimum wage law, overtime law, compensation or benefit law, meal or rest break law, time keeping law, employee record or documentation law, workers compensation law, unemployment compensation or tax law, or any other similar federal or state law (provided that the Purchaser shall pay employee-related liabilities solely to the extent expressly included in the Assumed Liabilities); (ii) to have any

common law successorship liability in relation to any Collective Bargaining Agreement, union, multiemployer organization, employee benefit plan, or multiemployer plan, including with respect to withdrawal liability or contribution obligations; (iii) to have, de facto or otherwise, merged or consolidated with or into any of the Debtors or any of the Debtors' estates, (iv) to be the successor of or a successor employer (as defined under COBRA and applicable regulations thereunder, common law, or otherwise) to the Debtors; (v) to have a common identity with the Debtors; (vi) to be an alter ego, joint employer, single employer, a continuation or substantial continuation, or to be holding itself out as a mere continuation, of any of the Debtors or their respective estates, or any enterprise of any of the Debtors, (vii) to be liable for any acts or omissions of the Seller or Debtors in connection with any Collective Bargaining Agreement, personnel, worker, employee, independent contractor, the conduct of the business, or the operation, funding, or administration of the employee benefit plans or multiemployer plans or arising under or related to the Transferred Assets other than as expressly set forth in the Amended Zokinvy Stalking Horse APA; (viii) to have any successor liability, transferee liability, derivative liability, vicarious liability, or any similar theories of any kind or character including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee or transferee liability, labor, product liability, employment, de facto merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, whether now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated; (ix) except as expressly set forth in the Amended Zokinvy Stalking Horse APA, to have any successor liability, transferee liability, derivative, liability, vicarious liability, or any similar theories of any kind or character including under any pending, threatened, or potential claim, litigation, arbitration, settlement, investigation,

fact circumstance, or event disclosed in the Transaction Documents; in each case whether known or unknown as of the Closing Date, whether now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated, except to the extent solely and expressly provided for in the Amended Zokinvy Stalking Horse APA. The Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their respective estates, or any of their predecessors or Affiliates. The so-called "bulk sales," "bulk transfer," or other similar laws shall be waived in all necessary jurisdictions, including those relating to Taxes. Except as expressly set forth in the Amended Zokinvy Stalking Horse APA with respect to Assumed Liabilities, the Purchaser, its Affiliates, officers, directors, members, partners, principals, and shareholders (or equivalent) and any of their respective representatives, successors, or assigns, or the Transferred Assets shall have no liability or responsibility whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly (w) any Interest against the Debtors or against an insider of the Debtors, (x) any Interest or Excluded Liabilities, (y) the Debtors except as expressly set forth in the Amended Zokinvy Stalking Horse APA and the Transaction Documents.

16. **Good Faith of the Purchaser**. The Zokinvy Sale Transaction specified in the Stalking Horse APA is undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the Zokinvy Sale Transaction, including, without limitation, the assumption and assignment of the Designated Contracts, unless such authorization and consummation of the sale are duly and properly stayed pending such appeal. The Purchaser is a good faith purchaser

within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

17. **No Avoidance of Stalking Horse APA**. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Amended Zokinvy Stalking Horse APA to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Amended Zokinvy Stalking Horse APA and the Zokinvy Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Amended Zokinvy Stalking Horse APA or the Zokinvy Sale Transaction. Specifically, the Purchaser has not acted in a collusive manner with any person or entity and the Zokinvy Purchase Price was not controlled by any agreement among bidders.

18. **Cure and Cure Dispute Resolution**. All defaults or other obligations of the Debtors under the Designated Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) as to which no objections were interposed and remain pending as of the date of this Zokinvy Sale Order are deemed satisfied by the payment of the proposed amount necessary, if any, to cure all monetary defaults, if any, under such Designated Contract in those amounts set forth in the Assignment Notice, which was served in compliance with the Bid Procedures Order, and which were satisfied, or shall be satisfied as soon as practicable. For all Designated Contracts for which an Assignment Notice was served, the Purchaser is authorized and directed to pay all Cure Amounts required to be paid by such parties upon the later of (a) the Closing, or (b) for any Designated Contract for which an objection has been filed to the assumption and assignment of such agreement or the Cure Amounts relating thereto and such

objection remains pending as of the date of this Zokinvy Sale Order (a "Cure Dispute"), within ten (10) business days of the resolution of such objection by settlement or order of this Court. Any non-Debtor counterparty to a Designated Contract that has not filed an objection on or before the deadline as set forth in the relevant Assignment Notice, or received an informal extension by the Debtors, shall be barred from objecting or asserting monetary or non-monetary defaults with respect to any such Designated Contract other than the applicable amount set forth in the Assignment Notice, and such Designated Contract shall be deemed assumed by the Debtors and assigned to the Purchaser on the Closing Date. To the extent that any Cure Dispute cannot be consensually resolved by the applicable parties, whether before or after the Closing Date, such Designated Contracts shall be assumed and assigned only upon satisfactory resolution of the Cure Dispute, to be determined in the Zokinvy Stalking Horse Purchaser's reasonable discretion. To the extent a Cure Dispute exists, the Designated Contracts may be conditionally assumed and assigned, subject to the consent of the Purchaser, pending a resolution of the Cure Dispute by agreement of the parties or after notice and a hearing. If a Cure Dispute is not satisfactorily resolved, the Purchaser may determine that such Designated Contracts should not be included on their schedule of Designated Contracts and should be rejected and not assigned, in which case the Purchaser will not be responsible for any Cure Amounts to the contract counterparty. The Debtors may then seek to reject the applicable contract or lease pursuant to Section 365 of the Bankruptcy Code.

19. **Determination of Cure Amounts**. Unless a counterparty to any Designated Contract has filed a timely Cure Objection which remains subject to an unresolved Cure Dispute as of the entry of this Zokinvy Sale Order, the Cure Amounts set forth on the Assignment Notices shall constitute findings of this Court and shall be final and binding on the counterparties

to the Designated Contracts and their successors and designees upon the Closing and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment, irrespective of the terms and conditions of such Designated Contracts. Each counterparty to a Designated Contract (other than a counterparty who filed a timely Cure Objection) shall be forever barred, estopped, and permanently enjoined from (i) asserting against the Purchaser or its property (including, without limitation, the Transferred Assets), any default arising prior to or existing as of the Closing, or any counterclaim, defense, recoupment, setoff, or any other Interest asserted or assertable against the Debtors (except as otherwise provided herein), and (ii) imposing or charging against the Purchaser or its Affiliates, any accelerations, assignment fees, increases, or any other fees or charges as a result of the Debtors' assumption and assignment to the Purchaser of the Designated Contracts in connection with the Zokinvy Sale Transaction approved by this Zokinvy Sale Order. To the extent a counterparty to any of the Designated Contracts received notice of the Debtors' proposed Cure Amount and fails to file a Cure Objection by the applicable deadline, such party shall be deemed to have (a) consented to the assumption and assignment of the applicable Designated Contract and the payment of the Cure Amount provided in the Assignment Notices and (b) waived any right to assert or collect any other cure amount or enforce any default that may arise or have arisen prior to or as of the Closing.

20. **Payment of Cure Amounts**. With respect to the Designated Contracts, to the extent there are any Cure Amounts unpaid as of the Closing Date, the Purchaser shall be obligated, and is hereby directed, to pay or cause to be paid such Cure Amounts, unless a Cure Amount is subject to an unresolved Cure Dispute, in which case the Purchaser shall pay the Cure Amount in accordance with Paragraph 18 above, or unless the Debtors are otherwise required

under applicable law to make such payments prior to the Closing, in which case the Debtors shall obtain both the Prepetition Term Loan Administrative Agent and the Purchaser's written consent before making such payments and Purchaser shall reimburse the Debtors for such amounts paid by the Debtors, provided that the Purchaser shall receive a credit to the Purchase Price for any such Cure Amounts. The Purchaser's promise to perform the obligations under the Designated Contracts arising after their assumption and assignment to the Purchaser shall constitute adequate assurance of future performance within the meaning of sections 365(b) and 365(f)(2) of the Bankruptcy Code. On the Closing Date, subject in all respects to the terms of this Zokinvy Sale Order, the Purchaser shall be deemed to be substituted for the Seller (and/or any other Debtor, to the extent it holds any rights, title, or interests in any of the Designated Contracts) as a party to the applicable Designated Contracts.

21. **Ipso Facto Clauses Ineffective**. Upon the Debtors' assumption and assignment of the Designated Contracts to the Purchaser pursuant to this Zokinvy Sale Order and the payment of the Cure Amounts in accordance with this Zokinvy Sale Order and the Amended Zokinvy Stalking Horse APA, no default shall exist under any Designated Contract and no counterparty to any such Designated Contract shall be permitted to declare or enforce a default by the Debtors or the Purchaser thereunder or otherwise take action against the Purchaser as a result of any Debtor's financial condition, change in control, bankruptcy, or failure to perform any of its obligations under the applicable Designated Contract. For the avoidance of doubt, and without limiting the generality of the foregoing or the operability of any other relief obtained pursuant to this Zokinvy Sale Order, any provision in a Designated Contract that prohibits or conditions, whether directly or indirectly, the assignment of such Designated Contract (including, without limitation, the granting of an Interest therein) or allows the counterparty

thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment shall be deemed an unenforceable anti-assignment provision that is void and of no force and effect with respect to the Zokinvy Sale Transaction as approved by this Zokinvy Sale Order. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Designated Contract shall not be a waiver of such terms or conditions or of the Debtors' or the Purchaser's right, as applicable, to enforce every term and condition of such Designated Contract.

22. **Binding Effect**. This Zokinvy Sale Order and the Amended Zokinvy Stalking Horse APA shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Transferred Assets. The terms and provisions of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, the Bid Procedures Order, and this Zokinvy Sale Order shall be binding in all respects upon the Debtors and their respective Affiliates and subsidiaries and such parties' successors and assigns, the Debtors' estates, all creditors thereof (whether known or unknown), all holders of equity interests in any Debtor, holders of Interests in, against, or on all or any portion of the Transferred Assets, all non-Debtor parties to the Designated Contracts, the Purchaser and its respective successors and assigns, and any and all third parties, notwithstanding any subsequent appointment of any trustee, examiners, "responsible persons" or other fiduciaries (collectively, the "Trustee") of the Debtors under any

chapter of the Bankruptcy Code, as to which Trustee such terms and provisions likewise shall be binding, and the Amended Zokinvy Stalking Horse APA (including the Designated Contracts) shall not be subject to rejection or avoidance under any circumstances.

23. **Release, Discharge, and Termination of Interests**. This Zokinvy Sale Order shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing prior to the Closing have been unconditionally released, discharged, and terminated solely as to the Transferred Assets (other than Permitted Liens and the Assumed Liabilities), and that the conveyances described herein have been effected.

24. **Collaboration and Supply Agreement.** For the avoidance of doubt, at the Closing, this Zokinvy Sale Order shall constitute approval of the assumption, assignment, and novation of that certain *Amended and Restated Collaboration and Supply Agreement*, dated as of February 29, 2024 (the "Collaboration and Supply Agreement") by and between Eiger BioPharmaceuticals, Inc. and the Progeria Research Foundation, Inc. ("PRF"), pursuant to Section 365 of the Bankruptcy Code and subject to the terms of the PRF Novation Agreement (as defined in the Amended Zokinvy Stalking Horse APA). The Collaboration and Supply Agreement is deemed valid and binding and in full force and effect. At the Closing, the Collaboration and Supply Agreement shall be assumed by the Debtors and, subject to the terms in the PRF Novation Agreement, shall be assigned to Purchaser and Purchaser shall take assignment from the Debtors of the Collaboration and Supply Agreement and it shall be deemed valid and binding on Purchaser. Notwithstanding anything to the contrary provided herein or in any cure notice, except as expressly set forth in the Amended Zokinvy Stalking Horse APA, the PRF Novation Agreement, or any of the other Transaction Documents, the assumption, assignment, and novation of the Collaboration and Supply Agreement shall not alter, impair,

modify, or otherwise affect any of the parties' respective rights and obligations under the Collaboration and Supply Agreement, whether legal, equitable or contractual. For the avoidance of doubt, Purchaser shall not and is not assuming, and shall not otherwise have, any liability or obligations under the Collaboration and Supply Agreement or with respect to PRF solely to the extent arising prior to the Closing.

25. That certain *Guaranty*, dated April 15, 2024, by and between Zydus Pharmaceuticals (USA) Inc. ("Zydus"), an affiliate of Purchaser, and PRF (the "Zydus Guaranty") is hereby approved and ratified. Following Closing, if it occurs, Purchaser and Zydus shall, subject to the terms and conditions of the Zydus Guaranty, be responsible for all post-Closing obligations, whether performance, financial, or otherwise, arising under or in respect of the Collaboration and Supply Agreement. To the extent anything contained in this Zokinvy Sale Order conflicts with a provision in the Zydus Guaranty, the Zydus Guaranty shall govern and control.

26. **No Material Modifications**. The Amended Zokinvy Stalking Horse APA and the Transaction Documents may be modified, amended, or supplemented by the Debtors and the Purchaser, in a writing signed by such parties, and in accordance with the terms thereof, without further order of this Court; *provided*, that (i) any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates or its creditors, and (ii) has been agreed to between the Debtors and the Purchaser (with such consent not to be unreasonably withheld) and approved by the Prepetition Term Loan Administrative Agent. Any material modification, amendment, or supplement to the Amended Zokinvy Stalking Horse APA and the Transaction Documents adversely affecting the Debtors' estates must be approved by order of this Court following a motion on notice to all interested parties.

27. **Subsequent Orders and Plan Provisions**. Nothing contained in any chapter 11 plan confirmed in the Debtors' chapter 11 cases or any subsequent order of this Court, including, without limitation, any order confirming any such chapter 11 plan, any order authorizing the sale of assets of the Debtors pursuant to any section of the Bankruptcy Code, and any order approving wind-down or dismissal of any Debtor's chapter 11 case or any subsequent chapter 7 case shall change, supersede, abrogate, nullify, restrict, or conflict with the provisions of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, or this Zokinvy Sale Order, or in any way prevent or interfere with the consummation or performance of the Zokinvy Sale Transaction.

28. **Failure to Specify Provisions**. The failure to specify or include any particular provisions of the Amended Zokinvy Stalking Horse APA or the Transaction Documents in this Zokinvy Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Amended Zokinvy Stalking Horse APA, the Transaction Documents, and the Zokinvy Sale Transaction be authorized and approved in their entirety.

29. **Automatic Stay**. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted solely to the extent necessary to (i) allow the Purchaser to deliver any notice provided for in the Amended Zokinvy Stalking Horse APA and the Transaction Documents, and (ii) allow the Purchaser to take any and all actions permitted under the Amended Zokinvy Stalking Horse APA and the Transaction Documents in accordance with the terms and conditions thereof. The automatic stay imposed by section 362 of the Bankruptcy Code shall be modified solely to the extent necessary to implement the preceding sentence, and this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

30. **Bankruptcy Rules Satisfied or Waived**. The requirements set forth in Bankruptcy Rules 6004 and 6006 have been satisfied or are otherwise deemed to be waived. As provided by Bankruptcy Rule 9014, the terms of this Zokinvy Sale Order shall be effective and enforceable immediately upon entry, and shall not be subject to stay provisions contained in Bankruptcy Rules 6004(h) and 6004(d). Time is of the essence in closing the Zokinvy Sale Transaction and the Debtors and the Purchaser intend to close the sale as soon as possible.

31. **Conflicts Between Sale Order and Stalking Horse APA**. To the extent anything contained in this Zokinvy Sale Order conflicts with a provision in the Amended Zokinvy Stalking Horse APA or Transaction Documents, this Zokinvy Sale Order shall govern and control. Notwithstanding the foregoing, nothing in this Zokinvy Sale Order shall modify or waive any closing conditions or termination rights in the Amended Zokinvy Stalking Horse APA, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

32. **Provisions Nonseverable and Mutually Dependent**. The provisions of this Zokinvy Sale Order, the Amended Zokinvy Stalking Horse APA, and the Transaction Documents are non-severable and mutually dependent.

33. **Retention of Jurisdiction**. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, the Bid Procedures Order, and this Zokinvy Sale Order, and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned to the Purchaser by the Debtors, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Zokinvy Sale Transaction. This Court retains jurisdiction to compel delivery of the Transferred Assets, to

protect the Purchaser and its assets, including the Transferred Assets, against any Interests or successor or transferee liability and to enter orders, as appropriate, pursuant to sections 105(a), 363, or 365 (or other applicable sections) of the Bankruptcy Code necessary to transfer the Transferred Assets and the Designated Contracts to the Purchaser. In the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter referenced in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

34. The Purchaser has standing to seek to enforce any terms of this Zokinvy Sale Order, the Bid Procedures Order, the Amended Zokinvy Stalking Horse APA, and the Transaction Documents in this Court or any other court with competent jurisdiction.

35. All time periods set forth in this Zokinvy Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

 # # # END OF ORDER # # #

Submitted By:

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Proposed Attorneys for the Debtors and Debtors in Possession

Exhibit 1

Amended Zokinvy Stalking Horse APA

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and between

SENTYNL THERAPEUTICS, INC., as Purchaser,

and

EIGER BIOPHARMACEUTICALS, INC., as Seller

Dated as of March 31, 2024

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SCHEDULES

[forthcoming]

EXHIBITS

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of March 31, 2024 (the "**Agreement Date**") is entered into by and between Sentynl Therapeutics, Inc., a Delaware Corporation ("**Purchaser**") and Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Seller**").

RECITALS

WHEREAS, on March 31, 2024 (the "**Petition Date**") the Seller and certain of its Affiliates (as defined below) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**"), thereby commencing chapter 11 cases (collectively, the "**Bankruptcy Cases**");

WHEREAS, the Seller is a debtor-in-possession under the Bankruptcy Code and manages its properties and assets pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Seller is engaged in the Business and owns, directly or indirectly, all of the Transferred Assets;

WHEREAS, the Seller desires to sell (or cause to be sold) to Purchaser, and Purchaser desires to purchase from the Seller, all of the Transferred Assets Free and Clear, and the Seller desires Purchaser to assume, and Purchaser desires to assume from the Seller, all of the Assumed Liabilities, in each case upon the terms and subject to the conditions hereof, pursuant to a Sale Order and Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, the Transactions contemplated by this Agreement are subject to approval by the Bankruptcy Court and will only be consummated pursuant, among other things, to the Sale Order to be entered in the Bankruptcy Cases; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser shall deposit (or cause to be deposited) an aggregate amount equal to the Deposit Escrow Amount into an escrow account (the "**Deposit Escrow Account**") to be established and maintained by Escrow Agent pursuant to the Escrow Agreement.

NOW, **THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1.
DEFINED TERMS

1.1 **Defined Terms**. The following terms shall have the following meanings in this Agreement:

"**Action**" means any action, proceeding, arbitration or litigation (whether civil, criminal or administrative) commenced, brought, conducted or heard by or before any Governmental Authority or arbitrator.

"**Affiliate**" of any particular Person means any other Person, directly or indirectly, controlling, controlled by, or under common control with, such particular Person. For the purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Agreement Date**" has the meaning set forth in the preamble.

"**Allocation Schedule**" has the meaning set forth in Section 2.11(a).

"**Alternate Transaction**" has the meaning set forth in Section 9.1(b).

"**Applicable Law**" means, with respect to any Person, any federal, provincial, state, local law, ordinance, principle of common law, code, regulation or statute applicable to such Person or such Person's subsidiaries or to any of their respective securities, assets, properties or businesses.

"**Asset Taxes**" means any Taxes with respect to the ownership or operation of the Transferred Assets other than (a) Taxes based on net or gross income, and (b) Transfer Taxes.

"**Assigned Contracts**" has the meaning set forth in Section 2.1(d).

"**Assumed Liabilities**" has the meaning set forth in Section 2.3.

"**Assumption Notice**" has the meaning set forth in Section 5.3(a).

"**Attorney-Client Information**" has the meaning set forth in Section 10.17.

"**Auction**" has the meaning set forth in Section 5.2(i).

"**Avoidance Actions**" means any and all avoidance, recovery, subordination, or other claims, actions, rights, or remedies that may be brought by or on behalf of the Seller or its estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including, but not limited to, actions or remedies under sections 510, 542, 543, 544, 545, and 547 through and including 553 of the Bankruptcy Code.

"**Back-Up Bid**" means the second highest or otherwise best bid if the successful bidder fails to consummate its bid in accordance with the Bid Procedures.

"**Back-up Termination Date**" means the first to occur of (a) thirty (30) days after the entry of the Sale Order, (b) consummation of the Transactions with the winning bidder at the Auction, (c) Purchaser's receipt of notice from the Seller of the release by the Seller of Purchaser's obligations under Section 5.2(i) and (d) March 13, 2024.

"**Bankruptcy Cases**" has the meaning set forth in the Recitals.

"**Bankruptcy Code**" has the meaning set forth in the Recitals.

"**Bankruptcy Court**" has the meaning set forth in the Recitals.

"**Base Price**" means $26,000,000 provided, however, that the Base Price shall be reduced by the amount of $214,285.71 *per diem* for each calendar day that the Closing occurs between April 24, 2024, and May 31, 2024; provided, further, that, notwithstanding the reduction, the Base Price shall not be less than $20,000,000 if Closing occurs no later than May 31, 2024.

"**Bid Procedures**" means those certain bidding procedures for the Sale of the Seller's assets approved by the Bankruptcy Court.

"**Bid Procedures Motion**" means a motion filed by Seller with the Bankruptcy Court to seek approval of the Bid Procedures.

"**Bid Procedures Order**" means an Order of the Bankruptcy Court approving the Bid Procedures.

"**Bill of Sale and Assignment and Assumption Agreement**" means the bill of sale and assignment and assumption agreement, dated as of the Closing Date, by and between the Seller and Purchaser, substantially in the form attached hereto as Exhibit B.

"**Business**" means the business as presently conducted of the Seller Group related to the development, manufacture, sale, maintenance, and commercialization of Zokinvy in the Progeria Field (as such term is defined in the Sublicense Agreement) in the Territory.

"**Business Day**" means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in Seattle, Washington are authorized or required to be closed.

"**Business Intellectual Property**" means all Owned Intellectual Property Assets together with all other Intellectual Property used in, held for use in, or necessary for the conduct of the Business.

"**Buyer's FDA Transfer Letters**" means the letter to FDA in form and substance reasonably agreed by Purchaser and the Seller, accepting the transfer of rights to the NDA issued by FDA for Zokinvy in the Progeria Field from Seller.

"**Closing**" has the meaning set forth in Section 2.7.

"**Closing Date**" has the meaning set forth in Section 2.7.

"**Code**" means the Internal Revenue Code of 1986, as amended, or any successor law.

"**Competing Bid**" has the meaning set forth in Section 5.1.

"**Confidentiality Agreement**" means that certain Confidentiality Agreement, dated as of July 26, 2023, by and between the Seller and Purchaser.

"**Consent**" means any consent, approval, authorization, waiver or license.

"**Contract**" means any written agreement, mortgage, indenture, lease (whether for real or personal property), contract or subcontract.

"**Contracting Parties**" has the meaning set forth in Section 10.15

"**Cure Costs**" means any and all costs, expenses or actions that Purchaser is required to pay or perform to assume any of the Assigned Contracts pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code.

"**Deposit Escrow Account**" has the meaning set forth in the Recitals.

"**Deposit Escrow Amount**" means $1,300,000.

"**Designated Contracts**" has the meaning set forth in Section 5.3(b).

"**Designation Deadline**" has the meaning set forth in Section 5.3(b).

"**Determined Cure Costs**" means all Cure Costs for Assigned Contracts, as determined by a final order of the Bankruptcy Court.

"**Enforceability Exceptions**" means applicable bankruptcy, insolvency, reorganization, moratorium, receivership and similar Applicable Laws affecting the enforcement of creditors' rights generally and general equitable principles.

"**Environmental Laws**" means any Applicable Law relating to pollution or protection of the environment or worker health and safety (in respect of exposure to Hazardous Substances), including such Applicable Laws relating to the use, treatment, storage, disposal, Release or transportation of Hazardous Substances.

"**Escrow Agent**" means Kurtzman Carson Consultants LLC.

"**Escrow Agreement**" means the escrow agreement, dated as of the Agreement Date, by and among Purchaser, the Seller and the Escrow Agent in substantially the form attached hereto as Exhibit A.

"**Excluded Assets**" has the meaning set forth in Section 2.2.

"**Excluded Books and Records**" means the following originals and copies of those books and records, documents, data and information (in whatever form maintained) of the Seller Group and the Business: (i) all corporate minute books (and other similar corporate records) and stock records of the Seller Group, (ii) any books and records relating to the Excluded Assets or (iii) any books, records or other materials that any member of the Seller Group (x) is required by Applicable Law to retain (copies of which, to the extent permitted by Applicable Law, will be made available to Purchaser upon Purchaser's reasonable request), (y) reasonably believes is necessary to enable it to prepare and/or file Tax Returns (copies of which will be made available to Purchaser upon Purchaser's reasonable request) or (z) are prohibited by Applicable Law from delivering to Purchaser.

"**Excluded Contracts**" has the meaning set forth in Section 2.5.

"**Excluded Liabilities**" has the meaning set forth in Section 2.4.

"**Expense Reimbursement**" means the reimbursement by the Seller of Purchaser's actual and reasonable out-of-pocket legal, accounting, and other third-party advisory or service costs and expenses incurred in connection with the Transactions, as evidenced by invoice(s) provided to the Seller, on the terms and subject to the conditions of Section 9.3.

"**FDA**" means the United States Food and Drug Administration.

"**Final Order**" means an Order, judgment or other decree of the Bankruptcy Court or any other Governmental Authority of competent jurisdiction that has not been reversed, vacated, modified or amended, is not stayed and remains in full force and effect; provided, that such Order shall be considered a Final Order only after the time period for third parties seeking appeal has expired without the filing of any appeal or motion for reconsideration.

"**Free and Clear**" means free and clear of all Liens (other than the Permitted Liens and the Assumed Liabilities) to the maximum extent permitted by Section 363(f) of the Bankruptcy Code.

"**GAAP**" means generally accepted accounting principles in the United States as of the Agreement Date.

"**Governmental Authority**" means any domestic or foreign national, provincial, state, multi-state or municipal or other local government, any subdivision, agency, commission or authority thereof, any court (including the Bankruptcy Court) or tribunal or any quasi-governmental or private body exercising any regulatory or taxing authority thereunder (including the IRS and the FDA).

"**Hazardous Substances**" means any substances, materials or wastes which are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "pollutants" or "contaminants" under any Environmental Law, including any petroleum or refined petroleum products, radioactive materials, friable asbestos or polychlorinated biphenyls.

"**Intellectual Property**" means any and all intellectual property and proprietary rights in any jurisdiction throughout the world, including rights arising from the following: (i) patents and patent applications, design rights, industrial design registrations and applications therefor, divisions, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, reexaminations, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing; (ii) trademarks (whether registered, unregistered or applied for), service marks, trade dress, service names, trade names, brand names, product names, slogans, logos, business names, corporate names, and other source or business identifiers, all registrations and applications for registration thereof, and, in each case, together with all of the goodwill associated therewith; (iii) works of authorship, copyrights and all registrations and applications for registration thereof; (iv) trade secrets and know-how; (v) rights in formulae, methods, techniques, processes, assembly procedures, software, software code (in any form, including source code and executable or object code), subroutines, test results, test vectors, user interfaces, protocols, schematics, specifications, drawings, prototypes, molds and models, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing), and (vi) social media accounts, social media identifiers, internet domain name registrations.

"**Intellectual Property Assignment Agreement**" means the assignment agreement assigning the Intellectual Property to Purchaser, in a form reasonably acceptable to Purchaser and the Seller and executed and delivered at Closing.

"**Intellectual Property Registrations**" means, as to any Owned Intellectual Property Assets, any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including domain names, registered trademarks and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"**IRS**" means the United States Internal Revenue Service.

"**Knowledge**" means (a) with regard to the Seller, the actual knowledge, without any implication of verification or investigation concerning such knowledge, of Seller's chief executive officer, chief financial officer, and general counsel, in each case as of the Agreement Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate) and (b) with regard to Purchaser, the actual knowledge, without any implication of verification or investigation concerning such knowledge, of Purchaser's chief executive officer as of the Agreement Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate).

"**Law Firm**" means Sidley Austin LLP and its successors.

"**Liabilities**" shall mean debts, liabilities, duties, obligations or commitments of any nature whatsoever, whether direct or indirect, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, whenever or however arising (including whether arising out of any Contract or in a tort claim based on negligence or strict liability).

"**Lien**" means all forms of lien (including mechanic's, contractor's or other similar liens arising under or relating to the provision of goods or services on or to any Transferred Assets, and liens arising under the Bankruptcy Code), encumbrance, defect or irregularity in title, pledge, mortgage, deed of trust, deed to secure debt, security interest, charge, transfer restriction or similar agreement or encumbrance, including any dedication under any gathering, transportation, treating, processing, fractionating, purchase, sale or similar agreements, or any other rights granted or consensual as or against any Transferred Assets including but not limited to easements, encroachments, rights of first refusal, options, or any other interest or right in property that constitutes a lien or interest within the definition or adjudication of such terms under Section 101(37) of the Bankruptcy Code.

"**Material Adverse Effect**" means a material adverse effect on the business, financial condition or results of operations of the Business (including the Transferred Assets and Assumed Liabilities) taken as a whole; provided, however, that none of the following shall be deemed (either alone or in combination) to constitute, and none of the following shall be taken into account in determining whether there has been or may be, a Material Adverse Effect: (a) any change in, or effects arising from or relating to, general business or economic conditions affecting any industry in which the Business operates; (b) any change in, or effects arising from or relating to, the United States or foreign economies, or securities, banking or financial markets in general, or other general business, banking, financial or economic conditions (including (i) any disruption in any of the foregoing markets, (ii) debt defaults or other restructuring events of any country with respect to which bondholders take a discount to the debt of any country or any increases in the interest rates for any country's debt, (iii) any change in currency exchange rates, (iv) any decline or rise in the price of any security, commodity, contract or index and (v) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (c) any change from, or effects arising from or relating to, the occurrence, escalation or material worsening of any act of God or other calamity, natural disaster, pandemic or disease, outbreak, hostility, act of war, sabotage, cyber-attack or terrorism or military action; (d) any action taken by Purchaser or its Affiliates with respect to the Transactions or with respect to the Business; (e) any action taken, or failed to be taken, by the Seller at the request of or with the consent of Purchaser or otherwise in compliance with the terms of this Agreement or any change from, or effects arising from or relating to, Purchaser's failure to consent to any action restricted by Section 6.1; (f) any change in, or effects arising from or relating to changes in, Applicable Law or accounting rules (including GAAP) or any interpretation thereof; (g) the failure of the Business to meet any of its projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or representatives); (h) national or international political, labor or social conditions; (i) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement and the Transactions or the identity of the parties to this Agreement; (j) the sale of any assets other than the Transferred Assets to any third parties by a member of the Seller Group or any of their Affiliates; (k) any effect arising or resulting from or related to the filing of the Bankruptcy Cases; (l) any action required to be taken under any Applicable Law or Order or any existing Contract by which any member of the Seller Group's (or any of their properties) are bound; (m) seasonal changes in the results of operations of the Seller Group; (n) any epidemic, pandemic, outbreak of disease or other public health emergency (including COVID-19) or any escalation or worsening of any such conditions or (o) any objections made in the Bankruptcy Court to this Agreement, the

Transactions, the Sale Order or the reorganization, any orders of the Bankruptcy Court and any actions or omissions of the Seller in compliance with any order of the Bankruptcy Court and the assumption or rejection of any Assigned Contract; except in the cause of clauses (a) through (c), (h) and (n), to the extent such conditions, events, changes, crises and disasters, as applicable, do not have a material and disproportionate impact on the Business, taken as a whole, compared to other industry participants (in which case, only the extent of such disproportionate effect shall be taken into account when determining whether there is a Material Adverse Effect).

"Merck" means Merck Sharp & Dohme Corp. (successor-in-interest of Schering Corporation).

"Merck Side Letter" means the letter agreement with Merck substantially in the form attached hereto as Exhibit C duly executed by each of Merck and the Seller.

"**New Drug Application**" or "**NDA**" means new drug application as approved by the FDA.

"**Non-Transferred Asset**" has the meaning set forth in Section 2.6(a).

"**Nonparty Affiliates**" has the meaning set forth in Section 10.15.

"**Open Source Software**" means any software that is licensed pursuant to a license approved by the Open Source Initiative and listed at http://www.opensource.org/licenses/alphabetical or that is considered "free" or "open source software" by the Free Software Foundation.

"**Order**" means any award, decision, injunction, judgment, ruling or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

"**Organizational Documents**" means (a) the articles or certificates of incorporation and the by-laws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the operating or limited liability company agreement and the certificate of formation of a limited liability company, (e) any charter, joint venture agreement or similar document adopted or filed in connection with the creation, formation or organization of a Person not described in clauses (a) through (d), and (f) any amendment to or equivalent of any of the foregoing.

"**Outside Date**" has the meaning set forth in Section 9.1(i).

"**Owned Intellectual Property Assets**" means the Intellectual Property owned or purported to be owned by any of member of the Seller Group that is used in, held for use in, or related to, the conduct of the Business as currently conducted or proposed to be conducted.

"**Permit**" means all permits, authorizations, certificates, franchises, consents and other approvals from any Governmental Authority.

"**Permitted Liens**" means (a) Liens for Taxes, assessments or other governmental charges not yet due and payable or being contested in good faith by appropriate proceedings as set forth on Schedule 1.1(a); (b) mechanics', carriers', workers', repairers' and other similar Liens arising or incurred in the ordinary course of business for obligations that are not overdue or are being contested in good faith by appropriate proceedings; (c) zoning, entitlement and building regulations and land use restrictions; (d) purchase money Liens and Liens securing rental payments under capital lease arrangements; (e) Liens arising under leases of property or equipment in favor of the owner thereof; (f) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (g) deposits to secure the performance of bids, Contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (h) licenses of Intellectual Property granted in the ordinary course of business; (i) [reserved]; (j) Liens arising under or created by this Agreement or any of the Related Documents; (k) Liens arising in the ordinary course of business which would not reasonably be expected to have a Material Adverse Effect; and (l) Liens set forth on Schedule 1.1(b).

"**Person**" means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or any other entity or Governmental Authority.

"**Personal Information**" means any information in the possession or control of the Seller Group (solely as related to the Business) about an identifiable individual other than the name, title or business address, business email address or telephone number of any employee of the Seller Group.

"**Petition Date**" has the meaning set forth in the Recitals.

"PRF" means the Progeria Research Foundation, Inc.

"PRF Novation Agreement" means the Novation and Assignment Agreement substantially in the form attached hereto as Exhibit D pursuant to which that certain Amended and Restated Collaboration and Supply Agreement, dated as of February 29, 2024, by and between Seller and PRF will be assigned and novated to Purchaser simultaneously with Closing, duly executed by each of the Seller and PRF.

"**Pre-Closing Tax Period**" means any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period through the Closing Date.

"Progeria Field" has the meaning set forth in the Sublicense Agreement.

"**Public Health Measures**" means any closures, "shelter-in-place," "stay at home," workforce reduction, social distancing, shut down, closure, curfew or other restrictions or any other Applicable Law, Orders, directives, guidelines or recommendations issued by any Governmental Authority, the Centers for Disease Control and Prevention, the World Health Organization, or any industry group in connection with COVID-19 or any other epidemic, pandemic, or outbreak of disease, or in connection with or in response to any other public health conditions.

"**Purchase Price**" means the Base Price *less* the aggregate amount of Determined Cure Costs.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Group Members**" has the meaning set forth in Section 10.17.

"**Purchaser Releasing Party**" has the meaning set forth in Section 10.16(b).

"**Purchaser Schedules**" has the meaning set forth in ARTICLE 4.

"**Related Claims**" means all claims or causes of action (whether in contract or tort, in law or in equity, or granted by statute or otherwise) that may be based upon, arise out of or relate to this Agreement, the Related Documents and any other document or instrument delivered pursuant to this Agreement or the Related Documents, or the negotiation, execution, termination, validity, interpretation, construction, enforcement, performance or nonperformance of this Agreement or the Related Documents or otherwise arising from the Transactions or the relationship between the parties (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with, or as an inducement to enter into, this Agreement or the Related Documents).

"**Related Documents**" means the Escrow Agreement, the Bill of Sale and Assignment and Assumption Agreement, Intellectual Property Assignment Agreement, Sublicense Agreement, Merck Side Letter, and PRF Novation Agreement; provided, however, that the Escrow Agreement. the Bill of Sale and Assignment and Assumption Agreement, Intellectual Property Assignment Agreement, Sublicense Agreement, Merck Side Letter Agreement, and PRF Novation Agreement shall not be a Related Document solely for purposes of applying the provisions in ARTICLE 10 to the extent, and only to the extent, that any such document expressly conflicts with ARTICLE 10.

"**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Substances.

"**Sale Motion**" means the motion of the Seller seeking entry of the Sale Order approving the terms herein, to be filed on or about March 31, 2024, in the Bankruptcy Cases.

"**Sale Order**" means an Order of the Bankruptcy Court issued pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code in form and substance acceptable to Purchaser and the Seller, in each party's commercially reasonable discretion, approving this Agreement and all of the terms and conditions hereof and approving and authorizing the Seller to consummate the Transactions contemplated hereby Free and Clear and containing a finding that Purchaser has acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code.

"**Schedules**" has the meaning set forth in ARTICLE 3.

"**Seller**" has the meaning set forth in the preamble.

"**Seller Group**" means the Seller and each of its Affiliates.

"**Seller Group Members**" has the meaning set forth in Section 10.17.

"**Seller Group Taxes**" means any (i) Liability of Seller Group for Taxes, (ii) any Liability for Asset Taxes attributable to any Pre-Closing Tax Period, and (iii) any Liability of Seller Group for the unpaid Taxes of any Person under Treasury Regulation §1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.

"Seller Permits" has the meaning set forth in Section 3.5.

"**Seller Releasing Party**" has the meaning set forth in Section 10.16(a)

"**Solvent**" when used with respect to any Person, means that, as of any date of determination, (a) the fair salable value (determined on a going concern basis) of its assets and property will, as of such date, exceed the amounts required to pay its debts as they become absolute and mature, as of such date, (b) such Person will have adequate capital to carry on its business and (c) such Person will be able to pay its debts as they become absolute and mature, in the ordinary course of business, taking into account the timing of and amounts of cash to be received by it and the timing of and amounts of cash to be payable on or in respect of its indebtedness.

"Sublicense Agreement" means the Sublicense Agreement, dated as of the Closing Date, by and among Purchaser and the Seller in substantially the form attached hereto as Exhibit E.

"Straddle Period" means any taxable year or other taxable period beginning on or before and ending after the Closing Date.

"**Tax**" means any tax of any kind whatsoever (including any income tax, franchise tax, branch profits tax, capital gains tax, value-added tax, unclaimed property, escheat, sales tax, use tax, property tax, transfer tax, payroll tax, social security tax or withholding tax), and any related fine, penalty, interest, or addition to tax with respect thereto, imposed, assessed or collected by or under the authority of any Governmental Authority.

"**Tax Return**" means any return (including any information return), report, statement, schedule, notice, form, or other document or information (whether in tangible, electronic or other form), including any amendments, schedules attachments, supplements, appendices and exhibits thereto, filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection, or payment, of any Tax.

"**Technology**" means algorithms, applied programming interfaces, apparatus, designs, drawings, data collections, diagrams, systems, procedures, processes, methods, methodologies, models, formulas, inventions (whether or not patentable), discoveries, improvements, know-how, methods, network configurations and architectures, processes, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, tools, user interfaces, technical engineering

and manufacturing information and materials including engineering plans and bills of materials, web sites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries).

"**Termination Fee**" means a fee equal to three percent (3.0%) of the initially proposed Base Price in the amount of $26,000,000 *less* the aggregate reduction in the Base Price resulting from the $214,285.71 *per diem* deduction for each calendar day that the Closing occurs after April 25, 2024.

"**Territory**" means the entire world.

"**Transactions**" means the transactions contemplated by this Agreement and the Related Documents.

"**Transfer Taxes**" has the meaning set forth in Section 2.10.

"**Transferred Assets**" has the meaning set forth in Section 2.1.

"**Used in the Business**" has the meaning set forth in Section 2.1.

"Zokinvy" means that certain commercially available, capsule formulation of lonafarnib as referenced by NDA # N213969.

1.2 **Other Definitional and Interpretive Matters**.

(a) Unless otherwise expressly provided, for purposes of this Agreement and the Related Documents, the following rules of interpretation shall apply:

(i) Calculation of Time Period. All references to a day or days shall be deemed to refer to a calendar day or days, as applicable, unless otherwise specifically provided. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference to $ shall mean U.S. dollars, which is the currency used for all purposes in this Agreement and the Related Documents. The specification of any dollar amount in the representations and warranties or otherwise in this Agreement, the Related Documents or the Schedules is not intended and shall not be deemed to be an admission or acknowledgement of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the parties hereto to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement, the Related Documents or the Schedules.

(iii) Exhibits/Schedules. The Exhibits and Schedules to this Agreement are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Disclosure of any item on any Schedule shall not constitute an admission or indication that any such item is required to be disclosed, or that such item or matter is material or has resulted in or will result in a Material Adverse Effect or that the included items or actions are not in the ordinary course of business. No disclosure on a Schedule relating to a possible breach or violation of any Contract, Applicable Law or Order shall be construed as an admission or indication that a breach or violation exists or has actually occurred. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a table of contents, the division of this Agreement or Related Documents into articles, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement or Related Document, as applicable. Unless otherwise specified, all references in this Agreement to any "Section" or other subdivision are to the corresponding section or subdivision of this Agreement, and all references in a Related Document to any "Section" or other subdivision are to the corresponding section or subdivision of such Related Document.

(vi) Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" that are used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. Uses of such words in the Related Documents shall refer to such Related Document as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Or. The word "or" shall be construed in the inclusive sense of "and/or" unless otherwise specified.

(viii) Including. The word "including" or any variation thereof means (unless the context of its usage otherwise requires) "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(ix) Successors. A reference to any party to this Agreement, any Related Document or any other agreement or document shall include such party's successors and permitted assigns.

(x) Legislation. A reference to any legislation or to any provision of any legislation shall include any amendment thereto, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(xi) Reflected On or Set Forth In. An item arising with respect to a specific representation or warranty shall be deemed to be "reflected on" or "set forth in" a balance sheet or financial statement, to the extent any such phrase appears in such representation or warranty, if (a) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement that relates to the subject matter of such representation, (b) such item is otherwise specifically set forth on the balance sheet or financial statement or (c) such item is set forth in the notes to the balance sheet or financial statement.

(xii) Made Available. Any reference in this Agreement to "made available" means a document or other item of information that was provided or made available to Purchaser or its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions.

(b) All representations and warranties set forth in this Agreement or the Related Documents are contractual in nature only and subject to the sole and exclusive remedies set forth herein. No Person is asserting the truth of any representation and warranty set forth in this Agreement or the Related Documents; rather, the parties have agreed that should any representations and warranties of any party prove untrue, the other parties shall have the specific rights and remedies herein specified as the exclusive remedy therefor, but that no other rights, remedies or causes of action (whether in law or in equity or whether in contract or in tort or otherwise) are permitted to any party hereto as a result of the untruth of any such representation and warranty. The phrase "to Seller's Knowledge" and phrases of similar import or effect are used herein to qualify and limit the scope of any representation or warranty in which they appear and are not affirmations of any Person's "superior knowledge" that the representation or warranty in which they are used is true.

(c) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the Related Documents and, in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Related Documents shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement and the Related Documents. The parties hereto agree that changes from earlier drafts to the final version of this Agreement do not necessarily imply that the party agreeing to such change is agreeing to a change in meaning (as the party agreeing to such change may believe the change is stylistic and non-substantive); consequently, no presumption should exist by virtue of a change from a prior draft.

ARTICLE 2.
THE PURCHASE AND SALE; CLOSING

2.1 **Purchase and Sale**. Upon the terms and subject to the conditions set forth in this Agreement, the Sublicense Agreement, and the Sale Order, at the Closing, in exchange for an aggregate payment from Purchaser to the Seller equal to the Purchase Price, Purchaser shall purchase, assume and accept from the Seller, and the Seller shall sell, transfer, assign, convey and deliver (or shall cause the sale, transfer, assignment, conveyance and delivery) to Purchaser, Free and Clear (except for Permitted Liens), all of the rights, title and interests in, to and under the following assets and interests used in the Business ("**Used in the Business**") as the same shall exist on the Closing Date (collectively, the "**Transferred Assets**"):

(a) the Transferred Inventory (as such term is defined in the Sublicense Agreement), the sale, transfer, assignment, conveyance and delivery of which are effected through the Sublicense Agreement (or the other transfer instruments contemplated therein) and subject to the terms and conditions thereof;

(b) the Zokinvy Trademarks and Domain Names (as such terms are defined in the Sublicense Agreement), the sale, transfer, assignment, conveyance and delivery of which are effected through the Sublicense Agreement (or the other transfer instruments contemplated therein) and subject to the terms and conditions thereof;

(c) the Transferred Regulatory Information (as such term is defined in the Sublicense Agreement), the sale, transfer, assignment, conveyance and delivery of which are effected through the Sublicense Agreement (or the other transfer instruments contemplated therein) and subject to the terms and conditions thereof;

(d) (i) all Contracts that are listed on Schedule 3.6 to the Sublicense Agreement (the sale, transfer, assignment, conveyance and delivery of which are effected through the Sublicense Agreement (or the other transfer instruments contemplated therein) and subject to the terms and conditions thereof), excluding Contracts that expire or are terminated prior to the Closing, and (ii) all Designated Contracts that Purchaser elects to assume pursuant to Section 5.3(b) ((i) and (ii), collectively, the "**Assigned Contracts**"); and

(e) the Business Books and Records (as such term is defined in the Sublicense Agreement); provided, however, that the Seller Group shall be entitled to retain copies of any such materials as provided in the Sublicense Agreement;

(f) all rights to receive mail and other correspondences and communications (including electronic mail) addressed to Seller or any other member of the Seller Group relating solely to Zokinvy in the Progeria Field (including any such mail and other correspondence and communications (including electronic mail) from the FDA or any other Governmental Authority, customers, advertisers, suppliers, distributors, agents and others and payments with respect to Zokinvy in the Progeria Field);

(g) all of the Seller Group's rights, claims or causes of action against third parties relating to the assets, properties, business or operations of the Seller Group with respect to the Business, the Transferred Assets and the Assumed Liabilities (including all guaranties,

warranties, indemnities and similar rights in favor of the Seller Group or any their Affiliates to the extent solely related to the Transferred Assets or the Assumed Liabilities), in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date, except for such rights, claims and causes of related to the Excluded Assets or Excluded Liabilities;

(h) any other of Seller's assets and/or rights contemplated expressly to be transferred to Purchaser pursuant to the terms and conditions of the Sublicense Agreement; and

(i) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, choses in action, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against third parties, rights of setoff and rights of recoupment, in each case, to the extent used in or held for use for the Transferred Assets listed in clauses (a) through (h) above or the Assumed Liabilities.

2.2 **Excluded Assets**. Notwithstanding the provisions of Section 2.1 or anything to the contrary herein, any and all assets, rights and properties of the Seller Group that are not specifically identified in Section 2.1 as Transferred Assets, including the following (collectively, the "**Excluded Assets**"), shall be retained by the Seller Group, and Purchaser and its designees shall acquire no right, title or interest in the Excluded Assets in connection with the Transaction:

(a) all (i) cash and cash equivalents, wherever located, including bank balances and bank accounts or safe deposit boxes, monies in the possession of any banks, savings and loans or trust companies and similar cash items, (ii) escrow monies and deposits in the possession of landlords and utility companies, and (iii) investment securities and other short- and medium-term investments;

(b) all records, documents or other information exclusively relating to current or former employees of the Seller Group that are not hired by Purchaser, and any materials to the extent containing information about any employee, disclosure of which would violate Applicable Law or such employee's reasonable expectation of privacy;

(c) any interest of the Seller Group under this Agreement or the Related Documents, including the right to receive the Purchase Price and to enforce the Seller's rights and remedies thereunder;

(d) all Excluded Contracts (including all prepaid assets relating to the Excluded Contracts), other than the Assigned Contracts, to which any member of the Seller Group or any of their respective Affiliates is a party;

(e) any (i) Attorney-Client Information arising from communications prior to the Closing Date between a member of the Seller Group (including any one or more officers, directors or stockholders of such Seller Group member), on the one hand, and its counsel, on the other hand, and (ii) claims under any director and officer, errors and omissions, fiduciary and commercial crime insurance policies; and

(f) any rights of the Seller Group to Tax refunds (or credits for overpayment of Taxes in lieu of a refund) attributable to any Pre-Closing Tax Period;

(g) all Permits (including applications therefor and any trade or import/export Permits) that (i) are not materially related to the Business or (ii) are not transferable to Purchaser under Applicable Law;

(h) the Excluded Books and Records;

(i) any assets not otherwise designated as Transferred Assets or from time to time designated by the parties hereto as Excluded Assets;

(j) all accounts receivable, intercompany obligations and other amounts receivable by the Seller Group;

(k) the Avoidance Actions;

(l) all of the Seller Group's rights, claims or causes of action against third parties relating to the assets, properties, business or operations of the Seller Group (including all guaranties, warranties, indemnities and similar rights in favor of the Sellers Group or any of their Affiliates) to the extent arising under the Bankruptcy Code or relating to any of the Excluded Assets or Excluded Liabilities, in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date; and

(m) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against third parties, rights of setoff and rights of recoupment, in each case, to the extent exclusively related to or exclusively used in or held for use for the Excluded Assets listed in clauses (a) through (l) above.

Notwithstanding anything to the contrary contained in this Agreement or any of the other Related Documents, Purchaser acknowledges and agrees that all of the following are also Excluded Assets, and all right, title and interest in and to all Excluded Assets shall be retained by the Seller Group and shall remain the property of the Seller Group (and shall expressly be excluded from the sale, transfer, assignment and conveyance to Purchaser hereunder), and neither Purchaser nor any of its Affiliates shall have any interest therein: (x) all records and reports prepared or received by the Seller Group or any of their Affiliates in connection with the sale of the Business and the Transactions, including all analyses relating to the Business or Purchaser so prepared or received; and (y) all confidentiality agreements with prospective purchasers of the Business or any portion thereof and all bids and expressions of interest received from third parties with respect thereto.

2.3 **Assumption of Liabilities**. On the terms and subject to the conditions set forth in this Agreement, Purchaser shall, effective as of the Closing, assume and agree to pay, discharge and perform in accordance with their terms the following Liabilities of the Seller Group arising from or related to the Business or the Transferred Assets as the same shall exist on the Closing Date arising only after the Closing Date (collectively, the "**Assumed Liabilities**"), including:

(a) all Liabilities relating to the Transferred Assets solely to the extent such Liabilities relate to and arise in periods following the Closing;

(b) subject to Section 2.4, all Liabilities arising under the Assigned Contracts solely to the extent such Liabilities relate to and arise in periods following the Closing, and all of the Determined Cure Costs; and

(c) all Taxes for which Purchaser is liable pursuant to this Agreement.

2.4 **Excluded Liabilities**. Notwithstanding Section 2.3, Purchaser is assuming only the Assumed Liabilities of the Seller Group and will not assume or be liable for any Excluded Liabilities (including Seller Group Taxes), and the Seller Group shall retain and shall be responsible for, all Liabilities that are not Assumed Liabilities, including all Liabilities related to Excluded Assets or any other Liabilities of the Business (all such Liabilities not being assumed herein referred to as the "**Excluded Liabilities**").

2.5 **Excluded Contracts**. Pursuant to Section 5.3(b), Purchaser shall be entitled, in its sole discretion, by written notice to the Seller up to three Business Days prior to the Closing Date, to elect not to purchase or assume one or more Assigned Contract, in which case, notwithstanding anything in this Agreement or any Related Document to the contrary, such Assigned Contract shall be considered an excluded contract ("**Excluded Contract**") (and shall constitute an Excluded Asset and not be included in the Transferred Assets) for all purposes of this Agreement and Purchaser shall not have any obligation to satisfy or pay any Cure Costs or other Liabilities with respect to such Excluded Contract. Each assignable Assigned Contract that Purchaser does not elect to remove from the list of Assigned Contracts pursuant to Section 5.3(b) shall be an Assigned Contract.

2.6 **Nontransferable Assets and Liabilities**.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Asset or any claim, right or benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the Consent of a third party (including any Governmental Authority) (after giving effect to the Sale Order or any other applicable order of the Bankruptcy Court that effects such transfer without any required Consents), would constitute a breach or other contravention thereof or a violation of Applicable Law (each, a "**Non-Transferred Asset**").

(b) If, on the Closing Date, any third-party Consent is not obtained for a Non-Transferred Asset, or if an attempted transfer or assignment thereof would be ineffective or a violation of Applicable Law, then, until any requisite consent is obtained therefor and the same is transferred and assigned to Purchaser or its designee, each such Non-Transferred Asset shall be held by the Seller as agent for the Purchaser, and the Seller shall, to the extent permitted by Applicable Law, provide to Purchaser the benefits and Purchaser shall assume the obligations and bear the economic burdens associated with such Non-Transferred Asset. The Seller and Purchaser shall use commercially reasonable efforts to enter into agreements (including subcontracting, sublicensing or subleasing, if permitted) by which (i) the Seller shall, at Purchaser's sole expense, without interruption of the Business, provide Purchaser with the economic and operational equivalent of obtaining the requisite third-party Consent and assigning the applicable Non-Transferred Asset to Purchaser (including, with the prior written consent of Purchaser, enforcing for the benefit of Purchaser, and at Purchaser's sole expense, all claims or

rights arising thereunder) and (ii) Purchaser shall perform, at its sole expense, the obligations and assume the economic burdens of the Seller or its Affiliates to be performed after the Closing with respect to such Non-Transferred Asset. Purchaser shall promptly, upon receipt of a written request therefor from the Seller, reimburse the Seller for all monies paid by the Seller on Purchaser's behalf in connection with any Assumed Liability not assigned or transferred to Purchaser pursuant to this Section 2.6.

2.7 **Closing**. The closing of the Transactions (the "**Closing**") will take place remotely by electronic exchange of documents on the date (the "**Closing Date**") that is the second (2nd) Business Day after the date on which all of the conditions set forth in ARTICLE 8 (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction or waiver of all such conditions at the Closing), have been satisfied or waived by the party hereto entitled the benefit of the same, unless another time or date is agreed to in writing by the parties hereto. Except as otherwise set forth herein, all proceedings to be taken and all documents to be executed and delivered by all parties hereto at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed, and delivered.

2.8 **Closing Deliveries of the Parties**. At or prior to the Closing:

(a) Purchaser and the Seller shall execute and deliver the Bill of Sale and Assignment and Assumption Agreement;

(b) Purchaser and the Seller shall execute and deliver the Intellectual Property Assignment Agreement, in a form reasonably acceptable to Purchaser and the Seller;

(c) Purchaser and the Seller shall execute and deliver the Sublicense Agreement;

(d) Escrow Agent, Purchaser and the Seller shall execute and deliver the Escrow Agreement;

(e) To the extent not covered in the Sublicense Agreement, on the Closing Date, each Party shall transmit the Purchaser's FDA Transfer Letters to the FDA and shall take any other actions reasonably necessary to effect the transfer of Zokinvy in the Progeria Field from the Seller to Purchaser;

(f) Purchaser shall deliver, or cause to be delivered, to the Seller or the applicable Person each of the following:

(i) a certificate, dated as of the Closing Date, executed by or on behalf of Purchaser as to the satisfaction of the conditions set forth in Section 8.3(a) and Section 8.3(b); and

(ii) payment of the closing payments set forth in Section 2.9.

(g) the Seller shall deliver, or cause to be delivered, to Purchaser or the applicable Person each of the following:

(i) the PRF Novation Agreement duly executed by PRF and Seller;

(ii) the Merck Side Letter duly executed by Merck and Seller;

(iii) a certificate, dated as of the Closing Date, executed by or on behalf of the Seller as to the satisfaction of the conditions set forth in Section 8.2(a) and Section 8.2(b);

(iv) an IRS Form W-9 with respect to the Seller, duly completed and executed, dated as of the Closing Date; and

(v) the deliverables that are required to be delivered to Purchaser on the Effective Date (as defined in the Sublicense Agreement) pursuant to the Sublicense Agreement.

2.9 **Purchase Price; Assumed Liabilities; Deposits**.

(a) At the Closing, upon the terms and subject to the conditions set forth herein, in full consideration for the sale, transfer, conveyance, assignment and delivery of the Transferred Assets to Purchaser and assumption of the Assumed Liabilities by Purchaser, Purchaser shall (i) pay to the Seller an aggregate amount equal to the Purchase Price *minus* the Deposit Escrow Amount, which shall be released to the Seller by the Escrow Agent pursuant to Section 2.9(c), by irrevocable wire transfer of immediately available funds in accordance with payment instructions delivered by the Seller to Purchaser prior to the Closing; and (ii) assume the Assumed Liabilities.

(b) At the Closing, on the terms and subject to the conditions set forth in this Agreement, Purchaser will assume and become responsible for the Assumed Liabilities. Purchaser agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms hereof, including paying or causing to be paid, at or prior to the Closing, all Determined Cure Costs.

(c) The Deposit Escrow Amount shall be distributed as follows:

(i) if the Closing shall occur, (A) the Seller and Purchaser shall deliver a joint written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to the Seller, by irrevocable wire transfer of immediately available funds, to an account designated by the Seller to the Escrow Agent, and (B) the Deposit Escrow Amount shall be delivered to the Seller at Closing and credited against the amount required to be paid by Purchaser to the Seller at Closing in accordance with Section 2.9(a);

(ii) if this Agreement is terminated by the Seller pursuant to Section 9.1(g), (A) the Seller and Purchaser shall deliver a joint written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to the Seller, by irrevocable wire transfer of immediately available funds, to an account designated by the Seller to the Escrow Agent and (B) the Deposit Escrow Amount, which shall constitute liquidated damages (and not a

penalty), shall be delivered to the Seller within two (2) Business Days following delivery of such joint written instruction; or

(iii) if this Agreement is validly terminated for any reason in accordance with the terms of this Agreement other than by the Seller pursuant to Section 9.1(g) or Purchaser forfeits the Deposit Escrow Amount to the Seller pursuant to Section 8.5, (A) the Seller and Purchaser shall deliver a joint written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to Purchaser, by irrevocable wire transfer of immediately available funds, to an account designated by Purchaser to the Escrow Agent, and (B) the Deposit Escrow Amount shall be delivered to Purchaser within two (2) Business Days following delivery of such joint written instruction.

Any issue regarding the entitlement to the Deposit Escrow Amount shall be determined by the Bankruptcy Court, and Purchaser consents to the jurisdiction of the Bankruptcy Court for any issue related to this Agreement.

2.10 **Transfer Taxes**. Purchaser shall be solely responsible for, and shall indemnify, defend, and hold harmless the Seller Group for, any transfer, documentary, sales, use, excise, stock transfer, value-added, stamp, recording, registration and other similar taxes, levies and fees (including any penalties, fines and interest), together with any conveyance fees, recording charges and other similar fees and charges, incurred in connection with this Agreement and the Transactions (collectively, "**Transfer Taxes**"). Purchaser and the Seller shall cooperate in good faith to minimize, to the extent permissible under Applicable Law, the amount of any Transfer Taxes due with respect to the Transactions.

2.11 **Allocation of Purchase Price**.

(a) The Purchase Price (including all other amounts treated as consideration for U.S. federal income tax purposes) and Assumed Liabilities shall be allocated as set forth on Schedule 2.11 (the "**Preliminary Allocation Schedule**"). Within 90 days following the final determination of the Purchase Price, Purchaser shall deliver to the Seller a schedule allocating the Purchase Price (and all other amounts treated as consideration for U.S. federal income tax purposes) among the Transferred Assets (the "**Allocation Schedule**"). The Allocation Schedule shall be reasonable and shall be prepared in accordance with the Preliminary Allocation Schedule, and Purchaser and the Seller shall negotiate in good faith to resolve disputed items, if any, in the Allocation Schedule as promptly as practicable. If Purchaser and the Seller are unable to reach agreement with respect to the Allocation Schedule within 30 days after the delivery of the Allocation Schedule by Purchaser to the Seller, the parties shall be entitled to use their own Purchase Price allocations for Tax reporting purposes.

(b) To the extent Purchaser and the Seller agree on the Allocation Schedule pursuant to Section 2.11(a), Purchaser and the Seller shall (i) timely file all Tax Returns required to be filed in connection with the Allocation Schedule, and (ii) prepare and file all Tax Returns and determine all Taxes in a manner consistent with the Allocation Schedule, except as may be required by Applicable Law and except as may be necessary to reflect adjustments to the Allocation Schedule resulting from post-Closing payments or events. Purchaser, on the one

hand, and the Seller, on the other hand, shall notify the other if it receives notice that any Governmental Authority proposes any allocation different from Allocation Schedule.

2.12 **Escrow Accounts**. At the Closing, the Deposit Escrow Amount shall be used to satisfy a portion of the payment obligations of Purchaser pursuant to Section 2.9(c), otherwise the Deposit Escrow Amount shall be released to Purchaser or the Seller pursuant to Section 2.9(c). Upon the final release of all of the Deposit Escrow Amount pursuant to the terms of this Agreement and the Escrow Agreement, the Escrow Agreement shall automatically terminate. Any fees owed to the Escrow Agent and obligations under the Escrow Agreement shall be borne by Purchaser. The Deposit Escrow Amount shall be held in trust for the benefit of the Seller and shall not be subject to any encumbrance, attachment, trustee process or any other judicial process of any creditor of any party hereto, and shall be held and disbursed solely for the purposes of and in accordance with the terms of this Agreement and the Escrow Agreement.

2.13 **Tax Withholding**. Notwithstanding anything in this Agreement to the contrary, Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Person such amounts as it is required to deduct and withhold from such Person with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any provision of any Law relating to Taxes; provided, however, that the Purchaser shall (i) provide commercially reasonable notice to the Person prior to such deduction and withholding and (ii) afford the Person a reasonable opportunity to provide any additional information, forms or certifications to establish an exemption from, or obtain a reduced rate of, withholding. To the extent that amounts are so withheld and properly remitted by Purchaser, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made by Purchaser.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as disclosed in a document herewith delivered by the Seller to Purchaser (the "**Schedules**"), the Seller hereby makes the representations and warranties contained in this ARTICLE 3 to Purchaser.

3.1 **Organization, Good Standing and Other Matters**. Each member of the Seller Group is duly organized, validly existing and in good standing under the Applicable Laws of its jurisdiction of organization and has, subject to the necessary authority of the Bankruptcy Court, the requisite corporate power and authority to operate the Business and necessary to own, lease or operate the properties and assets owned, leased or operated by it to carry on the Business as now being conducted, except where the failure to be so duly organized, validly existing and in good standing, or to have such power and authority, would not, individually or in the aggregate, have a Material Adverse Effect. Each member of the Seller Group is duly qualified to do business as a foreign company in each jurisdiction in which the nature of the Business as currently conducted by it or the property owned or leased by it makes such qualification necessary, except where the failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

3.2 **Authority and Enforceability**. Subject to Bankruptcy Court approval, the Seller has all requisite power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement and the each of the Related Documents to which the Seller is (or at Closing, will be) a party thereto, and the consummation by the Seller of the Transactions, has been duly authorized and approved by all necessary limited liability company action on the part of the Seller and are subject to the approval of the Bankruptcy Court. This Agreement has been, and each Related Document will be, at or prior to the Closing, duly executed and delivered by the Seller and, assuming the due execution and delivery by the other parties hereto or thereto, and subject to the approval of the Bankruptcy Court, constitutes a valid and binding obligation of the Seller, enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

3.3 **No Conflict; Required Filings and Consents**. Except (a) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (b) as otherwise set forth on Schedule 3.3, the execution and delivery of this Agreement by the Seller does not and the execution and delivery of the Related Documents by the Seller will not, and the consummation of the Transactions hereby and thereby will not (i) violate the provisions of the Organizational Documents of any member of the Seller Group, (ii) subject to the entry of the Sale Order, violate any Applicable Law or Order to which any member of the Seller Group is subject or by which its properties or assets are bound, (iii) require any member of the Seller Group to obtain any Consent, or give any notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date (except as required by the Bankruptcy Code or the Sale Order), (iv) subject to the entry of the Sale Order, result in a breach of or constitute a default (with or without due notice or lapse of time or both), give rise to any right of termination, cancellation or acceleration under, or require the Consent of any third party to, any Assigned Contract or (v) subject to the entry of the Sale Order, result in the imposition or creation of any Lien upon or with respect to any of the assets or properties of the Seller Group; excluding from the foregoing clauses (ii) through (v) any Consents, approvals, notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, have a Material Adverse Effect.

3.4 **Compliance With Laws**. To the Seller's Knowledge, (i) the Seller Group is conducting the Business in compliance in all material respects with all material Applicable Laws applicable to the Business and (ii) no member of the Seller Group has received any written notice since the Petition Date of any material violations of any material Applicable Law applicable to their conduct of the Business. As of the Agreement Date, the Seller has and, to the Seller's Knowledge, has obtained all permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals of the FDA or any other Governmental Authority, currently used in, necessary for and material to the operation of sale of Zokinvy in the Progeria Field as presently conducted, all such permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals are included in the Transferred Assets and Seller has made available to Purchaser true and complete copies of all such permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals. As of the Agreement Date, neither Seller nor, to the Seller's Knowledge, any other Person has received any communication

from any Governmental Authority that threatens to withdraw or suspend any such permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals. Seller has filed with the applicable Regulatory Authorities all required filings, declarations, listings, registrations, reports or submissions, including adverse event reports, necessary for and material to the operation of sale of Zokinvy in the Progeria Field as presently conducted. All relevant filings, declarations, listings, registrations, reports or submissions were in material compliance with Applicable Law when filed, and no deficiencies have been asserted by any Governmental Authority with respect to any such filings, declarations, listing, registrations, reports or submissions. As of the Agreement Date, the Seller has not received or been subject to: (1) any FDA Form 483s directly relating to Zokinvy in the Progeria Field; (2) any FDA notices of adverse findings relating to Zokinvy in the Progeria Field; or (3) any warning letters or other correspondence from the FDA or any other Governmental Authority in which the FDA or such other Governmental Authority asserted that the actions of Seller, with respect to Zokinvy in the Progeria Field, were not in compliance with Applicable Laws. There has not been any occurrence of any product recall, market withdrawal or replacement, or post-sale warning conducted by or on behalf of the Seller concerning Zokinvy in the Progeria Field or, to the Seller's Knowledge, any product recall, market withdrawal or replacement conducted by or on behalf of any entity as a result of any alleged defect in Zokinvy in the Progeria Field.

3.5 **Permits**. To the Seller's Knowledge, (i) the Seller Group possess all material Permits required for the operation of the Business as currently conducted (the "**Seller Permits**") and (ii) no member of the Seller Group has received as of the Agreement Date any written notice of any cancellation, suspension, revocation, invalidation or non-renewal of any Permit since the Petition Date.

3.6 **Litigation**. As of the Agreement Date, there is no Action pending or, to the Seller's Knowledge, formally threatened in writing, against any member of the Seller Group before any Governmental Authority that would have a Material Adverse Effect or affect the Transferred Assets in any material respect after the entry of the Sale Order, if determined adversely and after taking into effect applicable insurance coverage.

3.7 **Real Property; Personal Property**.

(a) The Seller Group does not own any real property.

(b) Schedule 3.6(b) sets forth each parcel of real property leased by the Seller Group.

(c) Schedule 3.7(b) sets forth a list of all leases of tangible assets and other personal property of the Seller Group as of the Agreement Date involving annual payments in excess of $50,000. Each member of the Seller Group has good and valid title to, or in the case of leased tangible assets and other personal property, a valid leasehold interest in (or other right to use), all of the material tangible assets and other personal property that are necessary for such member of the Seller Group to conduct the Business, in each case, free and clear of all Liens to the maximum extent permitted by Section 363(f) of the Bankruptcy Code (other than Permitted Liens). All such material tangible assets and other personal property are in good condition and repair, normal wear and tear excepted.

3.8 **Assigned Contracts**. With respect to the Assigned Contracts, (i) except as a result of, or arising in connection with, the filing of the Bankruptcy Cases, no member of the Seller Group has received any written notice of any default or event that (with due notice or lapse of time or both) would constitute a default by the applicable member of the Seller Group under any Assigned Contract, other than defaults that have been cured or waived in writing or would not reasonably be expected to have a Material Adverse Effect, (ii) to the Seller's Knowledge, each Assigned Contract is a legal, valid and binding obligation of the applicable member of the Seller Group and is in full force and effect (except to the extent subject to, and limited by, the Enforceability Exceptions), (iii) to the Seller's Knowledge, no other party to any Assigned Contract is (with or without the lapse of time or the giving of notice, or both) in material breach of or in material default under any Assigned Contract and (iv) to the Seller's Knowledge, no member of the Seller Group has provided or received any notice of any intention to terminate any Assigned Contract. The Seller has made available to Purchaser true, correct and complete copies of each of the Assigned Contracts listed on Schedule 3.8, together with all amendments thereto.

3.9 **Financial Statements**. Schedule 3.9 sets forth the Seller's (i) balance sheet and the related financial statements of revenue, expenses, retained earnings, and cash flow for the fiscal year ending on December 31, 2022, (ii) balance sheet and the related financial statements of revenue, expenses, retained earnings, and cash flow for the quarter ending on September 30, 2022 and (iii) the Seller's internally prepared statements of revenue, expenses, retained earnings, and cash flow for the months ending October 31, 2023 (collectively, the "**Seller Financial Statements**"). The Seller Financial Statements have been prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, except as permitted by the SEC on Form 10-Q under the Exchange Act, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments), have been prepared on a consistent basis throughout the periods covered thereby and presents fairly in all respects the financial condition of the Seller as of such dates and the results of operations of Seller for such periods, and are consistent with the books and records of Seller (which books and records are correct and complete in all material respects).

3.10 **Absence of Material Developments**. Except as disclosed on Schedule 3.10, since the Petition Date, there has occurred no fact, event, condition, change or circumstance which has had or would reasonably be expected to have a Material Adverse Effect.

3.11 **Customers and Suppliers.** Except as disclosed on Schedule 3.11(a), to the Knowledge of the Seller, since the Petition Date, no customer has or has threatened to stop or decrease the rate of, or as a result of the Bankruptcy Cases or the Transactions, purchasing materials, products or services from the Business. Except as disclosed on Schedule 3.11(b), to the Knowledge of the Seller, no supplier has or has threatened to stop or decrease the rate of, or as a result of the Bankruptcy Cases or the Transactions. supplying materials, products or services to the Business.

3.12 **Intellectual Property.**

(a) A true, correct and complete list of all Intellectual Property Registrations and, material unregistered trademarks, and all material software included in the Owned Intellectual Property Assets is set forth on Schedule 3.12(b).

(b) The Seller Group exclusively owns all Owned Intellectual Property Assets. Except as set forth on Schedule 3.12(b), no member of the Seller Group is a party to, or bound by, (i) any license, royalty agreement, or other agreement relating to the use of any material Business Intellectual Property (other than non-exclusive licenses grant to a member of the Seller Group for commercially available, unmodified, off-the-shelf software licensed for aggregate annual fees of less than $50,000), and (ii) agreements pursuant to which a member of the Seller Group settled any action, litigation, suit or other judicial or administrative proceeding, claim, assertion, or threat with respect to Intellectual Property, including settlement agreements, coexistence agreements, and consent agreements.

(c) Other than with respect to Excluded Contracts or Assigned Contracts that Purchaser does not ultimately assume, no current or former Affiliate, partner, director, stockholder, officer, member, manager, employee, consultant or contractor of the Seller Group will, after giving effect to the Transactions, own, license or retain any Business Intellectual Property.

(d) All material Intellectual Property Registrations remain pending or in full force and effect and have not expired or been abandoned or cancelled. To Seller's Knowledge, no interference, opposition, reissue, reexamination, or other proceeding is or has been pending or threatened, in which the scope, validity, or enforceability of any material Owned Intellectual Property Assets is being, has been challenged.

(e) To the Knowledge of the Seller, the conduct of the Business does not infringe, misappropriate or otherwise violate in any material respect any Person's Intellectual Property.

(f) To the Knowledge of the Seller's, no Person is currently infringing, misappropriating or otherwise violating any material Owned Intellectual Property Assets.

(g) The Seller Group has taken commercially reasonable steps to safeguard and maintain the confidentiality of all trade secrets that constitute Owned Intellectual Property Assets, including by using good faith efforts to require all Persons having access thereto to execute written non-disclosure agreements.

(h) The Seller Group complies with all Applicable Laws, internal policies and contractual obligations relating to privacy, data protection and cybersecurity.

3.13 **Inventories.** Except as disclosed on Schedule 3.13, all inventories of each member of the Seller Group (whether or not reflected on the Seller Financial Statements) consist of a quality and quantity usable and, with respect to finished goods, saleable, in the ordinary

course of business. No member of the Seller Group is in possession of any goods or inventory not owned by a member of the Seller Group, and the inventories (other than goods in transit) of a member of the Seller Group are located on the premises of the Seller Group. The reserve for obsolescence with respect to inventories is adequate and calculated consistent with past practice. Inventories that were purchased after the date of the balance sheet included in the Seller Financial Statements were purchased in the ordinary course of business at a cost not exceeding market prices prevailing at the time of purchase for items of similar quality and quantity. The quantities of each item of inventory are not excessive, but are reasonable for the continued operation of each member of the Seller Group in the ordinary course of business.

3.14 **Taxes.** The Seller Group has timely filed all Tax Returns that it was required to file with respect to Transferred Assets. All such Tax Returns were correct and complete in all material respects. All Taxes owed by the Seller Group (whether or not shown or required to be shown on any Tax Return) with respect to Transferred Assets have been paid. There are no liens on any of the Transferred Assets that arose in connection with any failure (or alleged failure) to pay any Tax. There is no dispute, examination, judicial proceeding or claim concerning any Taxes of the Seller Group with respect to the Transferred Assets.

3.15 **Product Liability.** Except as disclosed on Schedule 3.15, within the three (3) year period prior to the Closing Date there has not been any, and as of the Closing Date there is no pending, material litigation commenced against any member of the Seller Group relating to the sale, distribution or use of any item sold or used in the Business (the "**Goods**"), including litigation with respect to product liability or recall claims.

3.16 **Product Warranties; Product Returns.** Except for warranties arising solely pursuant to Applicable Law or in the ordinary course of business, (a) no member of the Seller Group has made any material warranties, express or implied, written or oral, to any third party with respect to any of the Goods within the three (3) year period prior to the Closing Date, and (b) there is no, and within the three (3) year period prior to the Closing Date there has not been any, material litigation pending or, to the Seller's Knowledge, threatened with respect to any such warranty.

3.17 **Accounts Payable**. The Seller has fully paid all accounts payable and related intercompany obligations of the Seller Group associated with the Business, incurred up to the Petition Date with respect to the suppliers or vendors set forth on Schedule 3.17.

3.18 **Brokers and Finders**. Except for SSG Advisors, LLC, the Seller has not, directly or indirectly, entered into any agreement with any Person that would obligate the Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

3.19 **No Other Representations or Warranties**. Except for the representations and warranties contained in this ARTICLE 3 and the Sublicense Agreement and the Related Agreements, the Seller does not, nor do any other Persons on behalf of the Seller, make any other express or implied representation or warranty with respect to itself, the Business, the Transferred Assets or the Assumed Liabilities, or with respect to any other information provided to Purchaser or its representatives, and the Seller disclaims any other representations or warranties, whether made by or on behalf of the Seller or any other Person. The Seller will not, and no other Persons

will, have or be subject to any Liability to Purchaser or any other Person resulting from the distribution to Purchaser, or Purchaser's use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser or its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever (electronic or otherwise) or otherwise in expectation of the Transactions.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as disclosed in a document herewith delivered by Purchaser to the Seller (the "**Purchaser Schedules**"), Purchaser hereby makes the representations and warranties contained in this ARTICLE 4 to the Seller.

4.1 **Organization, Good Standing and Other Matters**. Purchaser is duly organized, validly existing and in good standing under the Applicable Laws of its jurisdiction of organization and has all requisite corporate power or other entity power and authority to own its properties and to carry on its business as now being conducted. Purchaser is duly qualified or licensed to conduct its business as currently conducted and is in good standing in each jurisdiction in which the location of the property owned, leased or operated by it or the nature of its business makes such qualification necessary, except where the failure to be so qualified or licensed would not, individually or in the aggregate, materially impair or delay Purchaser's ability to consummate the Transactions.

4.2 **Authority and Enforceability**. Purchaser has all requisite corporate power or other entity power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party, and the consummation of the Transactions, have been duly authorized and approved by its board of directors (or equivalent governing body) and no other action on the part of Purchaser or its members is necessary to authorize the execution, delivery and performance of this Agreement and the Related Documents by Purchaser and the consummation of the Transactions. This Agreement has been, and each Related Document will be at or prior to Closing, duly executed and delivered by Purchaser and, assuming the due execution and delivery by the other parties hereto or thereto, constitutes a valid and binding obligation of Purchaser enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

4.3 **No Conflict: Required Filings and Consents**. Except (a) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (b) as set forth on Schedule 4.3, the execution and delivery of this Agreement and of the Related Documents and the consummation of the Transactions by Purchaser will not (i) violate the provisions of its Organizational Documents, (ii) violate any Applicable Law or Order to which it is subject or by which any of its properties or assets are bound, (iii) require it to obtain any Consent, or give any notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date,

(iv) result in a material breach of or constitute a default (with or without due notice or lapse of time or both), give rise to any right of termination, cancellation or acceleration under, or require the Consent of any third party to, any material Contract to which it is a party or (v) result in the imposition or creation of any Lien upon or with respect to any of its assets or properties; excluding from the foregoing clauses (ii) through (v) Consents, approvals, notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, (A) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (B) otherwise prevent, hinder or delay the consummation of the Transactions.

4.4 **Financing**. Purchaser has, and at the Closing will have, (a) sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price in accordance with the terms hereof and any other payments required hereunder and any expenses incurred or required to be paid by Purchaser in connection with the Transactions, and (b) the resources and capabilities (financial or otherwise) to perform its obligations hereunder and under the Related Documents. Purchaser has not incurred any obligation, commitment, restriction, or Liability of any kind, which would impair or adversely affect such resources and capabilities.

4.5 **Solvency**. Purchaser is not entering into this Agreement with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the Transactions**,** including the making of the payments contemplated by Section 2.9, and assuming satisfaction of the conditions to Purchaser's obligation to consummate the Transactions as set forth herein, the accuracy of the representations and warranties of Purchaser set forth herein and the performance by Purchaser of its obligations hereunder in all material respects, Purchaser will be Solvent.

4.6 **Litigation**. There is no Action pending or, to Purchaser's Knowledge, formally threatened against Purchaser or involving any of its properties or assets that would be reasonably be expected to (a) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (b) otherwise prevent, hinder, or delay the consummation of the Transactions.

4.7 **Brokers and Finders**. None of Purchaser or its Affiliates have, directly or indirectly, entered into any agreement with any Person that would obligate the Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

4.8 **Investigation and Agreement by Purchaser; Non-Reliance of Purchaser; No Other Representations and Warranties**.

(a) Purchaser acknowledges that it and its representatives have received access to such books and records, facilities, equipment, contracts, and other assets of the Business which it and its representatives have desired or requested to review. Purchaser acknowledges and agrees that it has made its own inquiry and investigation into, and, based thereon, have formed an independent judgment concerning the Seller Group, the Business, the Transferred Assets and the Assumed Liabilities.

(b) Except for the specific representations and warranties expressly made by the Seller in ARTICLE 3 and the Sublicense Agreement and Related Agreements as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement, and the representations and warranties made by the Seller in the Sublicense Agreement, Purchaser acknowledges and agrees that (i) the Seller is not making and have not made any representation or warranty, expressed or implied, at law or in equity, in respect of the Business, the Transferred Assets, the Assumed Liabilities, or any of its operations, prospects or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any Liabilities, the prospects of the Business, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Business furnished to Purchaser or its representatives or made available to Purchaser and its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever, and (ii) no officer, director, manager, stockholder, agent, Affiliate, advisor, representative or employee of the Seller Group has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in ARTICLE 3 and subject to the limited remedies herein provided or in the Sublicense Agreement.

(c) Other than the specific representations and warranties expressly set forth in ARTICLE 3 3 as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement or in the Sublicense Agreement, Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Seller and the Seller's Affiliates have specifically disclaimed and do hereby specifically disclaim, and shall not have or be subject to any Liability for reliance on any such other representation or warranty made by any Person. Purchaser specifically waives any obligation or duty by the Seller or the Seller's Affiliates to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties expressly set forth in ARTICLE 3 or in the Sublicense Agreement and disclaim reliance on any information not specifically required to be provided or disclosed pursuant to the specific representations and warranties set forth in ARTICLE 3 or in the Sublicense Agreement.

(d) Purchaser is acquiring the Business, the Transferred Assets and the Assumed Liabilities subject only to the specific representations and warranties expressly set forth in ARTICLE 3 as further limited by the specifically bargained-for exclusive remedies as set forth in Section 9 of this Agreement and in the Sublicense Agreement.

4.9 **No Other Representations or Warranties.** Except for the representations and warranties contained in this ARTICLE 4, neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to the Seller or its representatives, and Purchaser disclaims any other representations or warranties, whether made by Purchaser or any of its Affiliates, officers, directors, employees, agents or representatives.

ARTICLE 5.
BANKRUPTCY COURT MATTERS

5.1 **Competing Transaction**. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids in respect of all or any part of the Transferred Assets (whether in combination with other assets of the Seller Group or otherwise) in accordance with the terms of the Bid Procedures Order (each, a "**Competing Bid**"). From the Agreement Date (and any prior time) and until the Closing, the Seller is permitted to, and to cause its representatives to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates and representatives) in connection with any sale or other disposition of the Transferred Assets. In addition, the Seller shall have the authority to respond to any inquiries or offers to purchase all or any part of the Transferred Assets (whether in combination with other assets of the Seller Group or otherwise) and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bid Procedures Order or other Applicable Law, including supplying information relating to the Business and the assets of the Seller Group to prospective purchasers.

5.2 **Bankruptcy Court Filings**.

(a) Subject to its right to pursue a Competing Bid in accordance with the Bid Procedures Order, the Seller shall diligently pursue the entry by the Bankruptcy Court of the Sale Order, which Sale Order shall provide for the transfer of the Transferred Assets and the Assumed Liabilities to Purchaser free from all successor or transferee Liability to the fullest extent permitted by Section 363 of the Bankruptcy Code. The Seller shall comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Bankruptcy Court in obtaining the entry of the Sale Order. The Seller further covenants and agrees that, after entry by the Bankruptcy Court of the Sale Order, and provided, that the Sale Order becomes a Final Order, the terms of any other proposed order submitted by the Seller to the Bankruptcy Court shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the Transactions. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining entry of the Sale Order, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. In the event, if the entry of the Sale Order shall be appealed, the Seller and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

(b) Within one (1) day after the Petition Date, Seller will file the Bid Procedures Motion seeking the Bankruptcy Court's immediate approval and entry of the Bid Procedures Order substantially in the form and substance reasonably agreed to by the Buyer and Seller, among other things, (A) establishing the Bid Procedures, (B) approving payment of the Termination Fee and the Expense Reimbursement, to the extent payable by the terms of this Agreement and the Bid Procedures Order, and (C) providing that the Termination Fee and the Expense Reimbursement shall constitute superpriority administrative expenses of the Seller with priority over any and all administrative expenses pursuant to section 503(b) of the Bankruptcy Code.

(c) Seller shall use commercially reasonable efforts to provide Purchaser with a reasonable opportunity to review and comment upon all motions, applications, and supporting papers relating to the transactions contemplated by this Agreement prepared by Seller or any Affiliates (including forms of orders and notices to interested parties) prior to the filing thereof in the Bankruptcy Cases; provided that the foregoing shall not require the Seller to take any action that would, in Seller's reasonable business judgment, threaten to harm the overall value to be produced by the Seller's in-court sale process.

(d) The form of Bid Procedures Order and form of Sale Order submitted by the Seller to the Bankruptcy Court for approval must be reasonably satisfactory in form and substance to the Purchaser; provided that an order approving the form of Bid Procedures Order is, and shall be deemed to be, acceptable to Purchaser.

(e) Seller shall not seek any modification to the Bid Procedures, Bid Procedures Order, or Sale Order by the Bankruptcy Court that are materially adverse to the Purchaser without the prior written consent of Purchaser, which such consent shall not be unreasonably withheld.

(f) Each of Purchaser and Seller will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Bid Procedures Order and, subject to the Bid Procedures Order, the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Seller of its obligations under this Agreement and demonstrating that Purchaser is a good faith buyer under section 363(m) of the Bankruptcy Code.

(g) Seller shall use commercially reasonable efforts to provide appropriate notice of the hearings on the Sale Motion to all Persons entitled to notice, including, but not limited to, all Persons that have asserted Liens on the Transferred Assets, all parties to the Assigned Contracts and all taxing authorities in jurisdictions applicable to Seller and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(h) Within five (5) Business Days of the Auction (subject to the Bankruptcy Court's availability), if Purchaser is the successful bidder at the Auction (or if there is no Auction), Seller will seek entry of the Sale Order by the Bankruptcy Court.

(i) The Seller and Purchaser agree that, in the event that Purchaser is not the winning bidder at an auction undertaken pursuant to the Bid Procedures Order (the "**Auction**"), and (i) Purchaser submits the Back-Up Bid at the Auction or (ii) the terms of this Agreement are deemed to constitute a Back-Up Bid, then Purchaser shall be obligated to promptly consummate the Transactions upon the terms and conditions as set forth herein, including the payment of the Purchase Price as the same may be increased by Purchaser at the Auction; provided that, the Seller gives written notice to Purchaser on or before the Back-up Termination Date, stating that the Seller (A) failed to consummate the sale of the Transferred Assets with the winning bidder, and (B) terminated the purchase agreement with the winning bidder.

5.3 **Assumption of Assigned Contracts**.

(a) On or before the date that is five (5) Business Days following the date on which the Bid Procedures Order is entered by the Bankruptcy Court, the Seller shall file (or cause to be filed) a notice of assumption (the "**Assumption Notice**") with the Bankruptcy Court and serve such notice on each counterparty to an Assigned Contract listed thereon. The Assumption Notice shall identify all Assigned Contracts that the Seller and Purchaser believe may be assumed and assigned in connection with the sale of the Transferred Assets and set forth a good faith estimate of the amount of Cure Costs applicable to each such Assigned Contract (and if no Cure Cost is estimated to be applicable with respect to any particular Assigned Contract, the amount of such Cure Cost designated for such Assigned Contract shall be "$0.00"). In accordance with the Bid Procedures Order, the Seller reserves the right to supplement such list of Assigned Contracts and provide additional notice of assumption, and to remove an Assigned Contract from the list of Assigned Contracts, up to five days prior to the hearing by the Bankruptcy Court with respect to the Sale Motion.

(b) On or before the date that is five (5) Business Days before the Closing Date (the "**Designation Deadline**"), Purchaser shall provide to the Seller a list of those Assigned Contracts that Purchaser elects to have assumed and assigned to Purchaser on the Closing Date (the "**Designated Contracts**"). Purchaser shall be entitled to remove certain Assigned Contracts from the list of Designated Contracts at any time prior to the Designation Deadline by providing the Seller written notice of such removal. In the event that Purchaser removes any of such Assigned Contracts from such list, the Seller will provide the relevant counterparty written notice that the applicable Assigned Contract is no longer identified as a Designated Contract. For the avoidance of doubt, only those executory Assigned Contracts that remain identified as Designated Contracts as of the Closing Date will constitute Assigned Contracts and will be assumed by the Seller and assigned to Purchaser pursuant to the Sale Order. The Seller shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Assigned Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude the Seller from filing one or more motion to reject any Contracts that are not Assigned Contracts.

(c) Notwithstanding any provision in this Agreement to the contrary, a Contract shall not be a Designated Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract is (i) deemed rejected under Section 365 of the Bankruptcy Code, (ii) the subject of an objection to assignment or assumption or requires the consent of any Governmental Authority or other third party (other than, and in addition to, the

Bankruptcy Court) in order to permit the assumption and assignment by the applicable Seller to Purchaser of such Contract pursuant to Section 365 of the Bankruptcy Code, and such objection has not been resolved or such consent has not been obtained prior to the thirtieth day following the Closing Date (as such period may be extended by mutual agreement of Seller and Purchaser), or (iii) is terminated by any party thereto other than Seller, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as a Designated Contract hereunder and is not continued or otherwise extended upon assumption. In no event shall the failure to assign to Purchaser any Contract in accordance with subsections (i) through (iii) above reduce the Purchase Price payable to Seller or constitute a failure to satisfy the conditions precedent of Seller under Section 8.3, it being understood that the foregoing shall not relieve Seller of its obligation to deliver, or cause to be delivered, the PRF Novation Agreement, the Merck Side Letter, and the Sublicense Agreement as a condition to Closing pursuant to Section 8.3(c).

(d) Subject to the terms of Section 2.5, Section 2.8, Section 5.3(a) and Section 5.3(b), Purchaser shall make provision for the payment of the Determined Cure Costs in cash at Closing in accordance with the Sale Order.

(e) Notwithstanding any provision in this Agreement to the contrary, from and after the date of the Assumption Notice through the Closing Date, the Seller will not reject or take any action (or fail to take any action that would result in rejection by operation of Applicable Law) to reject, withdraw, repudiate or disclaim any Assigned Contract unless (i) Purchaser has provided its prior written consent; or (ii) Purchaser has removed such Assigned Contract from the list of Designated Contracts.

ARTICLE 6.
PRE-CLOSING COVENANTS

6.1 **Conduct of Business**. Except (i) as set forth on Schedule 6.1, (ii) as may be approved by Purchaser (which approval will not be unreasonably withheld, delayed or conditioned; provided, however, that the consent of Purchaser shall be deemed to have been given if Purchaser does not object within 48 hours after written request for such consent is provided by the Seller to Purchaser), (iii) for actions taken or omitted to be taken by any member of the Seller Group in response to any Public Health Measure, or (iv) as is otherwise permitted, contemplated or required by this Agreement, any Assigned Contract, by Applicable Laws or by order of the Bankruptcy Court, from the Agreement Date through the earlier of the Closing Date or the termination of this Agreement in accordance with its terms:

(a) The Seller Group shall use their commercially reasonable efforts to carry on the Business in all material respects in the ordinary course of business as it has been conducted since the Petition Date; and

(b) The Seller shall not, and shall cause its Affiliates not to:

(i) sell, license, abandon or otherwise dispose of any material asset or property constituting Transferred Assets other than, in each case, in the ordinary course of business or for the purpose of disposing of obsolete or worthless assets;

(ii) except in the ordinary course of business, acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of any business or any corporation, partnership or other business organization or otherwise acquire any assets (except inventory), that as of the Closing would constitute Transferred Assets, except for the acquisition of assets in the ordinary course of business;

(iii) change its present accounting methods or principles in any material respect, except as required by GAAP or Applicable Law; or

(iv) make or change any Tax election, change an annual accounting period, adopt or change any Tax accounting method, file any amended Tax Return, enter into any closing agreement, settle any material Tax claim or assessment or surrender any right to claim a refund of Taxes, other than in the ordinary course of business or as required by the Code or Applicable Law, and in each case that could have a material effect on the amount of Taxes due from the Business or due as a result of the Transferred Assets for a taxable period (or portion thereof) beginning after the Closing Date.

(c) Notwithstanding anything to the contrary, nothing contained in this Agreement shall give Purchaser or any of its Affiliates, directly or indirectly, any right to control or direct the Business, assets and operations prior to the Closing. Prior to the Closing, the Seller shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its Business, assets and operations.

6.2 **Access to Information; Confidentiality**.

(a) From the Agreement Date until the earlier of the Closing Date and the termination of this Agreement, the Seller shall grant Purchaser and its representatives (at Purchaser's sole cost and expense) reasonable access, during normal business hours and upon reasonable notice (and in the event of a facility visit request, at least 48 hours prior notice), and subject to any limitations resulting from any Public Health Measures, to the personnel, facilities, book and records of the Seller Group related to the Business or the Transferred Assets that are in the possession or under the control of the Seller Group; provided, however, that (i) all requests for access shall be directed to such other person(s) as the Seller may designate in writing from time to time (the "**Seller Access Contact**"), (ii) such activities do not unreasonably interfere with the ongoing business or operations of the Seller Group, (iii) the Seller shall have the right to have one or more of its representatives present at all times during any visits, examinations, discussions or contacts contemplated by this Section 6.2(a), (iv) Purchaser shall have no right to perform invasive or subsurface investigations or conduct any sampling or analysis of environmental media of the nature commonly referred to as a "Phase II Environmental Investigation," such as any soil or groundwater testing, (v) such access or related activities would not cause a violation of any agreement to which any Seller is a party, (vi) no Personal Information shall be disclosed or used other than in compliance with applicable privacy law and (vii) nothing herein shall require any member of the Seller Group or their representatives to furnish to Purchaser or provide Purchaser with access to information that (A) is subject to an attorney-client or an attorney work-product privilege, (B) legal counsel for the Seller Group reasonably concludes may give rise to antitrust or competition law issues or violate a protective order or otherwise may not be disclosed pursuant to Applicable Law (including any Public Health Measure) or (C)

would cause significant competitive harm to the Seller Group if the Transactions are not consummated.

(b) Notwithstanding anything to the contrary contained in this Agreement, from the Agreement Date until the Closing Date, Purchaser shall not, and shall cause its representatives not to, have any contact or discussions concerning any member of the Seller Group, the Business, the Transaction or any other matters with any lender, borrower, creditor, guarantor, business partner, bank, landlord, tenant, supplier, customer, employee, manager, franchisee, distributer, noteholder, independent contractor, consultant or other material business relation of any Seller, in each case, without the prior written consent of the Seller Access Contact (which consent may be withheld in the Seller's sole discretion and, if given, may be conditioned on the Seller Access Contact or his or her designee having the right to participate in any meeting or discussion).

(c) Any information provided to or obtained by Purchaser or its representatives, including pursuant to this Section 6.2 is confidential information and subject to the terms of, and the restrictions contained in, the Confidentiality Agreement. Purchaser agrees to be bound by and comply with the provisions set forth in the Confidentiality Agreement as if such provisions were set forth herein, and such provisions are hereby incorporated herein by reference. Effective upon (and only upon) the Closing, the Confidentiality Agreement shall automatically terminate and none of the parties thereto shall have any further Liability or obligation thereunder except with respect to any confidential information provided to or obtained by Purchaser or its representatives concerning the Seller Group, which information shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date. If this Agreement is terminated prior to Closing for any reason, the duration of the confidentiality of the Confidentiality Agreement shall be deemed extended, without any further action by the parties, for a period of time equal to the period of time elapsed between the date such Confidentiality Agreement was initially signed and the date of termination of this Agreement.

6.3 **Efforts to Consummate.** Except as otherwise provided in this Agreement, each of the parties hereto agrees to use its commercially reasonable efforts to cause the Closing to occur as soon as possible after the Agreement Date, including satisfying the conditions precedent set forth in ARTICLE 8 applicable to such party including (a) defending against any Actions, judicial or administrative, challenging this Agreement or the consummation of the Transactions, (b) seeking to have any preliminary injunction, temporary restraining order, stay or other legal restraint or prohibition entered or imposed by any court or other Governmental Authority that is not yet final and nonappealable vacated or reversed, and (c) and executing any additional instruments reasonably requested by another party hereto (without cost or expense to the executing party) necessary to carry out the Transactions and to fully carry out the purposes of this Agreement; provided, however, that, for purposes of "commercially reasonable efforts" standard as required by this Section 6.3, Section 6.4 or Section 6.5, neither the Seller nor its Affiliates or representatives shall be required to offer or grant any accommodation or concession (financial or otherwise) to any third party or to otherwise expend any money or suffer any detriment, to expend any money to remedy any breach of any representation or warranty hereunder, to commence any Action, to waive or surrender any right, to modify any agreement (including any Assigned Contract) or to provide financing to Purchaser for the consummation of the Transactions.

6.4 **Notices and Consents**. Reasonably promptly following the execution of this Agreement, the Seller will give, or cause to be given, applicable notices to third parties and thereafter will use commercially reasonable efforts (as limited by Section 6.3) to obtain the third-party consents set forth on Schedule 6.4; provided, however, that no representation, warranty, covenant or agreement of the Seller shall be breached or deemed breached, and no condition shall be deemed not satisfied, as a result of (a) the failure to obtain any such third-party consent (unless such consent is part of a closing condition of Seller), (b) any termination of a Contract as a result of the failure to obtain such third-party consent (unless such consent is part of a closing condition of Seller) or (c) any Action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such consent or any such termination; provided, further, that nothing in this Section 6.4 shall require the Seller to expend any money or grant any concessions to obtain any such third-party consent (unless Purchaser provides the funds for or reimburses the Seller for such payment).

6.5 **Regulatory Matters**.

(a) Purchaser and the Seller will establish a mutually acceptable and prompt communication and interaction process to ensure the orderly transfer of the NDA for Zokinvy in the Progeria Field and other similar regulatory approval and authorization documents for jurisdictions outside of the United States. Promptly after Closing, the Parties shall file with the FDA, and any other relevant Governmental Authority all information required in order to transfer the NDA and other similar regulatory approval and authorization documents for jurisdictions outside of the United States from the Seller to Purchaser, including the information required pursuant to 21 C.F.R. § 314.72, or any successor regulation thereto, any authorization letters or notices, and letters of acceptance. Seller shall file the information required of a former owner, and Purchaser shall file the information required of a new owner, at each Party's own expense. Both Purchaser and the Seller also agree to use all commercially reasonable efforts to take any actions required by the Governmental Authority or other government/health agencies to effect the transfer of the NDAs and other similar regulatory approval and authorization documents for jurisdictions outside of the United States from the Seller to Purchaser, and hereby further agree to cooperate with each other in order to effectuate the foregoing transfer of Zokinvy in the Progeria Field. The Parties agree to use all commercially reasonable efforts to complete the filing of the transfer of the NDAs and other similar regulatory approval and authorization documents for jurisdictions outside of the United States within ten (10) days from the Closing Date. The Seller may retain an archival copy of the NDAs and other similar regulatory approval and authorization documents for jurisdictions outside of the United States, including supplements and records that are required to be kept under 21 C.F.R. § 314.81 or other similar regulation.

(b) From and after the Closing Date until the Seller is dissolved, the Seller shall cooperate with Purchaser in preparing, disclosing and providing any relevant records, reports, responses or any other documentation that are required to be made, maintained and reported pursuant to the Governmental Authority in the Territory. The Parties agree to use their commercially reasonable efforts to take any other actions required by the FDA or any other Governmental Authority to effect the transaction.

(c) Until the completion of the transfer of Zokinvy in the Progeria Field to Purchaser, the Seller shall take all reasonably necessary or advisable actions to maintain the

relevant NDA and other similar regulatory approval and authorization documents for jurisdictions outside of the United States.

6.6 **Public Announcements**. Between the Agreement Date and the Closing Date, except to the extent required by any Applicable Law or Action (including the Bankruptcy Cases), neither Purchaser nor the Seller shall, and Purchaser and the Seller shall cause their respective Affiliates and representatives not to, directly or indirectly, issue any press release or public announcement of any kind without the prior written consent of Purchaser and the Seller; provided, however, that the Seller and its Affiliates may make announcements from time to time to their respective employees, customers, suppliers, and other business relations and otherwise as the Seller may reasonably determine is necessary to comply with Applicable Law or the requirements of this Agreement or any other agreement to which any Seller or any such Affiliate is a party. Purchaser and the Seller shall cooperate in good faith to prepare a joint press release to be issued on the Closing Date, the terms of which shall be mutually agreed upon by the parties.

6.7 **Update of Schedules; Knowledge of Breach**. From time to time prior to the Closing, the Seller may supplement or amend the Schedules with respect to any matter first arising after the Agreement Date that would have been required to be set forth or described in such Schedules. Any such supplemental or amended disclosure shall not be deemed to have cured any such breach of representation or warranty for purposes of determining whether or not the conditions set forth in Section 8.2(a) have been satisfied. From and after the Closing, references to the Schedules shall be references to the Schedules as supplemented, modified and/or updated. If, prior to the Closing, Purchaser shall have reason to believe that any breach of a representation or warranty of the Seller has occurred (other than through notice from the Seller), Purchaser shall promptly so notify the Seller, in reasonable detail. Nothing in this Agreement, including this Section 6.7, shall imply that the Seller is making any representation or warranty as of any date other than the Closing Date (other than representations and warranties that are expressly made as of an earlier date).

ARTICLE 7.
POST-CLOSING COVENANTS

7.1 **Access to Information; Books and Records**. From and after the Closing, Purchaser and its Affiliates shall (i) afford the Seller Group and their respective representatives reasonable access, during normal business hours, upon reasonable advance notice and under reasonable circumstances, to the books and records of Purchaser and the Business shall permit the Seller Group and their respective representatives to examine and copy such books and records to the extent reasonably requested by such party and (ii) cause their representatives to furnish all information reasonably requested by any member of the Seller Group or their representatives in connection with financial or regulatory reporting, audit, third party litigation, preparing or filing of any Tax Return or the defense of any Tax claim or assessment or any other business purpose; provided, however, that nothing in this Section 7.1 shall require Purchaser or its Affiliates to furnish to the Seller Group or their respective representatives any material that is subject to an attorney-client or solicitor-client privilege or an attorney or solicitor work-product privilege or which may not be disclosed pursuant to Applicable Law. For a period of six (6) years following the Closing Date, or such longer period as may be required by Applicable Law or necessitated by applicable statutes of limitations, Purchaser shall, and shall cause its Affiliates

to, maintain all such books and records in the jurisdiction in which such books and records were located prior to the Closing Date and shall not destroy, alter or otherwise dispose of any such books and records. On and after the end of such period, Purchaser shall, and shall cause its Affiliates to, provide the Seller with at least ten Business Days prior written notice before destroying, altering or otherwise disposing any such books and records, during which period the Seller may elect to take possession, at its own expense, of such books and records.

7.2 **Post-Closing Receipt and Possession of Assets**.

(a) After the Closing Date, the Seller shall transfer promptly to Purchaser from time to time (but in any event on a monthly basis) any payments constituting Transferred Assets received by the Seller. After the Closing Date, Purchaser shall transfer promptly to the Seller, from time to time (but in any event on a monthly basis), any payments constituting Excluded Assets, including any accounts receivable constituting Excluded Assets, received by Purchaser after the Closing.

(b) In the event that, after the Closing Date, Purchaser receives or otherwise is in possession of any other Excluded Asset, Purchaser shall promptly notify the Seller of its receipt or possession of such other Excluded Asset and transfer, at the Seller's expense, such Excluded Asset to the Seller. In the event that, after the Closing Date, the Seller receives or otherwise is in possession of any other Transferred Asset, the Seller shall promptly notify Purchaser of its receipt or possession of such other Transferred Asset and transfer, at Purchaser's expense (unless the Seller was required to transfer such Transferred Asset to Purchaser at Closing, in which case, and without limitation of any other remedies available to Purchaser, such transfer will be at the Seller's expense), such Transferred Asset to Purchaser.

7.3 **Tax Matters**.

(a) All Taxes with respect to the income or operations of the Business or the ownership of the Transferred Assets that relate to any Straddle Period shall be apportioned between Seller and Purchaser as follows: (i) in the case of ad valorem or other property Taxes, on a per diem basis; and (ii) in the case of income, sales and use and withholding Taxes, employment Taxes, or other Taxes based on or measured by income, receipts or profits, as determined from the closing of the books and records of Seller and the Business at the close of business on the Closing Date.

(b) After the Closing Date, Purchaser and Seller shall furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books, records, work papers and Tax Returns for Pre-Closing Tax Periods) relating to the Business or the Transferred Assets as is reasonably necessary for the preparation of any Tax Return, claim for refund or audit, and the prosecution or defense of any claim, suit or proceeding relating to any proposed Tax adjustment. Upon reasonable notice, Seller and Purchaser shall make its employees and facilities available on a mutually convenient basis to provide reasonable explanation of any documents or information provided hereunder. The other party hereto shall promptly (and in no event later than 30 days after receipt of the request) provide the requested information. The requesting party shall indemnify the other party for any out-of-pocket expenses incurred by such party in connection with providing any

information or documentation pursuant to this Section 7.3(b). Any information obtained under this Section 7.3(b) shall be kept confidential, except as otherwise reasonably may be necessary in connection with the filing of Tax Returns or claims for refund or in conducting any Tax audit, dispute or contest.

ARTICLE 8.
CONDITIONS PRECEDENT

8.1 **Conditions to Each Party's Obligation**. The respective obligations of the parties hereto to effect the Transactions are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Seller and Purchaser), at or prior to the Closing, of the following conditions:

(a) No Injunctions or Restraints. No Order or Applicable Law preventing the consummation of the Transactions shall be in effect.

(b) Sale Order. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall be a Final Order (unless such Final Order requirement is waived by the Seller and Purchaser in their respective sole discretion).

8.2 **Conditions to Obligations of Purchaser**. The obligations of Purchaser to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Purchaser), at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of the Seller set forth in ARTICLE 3 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality", "Material Adverse Effect" or words of similar import set forth therein) as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect.

(b) Performance of Covenants and Obligations. The Seller shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing, except to the extent of changes or developments contemplated expressly by the terms of this Agreement or caused by the Transactions.

(c) Closing Deliverables. The Seller shall have delivered to Purchaser the closing deliveries required to be delivered by the Seller pursuant to Section 2.8(a), Section 2.8(b), Section 2.8(c), Section 2.8(d), Section 2.8(e), and Section 2.8(g). The Escrow Agent shall have delivered its duly executed signature page of the Escrow Agreement to the Purchaser pursuant to Section 2.8(d).

8.3 **Conditions to Obligations of the Seller**. The obligation of the Seller to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Seller), at or prior to the Closing, of the following conditions:

(a) Representations and Warranties. Each of the representations and warranties of Purchaser set forth in ARTICLE 4 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality" or words of similar import set forth therein) as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, (i) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (ii) otherwise prevent, hinder or delay the consummation of the Transactions.

(b) Performance of Covenants and Obligations of Purchaser. Purchaser shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing, except to the extent of changes or developments contemplated by the terms of this Agreement or caused by the Transactions.

(c) Closing Deliverables. Purchaser shall have delivered to the Seller the closing deliveries required to be delivered by Purchaser pursuant to Section 2.8(a), Section 2.8(b), Section 2.8(c), Section 2.8(d), Section 2.8(e), and Section 2.8(f). The Escrow Agent shall have delivered its duly executed signature page of the Escrow Agreement to the Seller pursuant to Section 2.8(d).

8.4 **Waiver of Condition; Frustration of Conditions**. All conditions to the Closing shall be deemed to have been satisfied or waived from and after the Closing. Neither Purchaser nor the Seller may rely on the failure of any condition set forth in this ARTICLE 8, as applicable, to be satisfied if such failure was caused by such party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the Transactions.

8.5 **Delivery of a Notice of Readiness to Close**. At any time after the Seller's satisfaction of its conditions to Closing in accordance with the terms of Section 8.1 and Section 8.3 of this Agreement, the Seller may deliver a notice to the Purchaser (a "**Notice of Readiness to Close**"). The Purchaser shall have three (3) Business Days from delivery of a Notice of Readiness to Close to satisfy its conditions to Closing in accordance with the terms of Section 8.1 and Section 8.2 of this Agreement and consummate the Transactions. If Purchaser does not satisfy its conditions to Closing and consummate the Transaction within three (3) Business Days, Purchaser shall forfeit the entire Deposit Escrow Amount to the Seller.

ARTICLE 9.
TERMINATION

9.1 **Events of Termination**. Notwithstanding anything to the contrary, this Agreement may be terminated and the Transactions may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Purchaser and the Seller;

(b) automatically, upon (i) the consummation of a sale or other disposition of all or substantially all of the Transferred Assets to a Person other than Purchaser (each,

an "**Alternate Transaction**"), (ii) if, at close of the Auction, Purchaser's bid has not been selected as either the winning bid or the Back-Up Bid or (iii) if, at the close of the Auction, Purchaser's bid was selected as the Back-Up Bid, upon the consummation of a Competing Bid or Alternative Transaction;

(c) by Purchaser or the Seller by written notice to Purchaser or the Seller from the other, if the Bankruptcy Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

(d) by Purchaser or the Seller by written notice to Purchaser or the Seller from the other, if Purchaser is not selected as having the winning bid or Back-Up Bid at Auction, if any;

(e) by Purchaser if the Seller (i) withdraws the motion for the Sale Order, or publicly announces its intention to withdraw such motion, (ii) moves to voluntarily dismiss the Bankruptcy Cases, (iii) moves for conversion of the Bankruptcy Cases to Chapter 7 of the Bankruptcy Code, or (iv) moves for appointment of an examiner with expanded powers pursuant to Section 1104 of the Bankruptcy Code or a trustee in the Bankruptcy Cases;

(f) by Purchaser, by written notice from Purchaser to the Seller, if there has been a breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement, such that the conditions in Section 8.1 or Section 8.2 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by the Seller prior to the earlier of (i) 20 Business Days after receipt of written notice from Purchaser requesting such breach be cured or (ii) the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(f) shall not be available to Purchaser if the failure of Purchaser to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement;

(g) by the Seller, by written notice from the Seller to Purchaser, if there has been a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement, such that the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by Purchaser prior to the earlier of (i) 20 Business Days after receipt of written notice from the Seller requesting such breach be cured or (ii) the Outside Date; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(g) shall not be available to the Seller if the failure of the Seller to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement;

(h) by Purchaser or the Seller, by written notice from Purchaser or the Seller to the other, if any Governmental Authority of competent jurisdiction shall have issued an Order, enacted any Applicable Law or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the Transactions and, in the case of Orders and other actions,

such Order or other action shall have become Final Orders; provided, however, that the right to terminate this Agreement pursuant to this Section 9.1(h) shall not be available to the party seeking to terminate if any action of such party or any failure of such party to act has contributed to such Order or other action and such action or failure constitutes a breach of this Agreement;

(i) by Purchaser or the Seller, by written notice from Purchaser or the Seller to the other, if the Closing has not occurred on or prior to June 1, 2024 (the "**Outside Date**"); provided, however, that the party exercising the right to terminate this Agreement pursuant to this Section 9.1(i) shall not have been responsible for such failure of the Closing to occur through a breach or inaccuracy of a covenant, representation or warranty contained in this Agreement (it being understood, acknowledged, and agreed that if Seller is unable to provide any required Closing deliverable of Seller, then Seller shall be deemed to have been responsible for such failure of the Closing for purposes of this Section 9.1(i)); or

(j) by Purchaser by written notice to the Seller if the Bankruptcy Court does not approve the Bid Procedures Order without any material modifications (other than such modifications reasonably acceptable to Purchaser) to the protections to Purchaser set forth in Section 9.3(a), Section 9.3(b), and Section 9.3(c).

9.2 **Effect of Termination**.

(a) In the event that this Agreement shall be terminated pursuant to Section 9.1, (a) Purchaser and its representatives shall promptly return all documents, work papers and other materials of the Seller including any confidential information and (b) all further obligations of the parties hereto under this Agreement shall terminate without further Liability or obligation to the other parties hereto; provided, however, that, notwithstanding the foregoing, the Liabilities and obligations under (i) the Confidentiality Agreement, and (ii) Section 2.9(c), Section 6.2(c), this Section 9.2 and ARTICLE 10 shall continue in full force and effect.

(b) Notwithstanding anything to the contrary in this Agreement, in the event of valid termination of this Agreement pursuant to Section 9.1, (i) the Seller's Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement shall be capped at an amount equal to the Deposit Escrow Amount, and (ii) no such termination shall relieve Purchaser from any Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement (including if this Agreement is terminated by the Seller pursuant to Section 9.1(g)) and the Seller shall be entitled to all remedies available at law or in equity, including payment of the Deposit Escrow Amount pursuant to Section 2.9(c).

9.3 **Termination Fee and Expense Reimbursement**.

(a) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Purchaser as a stalking-horse bidder, the Seller shall pay in cash to Purchaser, by wire transfer of immediately available funds to the account specified by Purchaser to the Seller in writing, an amount equal to the Termination Fee in the event that this Agreement is terminated pursuant to Section 9.1(b), in which case the

Termination Fee shall be due and payable simultaneously with any termination of this Agreement; provided, that, Purchaser shall not be entitled to the fee described in this Section 9.3(a) to the extent Purchaser is in material breach of this Agreement at the time this Agreement is terminated pursuant to Section 9.1(b) if Seller has provided notice of such material breach to Purchaser and such material breach has remained uncured for more than five (5) Business Days after Purchaser's receipt of such notice. The Termination Fee shall be payable solely from the proceeds of such Competing Bid or Alternative Transaction. The Seller's obligation to pay the Termination Fee pursuant to this Section 9.3(a) shall survive termination of this Agreement and shall constitute an administrative expense of the Seller under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code.

(b) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, if this Agreement is terminated in accordance with the terms set forth in Section 9.1(b), then the Seller shall pay to Purchaser in cash not later than two (2) Business Days following receipt of documentation supporting the request for reimbursement of costs, fees and expenses, the Expense Reimbursement, in an amount not to exceed $600,000, by wire transfer of immediately available funds to an account specified by Purchaser to the Seller in writing; provided, that, Purchaser shall not be entitled to the fee described in this Section 9.3(a) to the extent Purchaser is in material breach of this Agreement at the time this Agreement is terminated pursuant to Section 9.1(b) if Seller has provided notice of such material breach to Purchaser and such material breach has remained uncured for more than five (5) Business Days after Purchaser's receipt of such notice. The Expense Reimbursement shall be payable solely from the proceeds of such Competing Bid or Alternative Transaction. The Seller's obligation to pay the Expense Reimbursement pursuant to this Section 9.3(b)9.3(b) shall survive termination of this Agreement and shall constitute an administrative expense of Seller under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code.

(c) The Seller agrees and acknowledges that Purchaser's due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser, and that such due diligence, efforts, negotiation, and execution have provided value to the Seller and, in the Seller's reasonable business judgment, is necessary for the preservation of the value of the Seller's estate. The Seller further agrees and acknowledges that the Termination Fee and the Expense Reimbursement are not a penalty, but rather represent liquidated damages that are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing the Transactions, and the magnitude of the Transactions. The provision of the Termination Fee and the Expense Reimbursement is an integral part of this Agreement, without which the Purchaser would not have entered into this Agreement.

ARTICLE 10.
GENERAL PROVISIONS

10.1 **Survival of Representations, Warranties and Covenants.** All covenants and agreements contained in this Agreement that by their term are to be performed in whole or in part, or which prohibit actions, subsequent to Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder shall not survive Closing and shall therefor terminate, including any Action for damages in respect of any breach or inaccuracy thereof. Notwithstanding the foregoing, the provisions of Section 2.9(c), Section 6.2, Section 9.2, this Article 10 and the Confidentiality Agreement shall survive the Closing. For the avoidance of doubt, nothing in this Section 10.1 shall affect the survival of the covenants or representations or warranties of Seller under the Sublicense Agreement or its related agreements.

10.2 **Entire Agreement**. This Agreement, including the Exhibits and Schedules hereto, the Confidentiality Agreement and the Related Documents, contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (including any letters of intent or term sheets), whether written or oral, among the parties with respect to such subject matter (other than, for the avoidance of doubt, the Confidentiality Agreement and the Related Documents) or any prior course of dealings. The parties hereto have voluntarily agreed to define their rights, Liabilities and obligations respecting the Transactions exclusively in contract pursuant to the express terms and conditions of this Agreement, the Confidentiality Agreement and the Related Documents, and the parties hereto expressly disclaim that they are owed any duties or entitled to any remedies not expressly set forth in this Agreement, the Confidentiality Agreement and the Related Documents. Furthermore, the parties each hereby acknowledge that this Agreement, the Confidentiality Agreement and the Related Documents embody the justifiable expectations of sophisticated parties derived from arm's-length negotiations, and all parties to this Agreement, the Confidentiality Agreement and the Related Documents specifically acknowledge that no party has any special relationship with another party that would justify any expectation beyond that of an ordinary purchaser and an ordinary seller in an arm's-length transaction. The sole and exclusive remedies for any Related Claims shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies have been further limited or excluded pursuant to the express terms of this Agreement); and the parties hereby agree that neither party hereto shall have any remedies or cause of action (whether in contract or in tort or otherwise) of any statements, communications, disclosures, failures to disclose, representations or warranties not set forth in this Agreement.

10.3 **Amendment; No Waiver**. This Agreement and the Related Documents may be amended, supplemented or changed, and any provision hereof or thereof can be waived, only by a written instrument making specific reference to this Agreement (and, if applicable, the Related Documents) executed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party of a breach of any provision of this Agreement or the Related Documents shall not operate or be construed as a

further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.4 **Severability; Specific Versus General Provisions**. Whenever possible, each provision of this Agreement and the Related Documents shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any term or other provision of this Agreement or the Related Documents is invalid, illegal, or incapable of being enforced by any Applicable Law or public policy, all other terms or provisions of this Agreement and the Related Documents shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, in whole or in part, such term or provision is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under Applicable Law. No party hereto shall assert, and each party shall cause its respective Affiliates or related parties not to assert, that this Agreement or any part hereof is invalid, illegal or unenforceable. Notwithstanding anything to the contrary, to the extent that a representation, warranty, covenant or agreement of the Seller contained in this Agreement or the Schedules (each, a "**Provision**") addresses a particular issue with specificity (a "**Specific Provision**"), and no breach by the Seller exists under such Specific Provision, the Seller shall not be deemed to be in breach of any other Provision (with respect to such issue) that addresses such issue with less specificity than the Specific Provision, and if such Specific Provision is qualified or limited by the Seller's Knowledge, or in any other manner, no other Provision shall supersede or limit such qualification in any manner.

10.5 **Expenses and Obligations**. Except as otherwise provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the Transactions, including the costs, expenses and disbursements of counsel and accountants, shall be borne solely and entirely by the party that has incurred such expenses; provided, however, that Purchaser shall pay, or promptly reimburse the Seller for, any filing fees which relate to any required governmental filing or notification and Purchaser shall pay any Transfer Taxes.

10.6 **Notices**. All notices, consents, waivers, and other communications under this Agreement or the Related Documents must be in writing and will be deemed to have been duly given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing for next day delivery (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if delivered by electronic mail (unless the sender receives an automated message that the email has not been delivered) on the date of transmission if on a Business Day before 5:00 p.m. local time of the business address of the recipient party (otherwise on the next succeeding Business Day) and (d) if deposited in the United States mail, first-class postage prepaid, on the date of delivery, in each case to the appropriate addresses or email addresses set forth below (or to such other addresses as a party may designate by notice to the other parties in accordance with this Section 10.6):

If to Purchaser:

Sentynl Therapeutics, Inc.
420 Stevens Avenue, Suite 200
Solana Beach, CA 92075
Attn: Matt Heck, Chief Executive Officer
Email: mheck@sentynl.com

with a copy to (which will not constitute notice):

Pillsbury Winthrop Shaw Pittman LLP
11682 El Camino Real, Suite 200
Attn: Christian A. Salaman and Jason Stirling
email: christian.salaman@pillsburylaw.com
jason.stirling@pillsburylaw.com

If to the Seller:

Eiger BioPharmaceuticals, Inc.
2155 Park Boulevard
Palo Alto, CA 94306-1543
Attn: David Apelian, Chief Executive Officer
Email: dapelian@eigerbio.com

with a copy to (which will not constitute notice):

Sidley Austin LLP
2021 McKinney Ave., Suite 2000
Dallas, TX 75201
Attention: Thomas R. Califano
William E. Curtin
Anne G. Wallice
Email: tom.califano@sidley.com
wcurtin@sidley.com
anne.wallice@sidley.com

10.7 **Counterparts**. This Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format, or other agreed format shall be sufficient to bind the parties to the terms and conditions of this Agreement. Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any Related Document, shall be disregarded in determining the party's intent or the effectiveness of such signature.

10.8 **Governing Law.** This Agreement, the Related Documents and all Related Claims shall be governed by the internal laws of the State of Delaware (including its statute of limitations), without giving effect to any choice or conflict of law principles or rules that would cause the application of the Applicable Laws of any other jurisdiction.

10.9 **Submission to Jurisdiction; Consent to Service of Process**.

(a) Without limiting any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to interpret and/or enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any Related Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.6; provided, however, that if the Bankruptcy Cases have closed, the parties agree to irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Texas over all Related Claims, and each party hereto hereby irrevocably agrees that all Related Claims may be heard and determined in such courts. The parties hereto hereby irrevocably and unconditionally waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Related Claim brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any Related Claim by the delivery of a copy thereof in accordance with the provisions of Section 10.6 (other than by email) along with a notification that service of process is being served in conformance with this Section 10.9(b). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Applicable Law.

10.10 **Waiver of Jury Trial**. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING OR RELATED CLAIM BROUGHT BY OR AGAINST IT, DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS.

10.11 **Rights Cumulative**. All rights and remedies of each of the parties under this Agreement and the Related Documents will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement, the Related Documents or Applicable Law.

10.12 **Assignment**. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement or any of the rights, interests or obligations under this Agreement may be made by any party hereto at any time, whether or not by operation of law, without the prior written consent of the Seller and Purchaser, and any attempted assignment without the required consent shall be void; provided, however, that (a) Purchaser may assign (i) any of its rights or delegate any of its duties under this Agreement to any of its Affiliates, and (ii) its rights, but not its duties, under this Agreement to any of its financing sources and (b), the Seller may assign any of its rights or delegate any of its duties under this Agreement (i) to any of its Affiliates, (ii) to any creditor or group of creditors pursuant to an order of the Bankruptcy Court entered in the Bankruptcy Cases, including Seller's rights to payment hereunder and rights and ability to enforce the terms of this Agreement and (iii) for collateral security purposes to any lender of the Seller or its Affiliates; provided, further, however, that, in each case, such assignment shall not release Purchaser from its obligations under this Agreement and the Seller shall have no obligation to pursue remedies against any assignee of Purchaser before proceeding against Purchaser for any breach of Purchaser's obligations hereunder.

10.13 **Specific Enforcement; Remedies**. The parties hereto agree that irreparable damage (for which monetary relief, even if available, would not be an adequate remedy) would occur in the event that any of the provisions of this Agreement were not performed by the parties hereto in accordance with their specific terms or were otherwise breached. It is accordingly agreed that (i) Purchaser, on the one hand, and the Seller, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction without proof of damages or otherwise and that this shall include the right of the Seller to cause Purchaser to fully perform the terms of this Agreement to the fullest extent permissible pursuant to this Agreement and Applicable Laws and to thereafter cause this Agreement and the Transactions to be consummated on the terms and subject to the conditions thereto set forth in this Agreement, and (ii) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither the Seller nor Purchaser would have entered into this Agreement. Remedies shall be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement. Each of the parties hereto hereby (A) waives any defenses in any action for specific performance, including the defense that a remedy at law would be adequate, (B) waives any requirement under any Applicable Law to post a bond or other security as a prerequisite to obtaining equitable relief and (C) agrees not to assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. Notwithstanding anything to the contrary, in no event shall this Section 10.13 be used, alone or together with any other provision of this Agreement, to require the Seller to remedy any breach of any representation or warranty of the Seller.

10.14 **Third-Party Beneficiaries**. Except as set forth in ARTICLE 2 (with respect to the Seller), Section 10.15 (with respect to the Nonparty Affiliates), Section 10.16 (with respect to the released parties identified therein), Section 10.17 (with respect to the Sellers' Group Members) and the next sentence, nothing in this Agreement, express or implied, is intended to

confer upon any Person other than the parties hereto any rights or remedies of any nature whatsoever under or by reason of this Agreement. From and after the Closing, all of the Persons identified as third-party beneficiaries in the first sentence of this Section 10.14 shall be entitled to enforce such provisions and to avail themselves of the benefits of any remedy for any breach of such provisions, all to the same extent as if such Persons were parties to this Agreement. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with this Agreement without notice or Liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any party hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the Agreement Date or as of any other date.

10.15 **No Personal Liability of Directors, Officers and Owners**. All Related Claims may be made only against (and are those solely of) the entities that are expressly identified as parties in the preamble to this Agreement (the "**Contracting Parties**"). No Person who is not a Contracting Party, including any current, former or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, representative or assignee of, or any financial advisor or lender to, any Contracting Party, or any current, former or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, representative or assignee of, or any financial advisor or lender to, any of the foregoing (collectively, "**Nonparty Affiliates**"), shall have any Liability pursuant to any Related Claim; and, to the maximum extent permitted by Applicable Law, each Contracting Party hereby waives and releases all such Liabilities, claims, causes of action, and obligations against any such Nonparty Affiliates. Without limiting the foregoing, to the maximum extent permitted by Applicable Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Applicable Law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Nonparty Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Nonparty Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Documents.

10.16 **General Release**.

(a) Effective as of the Closing, the Seller, on behalf of itself, its Affiliates and each of their respective successors and assigns (each of the foregoing, a "**Seller Releasing Party**"), hereby fully, irrevocably and unconditionally releases and forever discharges Purchaser and its respective past and present directors, managers, officers, employees, agents, stockholders, members, representatives and Affiliates from and against, and covenants that it will not (directly or indirectly) assert any claim or proceeding of any kind before any Governmental Authority based upon, any and all claims, Actions, causes of action, suits, rights, agreements, Liabilities and demands whatsoever and all consequences thereof, known or unknown, actual or

potential, suspected or unsuspected, fixed or contingent, both in law and in equity, whether existing as of the Closing or arising thereafter, that a Seller Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date. The foregoing sentence shall not be deemed to be a release or waiver by a Seller Releasing Party of any Action it may have under this Agreement or any of the other Related Documents.

(b) Effective as of the Closing, Purchaser, on behalf of itself, its Affiliates and each of their respective successors and assigns (each of the foregoing, a "**Purchaser Releasing Party**"), hereby fully, irrevocably and unconditionally releases and forever discharges the Seller, the Seller's Affiliates and its and their respective past and present directors, managers, officers, agents, stockholders, members, representatives and Affiliates from and against, and covenants that it will not (directly or indirectly) assert any claim or proceeding of any kind before any Governmental Authority based upon, all claims, Actions, causes of action, suits, rights, agreements, Liabilities and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity, whether existing as of the Closing or arising thereafter, that a Purchaser Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date. The foregoing sentence shall not be deemed to be a release or waiver by a Purchaser Releasing Party of any Action it may have under this Agreement or any of the other Related Documents.

10.17 **Legal Representation**. Purchaser and the Seller acknowledge and agree that the Law Firm has represented the Seller Group in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Related Documents and the consummation of the Transactions, and that the Seller, its Affiliates and its partners, officers, directors and representatives (the "**Seller Group Members**") have a reasonable expectation that the Law Firm will represent them in connection with any Action involving any Seller Group Member, on the one hand, and Purchaser or any of its Affiliates and representatives (the "**Purchaser Group Members**"), on the other hand, arising under this Agreement, the Related Documents or the Transactions. Purchaser hereby, on behalf of itself and the other Purchaser Group Members, irrevocably: (a) acknowledges and agrees that any attorney-client privilege, solicitor-client privilege, work product or other attorney-client or solicitor-client confidential information ("**Attorney-Client Information**") arising from communications prior to the Closing between any Seller (including any one or more officers, directors or stockholders of such Seller), on the one hand, and the Law Firm, on the other hand, is not included in the property, rights, privileges, powers, franchises and other interests that are possessed by or vested in the Business or the Transferred Assets, that any such Attorney-Client Information shall be deemed property of, and controlled solely by, such Seller for the benefit and on behalf of the Seller Group Members and, upon request, convey and transfer any Attorney-Client Information to the Seller; (b) acknowledge and agree that the Seller Group Members shall have the right to retain, or cause the Law Firm to retain, any such documentation or information in the possession of the Law Firm or such Seller Group Members at the Closing; (c) agree not to access, retain or use any documentation or information constituting Attorney-Client Information and that no Purchaser Group Member shall have any right to waive any attorney-client privilege or other right to

confidentiality with respect to such Attorney-Client Information; (d) disclaim the right to assert a waiver by any Seller Group Member with regard to the attorney-client privilege, solicitor-client privilege or other right to confidentiality with respect to such Attorney-Client Information solely due to the fact that such documentation or information is physically in the possession of Purchaser after the Closing; (e) consent to the Law Firm's representation after the Closing of any Seller Group Member in any Action that may relate to a Purchaser Group Member or the Transactions and consent to and waive any conflict of interest arising therefrom without the need for any future waiver or consent; and (f) consent to the disclosure by the Law Firm to any Seller Group Member of any documentation or information obtained by the Law Firm during the course of its representation of Seller or any Affiliate prior to the Closing, whether related to this Agreement, the Related Documents, the Transactions or otherwise, whether or not such disclosure is made prior to or after the Closing and whether or not the documentation or information disclosed is subject to any attorney-client privilege, solicitor-client privilege or confidentiality obligation to any Seller, any Affiliate of such Seller or any other Person. In the event that any Action arises after the Closing between any Purchaser Group Member and a Person other than a Seller Group Member, such Purchaser Group Member shall not disclose any documentation or information that is subject to an attorney-client privilege or other rights of confidentiality referenced in this Section 10.17 without the prior written consent of the applicable Seller; provided, however, that if such Purchaser Group Member is required by judicial order or other legal process to make such disclosure, such Purchaser Group Member shall promptly notify the applicable Seller in writing of such requirement (without making disclosure) and shall provide such Seller with such cooperation and assistance as shall be necessary to enable such Seller to prevent disclosure by reason of such attorney-client privilege, solicitor-client privilege or other rights of confidentiality. This Section 10.17 is for the benefit of the Seller Group Members and such Persons are intended third-party beneficiaries of this Section 10.17.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

PURCHASER:

SENTYNL THERAPEUTICS, INC.

By: DocuSigned by: Matt Heck C4381FF94B614AC...

Name: Matt Heck
Title: President and CEO

SELLER :

EIGER BIOPHARMACEUTICALS, INC.

By: DocuSigned by: David Apelian 0F1FCA681024459...

Name: David Apelian
Title: Chief Executive Officer

AMENDMENT NO. 1 TO
ASSET PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 TO ASSET PURCHASE AGREEMENT (this "**Amendment**"), dated as of April 22, 2024 (the "**Amendment Date**") is entered into by and between Sentynl Therapeutics, Inc., a Delaware corporation ("**Purchaser**") and Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Seller**").

RECITALS

WHEREAS, Purchaser and Seller are parties to that certain Asset Purchase Agreement, dated as of March 31, 2024 (the "**Agreement**" or "**Zokinvy Stalking Horse APA**");

WHEREAS, capitalized terms not herein defined shall have the meanings ascribed to them in the Agreement;

WHEREAS, Purchaser and Seller desire to amend the Agreement in accordance with and as set forth herein; and

WHEREAS, Section 10.3 of the Agreement provides that the Agreement may be amended by a written instrument making specific reference to the Agreement executed by the party against whom enforcement of such amendment is sought.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in the Agreement and this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Amendment of Agreement**. The Agreement is hereby amended as follows:

1.1 The definition of "Base Price" found in Section 1.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

""**Base Price**" means $45,200,000 provided, however, that the Base Price shall be reduced by the amount of $100,000 *per diem* for each calendar day that the Closing occurs between April 24, 2024, and May 31, 2024; provided, further, that, notwithstanding the reduction, the Base Price shall not be less than $26,000,000 if Closing occurs no later than May 31, 2024."

1.2 The definition of "Expense Reimbursement" found in Section 1.1 of the Agreement is hereby deleted in its entirety.

1.3 The definition of "Sale Motion" found in Section 1.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

""**Sale Motion**" means the motion of the Seller seeking entry of the Sale Order approving the terms herein, to be filed on or about April 1, 2024, in the Bankruptcy Cases."

1.4 The definition of "Termination Fee" found in Section 1.1 of the Agreement is hereby amended and restated in its entirety to read as follows:

""**Termination Fee**" means a fee equal to three percent (3.0%) of the Base Price."

1.5 Section 5.2(b) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(b) Within one (1) day after the Petition Date, Seller will file the Bid Procedures Motion seeking the Bankruptcy Court's immediate approval and entry of the Bid Procedures Order substantially in the form and substance reasonably agreed to by the Buyer and Seller, among other things, (A) establishing the Bid Procedures, (B) approving payment of the Termination Fee, to the extent payable by the terms of this Agreement and the Bid Procedures Order, and (C) providing that the Termination Fee shall constitute superpriority administrative expenses of the Seller with priority over any and all administrative expenses pursuant to section 503(b) of the Bankruptcy Code."

1.6 Section 9.1(j) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(j) by Purchaser by written notice to the Seller if the Bankruptcy Court does not approve the Bid Procedures Order without any material modifications (other than such modifications reasonably acceptable to Purchaser) to the protections to Purchaser set forth in Section 9.3(a), and Section 9.3(b)."

1.7 The title for Section 9.3 of the Agreement is hereby amended and restated in its entirety to read as follows:

"**9.3 Termination Fee**"

1.8 Section 9.3(b) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(b) The Seller agrees and acknowledges that Purchaser's due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser, and that such due diligence, efforts, negotiation, and execution have provided value to the Seller and, in the Seller's reasonable business judgment, is necessary for the preservation of the value of the Seller's estate. The Seller further agrees and acknowledges that the Termination Fee is not a penalty, but rather represent liquidated damages that are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing the Transactions, and the magnitude of the Transactions. The provision of the Termination Fee is an integral part of this Agreement, without which the Purchaser would not have entered into this Agreement."

2. **Effect**. Except as expressly modified by this Amendment, the Agreement shall remain in full force and effect.

3. **Miscellaneous**. Sections 10.4 (Severability; Specific Versus General Provisions), Section 10.7 (Counterparts), 10.8 (Governing Law), 10.9 (Submission to Jurisdiction; Consent to Service of Process) and 10.10 (Waiver of Jury Trial) of the Agreement shall apply mutatis mutandis to this Amendment.

[The remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

PURCHASER:

SENTYNL THERAPEUTICS, INC.

By: DocuSigned by: Matt Heck C4381FF94B614AC...

Name: Matt Heck

Title: President and CEO

SELLER:

EIGER BIOPHARMACEUTICALS, INC.

By: DocuSigned by: David Apelian 0F1FCA681024459...

Name: David Apelian
Title: Chief Executive Officer

EXHIBIT 2

Filed Under Seal
unredacted copies will be emailed to the
parties listed on the certificate of service,
and available at the hearing

EXHIBIT 3

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Proposed Attorneys for the Debtors and Debtors in Possession

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

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

NOTICE OF CLOSING OF ZOKINVY SALE TRANSACTION

On March 31, 2024, the Debtors executed an asset purchase agreement (as amended, modified, or supplemented from time to time, the "Zokinvy Stalking Horse APA")[2] for the sale of the Transferred Assets. The Debtors attached the executed Zokinvy Stalking Horse APA as Exhibit 2 to the proposed order to the *Debtors' Motion for Entry of an Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; And (III) Granting Related Relief* [Docket No. 13] (the "Motion").

[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] Capitalized terms used but not defined herein have the meanings ascribed to them in the Zokinvy Stalking Horse APA, the Bid Procedures Order, or the Zokinvy Sale Order.

On April 5, 2024, the United States Bankruptcy Court for the Northern District of Texas (the "Court") entered an order granting, in part, the Motion and approving the bid procedures (the "Bid Procedures") annexed as Exhibit 1 to the order [Docket No. 94] (the "Bid Procedures Order"). Attached to the Bid Procedures Order as Exhibit 2 was that certain asset purchase agreement between the Debtors and Sentynl Therapeutics, Inc. On April 19, 2024, the Debtors filed the *Notice of Filing of Revised Bidding Procedures* [Docket No. 119] (the "Revised Bid Procedures").

On April 22, 2024, the Debtors filed the *Notice of Proposed Amendment to Zokinvy Stalking Horse Asset Purchase Agreement and Proposed Form of Zokinvy Sale Order* [Docket No. 148], which included as Exhibit A the proposed first amendment to the asset purchase agreement (the "Zokinvy Stalking Horse APA Amendment" and the asset purchase agreement as amended by the Zokinvy Stalking Horse APA Amendment, the "Amended Zokinvy Stalking Horse APA").

On April 24, 2024, the Court entered an order [Docket No. 162] (the "Zokinvy Sale Order") authorizing and approving entry into the Amended Zokinvy Stalking Horse APA and the Zokinvy Sale Transaction contemplated thereunder. Attached as Exhibit 1 to the Zokinvy Sale Order was a copy of the Amended Zokinvy Stalking Horse APA.

On May 3, 2024, the Closing occurred in accordance with the Amended Zokinvy Stalking Horse APA and the Zokinvy Sale Order. Attached hereto as **Exhibit A** is the Debtors' final list of assumed and assigned contracts pursuant to the Closing.[3]

Copies of the Amended Zokinvy Stalking Horse APA, as well as all related filings and exhibits, are available by: (i) visiting the website of the Debtors' claims, noticing, and solicitation agent, Kurtzman Carson Consultants LLC at: http://www.kccllc.net/eiger, (ii) (888) 733-1544 (Toll-Free) or (310) 751-2638 (International), and/or (iii) emailing https://kccllc.net/eiger/inquiry, or (iv) for a fee via PACER by visiting http://ecf.txnb.uscourts.gov/.

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[3] Pursuant to the Amended Zokinvy Stalking Horse APA, the Base Price was calculated in the amount of $46.1 million less a credit in the amount of $0.9 million for the termination fee resulting in a net base price in the amount of $45.2 million, subject to certain purchase price adjustments, including a reduction of $100,000 per diem if the sale closed after April 24, 2024.

Dated: May 4, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ *Thomas R. Califano*

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William E. Curtin (admitted *pro hac vice*)
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Proposed Attorneys for the Debtors and Debtors in Possession

Certificate of Service

I certify that on May 4, 2024, 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.

/s/ *Thomas R. Califano*
Thomas R. Califano

Exhibit A

Final List of Debtors' Designated Contracts

Exhibit A

Contract Counterparty	Contract Counterparty Address	Description of Contract of Lease
AnGes, Inc.	7-7-15, Saito Asagi, Ibaraki, Osaka, 567-0085, Japan	Marketing and Distribution Agreement, dated May 10, 2022, as amended by Side Letter, dated May 10, 2022 and Amendment No. 1, dated May 10, 2023
		Pharmacovigilance Agreement, dated January 11, 2024
		Quality Agreement, dated February 29, 2024
Axis Clinicals LLC	Attn Dinkar Sindhu, 1711 Center Ave West, Dilworth, MN 56529	Clinical Trial Agreement, dated September 5, 2023
		Clinical Trial Agreement, dated October 25, 2023
Bioanalytical Systems, Inc.	Stephanie Miller, Director, Client Services, 2701 Kent Avenue, West Lafayette, IN 47906	Master Independent Contractor Agreement, dated October 24, 2018, as supplemented by Contractor Task Order, dated June 3, 2020
Charles River Laboratories	251 Ballardvale Street, Wilmington, MA 01887-1096	Master Services Agreement, dated July 24, 2019, as supplemented by Statement of Work, dated July 29, 2022 and Statement of Work, dated March 11, 2024
Clinigen Inc.	Jerome Charton, Chief Executive Officer, Idis House, Churchfield Road, Weybridge Surrey, KT46 8DB, United Kingdom	Master Services Agreement, dated April 26, 2018, as supplemented by Letter Agreement, dated November 24, 2022
		Quality Technical Agreement, dated October 4, 2021
Frontage Laboratories, Inc.	Dr. Abdul Mutlib, CEO, 700 Pennsylvania Drive, Exton, PA 19341	Project Proposal, dated December 5, 2022
ICON Clinical Research Limited	Kyle McAllister, South County Business Park, Leopardstown, Dublin 18, Ireland	Master Services Agreement, dated August 25, 2022, as supplemented by Statement of Work No. 2, dated November 4, 2022
Intsel Chimos	Corinne Truffault, Chief Executive Officer, 1 Rue Royale- Batiment D, Saint-Cloud, 92210, France	Agreement, dated June 8, 2023
		Quality Agreement, dated June 23, 2024
Neopharm Ltd.	Neopharm Building, 6 Hashiloach St., Petach-Tikva, 4951439, Israel	Distribution Agreement, dated June 4, 2020
		Quality Agreement, dated June 21, 2022
RRD International, LLC	Scott Tarrant, Chief Executive Officer, 7361 Calhoun Place, Suite 510, Rockville, MD 20855	Master Services Agreement, dated March 15, 2015, as supplemented by Work Order No. 19, dated April 22, 2022, Work Order No. 20, dated April 22, 2022, Change Order Form, dated August 28, 2023 and Change Order Form, dated February 1, 2023
Yuki Gosei Kogyo Co Ltd	Seiichiro Matsumoto, President/CEO/Executive Officer, 10-4, Nihonbashi-Ningyocho 3-Chome, Chuo-Ku, Tokyo, 103-0013, Japan	Confidentiality Agreement, dated March 24, 2016 between Yuki Gosei Kogyo Co Ltd and Eiger Biopharmaceuticals, Inc.
		Confidential Disclosure Agreement, dated February 1, 2023 between Yuki Gosei Kogyo Co Ltd, Eiger Biopharmaceuticals, Inc., and AnGes, Inc.
		Invoice No. EX-72004, dated March 22, 2024
		PAA-MPN Stability Test Plan
		Price Quotation of Analysis Contract No. 103-366 (formerly No. 103-295), dated November 16, 2022, by and between Eiger Biopharmaceuticals, Inc.and Yuki Gosei Kogyo Co., Ltd., as amended by that First Amendment to Price Quotation of Analysis Contract No. 103-366 (formerly No. 103-295), dated February 15, 2023
		Quality Agreement Supplement, dated September 26, 2023 between Yuki Gosei Kogyo Co Ltd, Eiger Biopharmaceuticals, Inc., and AnGes, Inc.
		Technical Quality Agreement, dated January 14, 2022 between Yuki Gosei Kogyo Co Ltd and Eiger Biopharmaceuticals, Inc.

EXHIBIT 4

Exhibit 1

Lonafarnib APA

Execution Version

LONAFARNIB ASSET PURCHASE AGREEMENT

by and between

EIGER INNOTHERAPEUTICS, INC., as Purchaser,

and

EIGER BIOPHARMACEUTICALS, INC., as Seller

Dated as of August 1, 2024

Table of Contents

EXHIBITS

SCHEDULES

LONAFARNIB ASSET PURCHASE AGREEMENT

THIS LONAFARNIB ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of August 1, 2024 (the "**Agreement Date**") is entered into by and between Eiger InnoTherapeutics, Inc., a Delaware corporation ("**Purchaser**") and Eiger BioPharmaceuticals, Inc., a Delaware corporation (the "**Seller**").

RECITALS

WHEREAS, on April 1, 2024 (the "**Petition Date**") the Seller and certain of its Affiliates filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Northern District of Texas (the "**Bankruptcy Court**"), thereby commencing Chapter 11 cases (collectively, the "**Bankruptcy Cases**");

WHEREAS, the Seller is a debtor-in-possession under the Bankruptcy Code and manages its properties and assets pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Seller is engaged in the Business and owns, directly or indirectly, all of the Transferred Assets;

WHEREAS, the Seller desires to sell (or cause to be sold) to Purchaser, and Purchaser desires to purchase from the Seller, all of the Transferred Assets Free and Clear, and the Seller desires Purchaser to assume, and Purchaser desires to assume from the Seller, all of the Assumed Liabilities, in each case upon the terms and subject to the conditions hereof, pursuant to a Sale Order and Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, the transactions contemplated by this Agreement and the Related Documents are subject to approval by the Bankruptcy Court and will only be consummated pursuant, among other things, to the Sale Order to be entered in the Bankruptcy Cases; and

WHEREAS, concurrently with the execution of this Agreement, Purchaser shall deposit (or cause to be deposited) an aggregate amount equal to the Deposit Escrow Amount into an escrow account (the "**Deposit Escrow Account**") to be established and maintained by Escrow Agent pursuant to the Escrow Agreement.

NOW, **THEREFORE**, in consideration of the premises and the mutual representations, warranties, covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1.
DEFINED TERMS

1.1 **Defined Terms**. The following terms shall have the following meanings in this Agreement:

"**Action**" means any action, proceeding, arbitration or litigation (whether civil, criminal or administrative) commenced, brought, conducted or heard by or before any Governmental Authority or arbitrator.

"**AEs**" has the meaning set forth in Section 7.10(a).

"**Affiliate**" of any particular Person means any other Person directly or indirectly controlling, controlled by or under common control with such particular Person. For purposes of this Agreement, the direct or indirect ownership of fifty percent (50%) or more of the outstanding voting securities of a Person, or the right to receive fifty percent (50%) or more of the profits or earnings of a Person shall be deemed to constitute control. Such other relationship as in fact results in actual control over the management, business and affairs of a Person shall also be deemed to constitute control.

"**Agreement**" has the meaning set forth in the preamble.

"**Agreement Date**" has the meaning set forth in the preamble.

"**Allocation Schedule**" has the meaning set forth in Section 2.11(a).

"**Alternate Transaction**" has the meaning set forth in Section 9.1(b).

"**Applicable Law**" means, with respect to any Person, any federal, provincial, state, local law, ordinance, principle of common law, code, regulation or statute applicable to such Person or such Person's subsidiaries or to any of their respective securities, assets, properties or businesses.

"**Asset Taxes**" means any Taxes with respect to the ownership or operation of the Transferred Assets other than (a) Taxes based on net or gross income, and (b) Transfer Taxes.

"**Assigned Contracts**" has the meaning set forth in Section 2.1(a).

"**Assumed Liabilities**" has the meaning set forth in Section 2.3.

"**Assumption Notice**" has the meaning set forth in Section 5.3(a).

"**Attorney-Client Information**" has the meaning set forth in Section 10.17.

"**Auction**" has the meaning set forth in Section 5.2(h).

"**Avexitide Buyer**" means Amylyx Pharmaceuticals, Inc.

"**Avoidance Actions**" means any and all avoidance, recovery, subordination, or other claims, actions, rights, or remedies that may be brought by or on behalf of the Seller or its estate or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including, but not limited to, actions or remedies under sections 510, 542, 543, 544, 545, and 547 through and including 553 of the Bankruptcy Code.

"**Back-Up Bid**" means the second highest or otherwise best bid if the successful bidder fails to consummate its bid in accordance with the Bid Procedures.

"**Back-up Termination Date**" means the first to occur of (a) thirty (30) days after the entry of the Sale Order, (b) consummation of the Transactions with the winning bidder at the Auction, and (c) October 1, 2024.

"**Bankruptcy Cases**" has the meaning set forth in the Recitals.

"**Bankruptcy Code**" has the meaning set forth in the Recitals.

"**Bankruptcy Court**" has the meaning set forth in the Recitals.

"**Base Price**" means $5,200,000.

"**Bid Procedures**" means those certain bidding procedures for the sale of the Seller's assets approved by the Bankruptcy Court as filed at Docket No. 119.

"**Bid Procedures Order**" means that certain Order entered by the Bankruptcy Court at Docket No. 94 approving the Bid Procedures.

"**Bill of Sale and Assignment and Assumption Agreement**" means the bill of sale and assignment and assumption agreement, dated as of the Closing Date, by and between the Seller and Purchaser, in substantially the form attached hereto as Exhibit A and acceptable to Purchaser.

"**Biorasi Contract**" means any Contract with Biorasi LLC.

"**BMS License Agreement**" means that certain License Agreement, dated April 20, 2016, between the Seller and Bristol-Myers Squibb Company.

"**Business**" means the business as presently conducted of the Seller Group related to the Development, Manufacture, and Commercialization of Lonafarnib Antiviral Products in the Lonafarnib Antiviral Field in the Territory.

"**Business Books and Records**" means the records and files relating to any Licensed Product in any field (including the Lonafarnib Antiviral Field and Progeria Field) in the possession of, owned by, or under the control (including via license) of the Seller or any of its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of the Seller or any of its Affiliates, directly or indirectly, at any level) as of the Closing Date or at any time thereafter, including without limitation (i) supplier and vendor lists, (ii) promotional materials, and (iii) other business records required to be transferred to Purchaser under Applicable Law. For clarity, Business Books and Records shall exclude Regulatory Information and Data.

"**Business Day**" means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in San Francisco, California are authorized or required to be closed.

"**Business Intellectual Property**" means all Owned Intellectual Property Assets together with all other Intellectual Property used in, held for use in, or necessary for the conduct of the Business.

"**Closing**" has the meaning set forth in Section 2.7.

"**Closing Date**" has the meaning set forth in Section 2.7.

"**Code**" means the Internal Revenue Code of 1986, as amended, or any successor law.

"**Commercialization**" has the meaning given to it in the Merck License Agreement.

"**Competing Bid**" has the meaning set forth in Section 5.1.

"**Confidentiality Agreement**" means that certain Confidentiality Agreement, dated as of April 4, 2024, by and between the Seller and Purchaser.

"**Consent**" means any consent, approval, authorization, waiver or license.

"**Contract**" means any written agreement, mortgage, indenture, lease (whether for real or personal property), contract or subcontract.

"**Contracts List**" has the meaning set forth in Section 2.1(a).

"**Contracting Parties**" has the meaning set forth in Section 10.15.

"**Cross-Over Contract Benefited Party**" means, with respect to any Cross-Over Contract, the Zokinvy Buyer, the Avexitide Buyer, and/or the Lambda Buyer, as applicable, that benefits, or whose products purchased from Seller or any of its Affiliates benefit, from such Cross-Over Contract.

"**Cross-Over Contracts**" has the meaning set forth in Section 7.15.

"**Cure Amounts**" means any and all costs, expenses or actions with respect to defaults existing as of the Petition Date that Purchaser or the Seller, as applicable, are required to pay or perform to assume any of the Assigned Contracts pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code or as otherwise agreed between Purchaser or the Seller, as applicable, and the counterparty to an Assigned Contract.

"**Data**" means (a) any and all clinical, preclinical, non-clinical, toxicology, chemistry, biology, animal, CMC, safety, and other data, databases, information, batch records, laboratory records, and all other data and information, and (b) any and all global and country safety databases, in each case (a) and (b) that relate to any Licensed Compound or Licensed Product in any field (including the Lonafarnib Antiviral Field and Progeria Field), any other Transferred Asset, or any Assumed Liability that is in the possession of, owned by, or under the control (including via license) of the Seller or any of its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the

Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf the Seller or any of its Affiliates, directly or indirectly, at any level) as of the Closing Date or at any time thereafter.

"**Deposit Escrow Account**" has the meaning set forth in the Recitals.

"**Deposit Escrow Amount**" means $260,000.

"**Designation Deadline**" has the meaning set forth in Section 5.3(b).

"**Determined Cure Amounts**" means all Cure Amounts for Assigned Contracts, as determined by a final order of the Bankruptcy Court.

"**Development**" or "**Develop**" has the meaning given to it in the Merck License Agreement.

"**Disputed Contract**" has the meaning set forth in Section 5.4.

"**Disputed Contract Order**" has the meaning set forth in Section 5.4.

"**Enforceability Exceptions**" means applicable bankruptcy, insolvency, reorganization, moratorium, receivership and similar Applicable Laws affecting the enforcement of creditors' rights generally and general equitable principles.

"**Environmental Laws**" means any Applicable Law relating to pollution or protection of the environment or worker health and safety (in respect of exposure to Hazardous Substances), including such Applicable Laws relating to the use, treatment, storage, disposal, Release or transportation of Hazardous Substances.

"**Escrow Agent**" means Kurtzman Carson Consultants LLC.

"**Escrow Agreement**" means the escrow agreement by and between the Seller and the Escrow Agent attached hereto as Exhibit B.

"**Excluded Assets**" has the meaning set forth in Section 2.2.

"**Excluded Books and Records**" means the following originals and copies of those books and records, documents, data and information (in whatever form maintained) of the Seller Group and the Business: (i) all corporate minute books (and other similar corporate records) and stock records of the Seller Group, (ii) any books and records relating to the Excluded Assets or (iii) any books, records or other materials that any member of the Seller Group (x) is required by Applicable Law to retain (copies of which, to the extent permitted by Applicable Law, will be made available to Purchaser upon Purchaser's reasonable request), (y) reasonably believes is necessary to enable it to prepare and/or file Tax Returns (copies of which will be made available to Purchaser upon Purchaser's reasonable request) or (z) are prohibited by Applicable Law from delivering to Purchaser.

"**Excluded Contracts**" has the meaning set forth in Section 2.5.

"**Excluded Liabilities**" has the meaning set forth in Section 2.4.

"**Existing Manufacturing Contract**" means any Assigned Contract under which the Seller or any of its Affiliates Manufactured or has Manufactured any Licensed Compounds or Lonafarnib Antiviral Products, as identified on Schedule 2.1(a).

"**Existing Manufacturing Contract Interim Term**" has the meaning set forth in Section 7.11(a).

"**Existing Manufacturing Contract Transfer Date**" means, with respect to an Existing Manufacturing Contract, the date that is the earlier to occur of (a) November 3, 2024, (b) the date that the Zokinvy Buyer obtains a new agreement for substantially the same services as those provided to Seller by the counterparty under such Existing Manufacturing Contract prior to May 3, 2024, and (c) the date

Purchaser and the Zokinvy Buyer agree to arrangements for the supply of Licensed Progeria Product under the Existing Manufacturing Contracts following the assignment thereof to Purchaser.

"**Expense Reimbursement**" means the reimbursement by the Seller of Purchaser's actual and reasonable out-of-pocket legal, accounting, and other third-party advisory or service costs and expenses incurred in connection with the Transactions, as evidenced by invoice(s) provided to the Seller, on the terms and subject to the conditions of Section 9.3.

"**FDA**" means the United States Food and Drug Administration.

"**FD&C Act**" means the United States Federal Food, Drug and Cosmetic Act, as amended, and any rules, regulations, and requirements promulgated thereunder.

"**Field**" has the meaning given to it in the Merck License Agreement.

"**Final Order**" means an Order, judgment or other decree of the Bankruptcy Court or any other Governmental Authority of competent jurisdiction that has not been reversed, vacated, modified or amended, is not stayed and remains in full force and effect; provided that such Order shall be considered a Final Order only after the time period for third parties seeking appeal has expired without the filing of any appeal or motion for reconsideration.

"**Free and Clear**" means free and clear of all Liens and Excluded Liabilities (other than the Permitted Liens and the Assumed Liabilities) to the maximum extent permitted by Section 363(f) of the Bankruptcy Code.

"**GAAP**" means generally accepted accounting principles in the United States as of the Agreement Date.

"**General Business Books and Records**" means, excluding Transferred Business Books and Records and Business Books and Records that exclusively relate to the Licensed Progeria Product, any and all Business Books and Records that relate to any Licensed Product.

"**General Licensed Product Data**" means, excluding Transferred Data and Licensed Progeria Product Data, any and all Data that relate to any Licensed Product.

"**General Licensed Product Regulatory Information**" means, excluding Transferred Regulatory Information and Licensed Progeria Product Regulatory Information, any and all Regulatory Information that relate to any Licensed Product.

"**Global Safety Databases**" means the databases established and owned or controlled (including via license) by Seller or any of its Affiliates, including such databases that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf the Seller or any of its Affiliates, directly or indirectly, at any level) that contain the totality of all current and historic safety data and information with respect to the Licensed Product, including AEs, received, collected, used, held for use by or on behalf of Seller or its Affiliates or the Zokinvy Buyer or its Affiliates (including by or on behalf of any contractors or other service providers acting on its or their behalf, directly or indirectly, at any level), or pursuant to the Merck License Agreement or Merck Pharmacovigilance Agreement for drug surveillance, pharmacovigilance, and regulatory safety reporting purposes, including the global safety database that is the central repository of all such safety data and information worldwide and any and all local or territory databases of such safety data and information with respect to a particular country, region, jurisdiction, or territory.

"**Global Safety Database Contracts**" means any and all Contracts by and between Seller or any of its Affiliates and a Third Party service provider under which any part of the Global Safety Databases is stored or administered, including the Contracts identified as Global Safety Database Contracts on Schedule 7.15.

"**Goods**" has the meaning set forth in Section 3.14.

"**Governmental Authority**" means any domestic or foreign national, provincial, state, multi-state or municipal or other local government, any subdivision, agency, commission or authority thereof, any court (including the Bankruptcy Court), tribunal, or any quasi-governmental or private body exercising any regulatory or taxing authority thereunder (including the IRS and the FDA).

"**Hazardous Substances**" means any substances, materials or wastes which are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "pollutants" or "contaminants" under any Environmental Law, including any petroleum or refined petroleum products, radioactive materials, friable asbestos or polychlorinated biphenyls.

"**IND**" means (i) an Investigational New Drug application filed with the FDA in accordance with the FD&C Act, and (ii) any of its foreign equivalents as filed with the applicable Regulatory Authorities in other countries or regulatory jurisdictions in the world, as applicable, in each case ((i) and (ii)), including all supplements, amendments, variations, extensions, and renewals thereof that may be filed with respect to the foregoing.

"**Intellectual Property**" means any and all intellectual property and proprietary rights in any jurisdiction throughout the world, including rights arising from the following: (i) patents and patent applications, design rights, industrial design registrations and applications therefor, divisions, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, reexaminations, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing; (ii) trademarks (whether registered, unregistered or applied for), service marks, trade dress, service names, trade names, brand names, product names, slogans, logos, business names, corporate names, and other source or business identifiers, all registrations and applications for registration thereof, and, in each case, together with all of the goodwill associated therewith; (iii) works of authorship, copyrights and all registrations and applications for registration thereof; (iv) trade secrets and Know-How; (v) rights in formulae, methods, techniques, processes, assembly procedures, software, software code (in any form, including source code and executable or object code), subroutines, test results, test vectors, user interfaces, protocols, schematics, specifications, drawings, prototypes, molds and models, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing), and (vi) social media accounts, social media identifiers, internet domain name registrations.

"**Intellectual Property Assignment Agreement**" means the assignment agreement, dated as of the Closing Date, by and between the Seller and Purchaser, in substantially the form attached hereto as Exhibit C and acceptable to Purchaser.

"**Intellectual Property Registrations**" means, as to any Owned Intellectual Property Assets, any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including domain names, registered trademarks and copyrights, issued and reissued patents and pending applications for any of the foregoing.

"**Inventory**" has the meaning set forth in Section 2.1(h).

"**IQVIA Contract**" means any Contract with IQVIA Biotech LLC, IQVIA Clinical AB, IQVIA RDS INC., or Novella Clinical LLC, or any of their Affiliates.

"**IRS**" means the United States Internal Revenue Service.

"**Joint Ownership Agreement**" has the meaning set forth in Section 7.13.

"**Know-How**" means all technical, scientific, manufacturing, and other know-how and information, trade secrets, knowledge, technology, means, methods, processes, practices, formulae, instructions, skills, techniques, procedures, experiences, ideas, technical assistance, designs, drawings, assembly procedures, computer programs, apparatuses, specifications, data, results and other material, including: biological, chemical, pharmacological, toxicological, pharmaceutical, physical and analytical, pre-clinical, clinical,

safety, manufacturing and quality control data and information, including study designs and protocols; assays; stability reports, production records, test methods, certificates of analyses, development reports, quality and technical agreements, and supplier audit reports and biological methodology; in each case (whether or not confidential, proprietary, patented or patentable) in written, electronic or any other tangible or intangible form now known or hereafter developed.

"**Knowledge**" means (a) with regard to the Seller, the actual knowledge, without any implication of verification or investigation concerning such knowledge, of Seller's chief executive officer, chief financial officer, and general counsel, in each case as of the Agreement Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate) and (b) with regard to Purchaser, the actual knowledge, without any implication of verification or investigation concerning such knowledge, of Purchaser's chief executive officer as of the Agreement Date (or, with respect to a certificate delivered pursuant to this Agreement, as of the date of delivery of such certificate).

"**Lambda Buyer**" means the purchaser of the Seller assets associated with any "Licensed Compound" or "Licensed Product" as such terms are defined in the BMS License Agreement.

"**Law Firm**" means Sidley Austin LLP and its successors.

"**Letter of Authorization**" has the meaning set forth in Section 7.9(c).

"**Liabilities**" means debts, liabilities, duties, obligations or commitments of any nature whatsoever, whether direct or indirect, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, whenever or however arising (including whether arising out of any Contract or in a tort claim based on negligence or strict liability).

"**Licensed Compound**" has the meaning given to it in the Merck License Agreement.

"**Licensed Product**" has the meaning given to it in the Merck License Agreement.

"**Licensed Product Data**" means any and all Data that relates to any Licensed Product.

"**Licensed Product Regulatory Information**" means any and all Regulatory Information that relates to any Licensed Product.

"**Licensed Progeria Product**" has the meaning given to it in the Merck License Agreement.

"**Licensed Progeria Product Data**" means any and all Data that exclusively relate to the Licensed Progeria Product.

"**Licensed Progeria Product Regulatory Information**" means any and all Regulatory Information that exclusively relate to the Licensed Progeria Product.

"**Lien**" means all forms of lien (including mechanic's, contractor's or other similar liens arising under or relating to the provision of goods or services on or to any Transferred Assets, and liens arising under the Bankruptcy Code), encumbrance, defect or irregularity in title, pledge, mortgage, deed of trust, deed to secure debt, security interest, charge, transfer restriction or similar agreement or encumbrance, including any dedication under any gathering, transportation, treating, processing, fractionating, purchase, sale or similar agreements, or any other rights granted or consensual as or against any Transferred Assets including but not limited to easements, encroachments, rights of first refusal, options, or any other interest or right in property that constitutes a lien or interest within the definition or adjudication of such terms under Section 101(37) of the Bankruptcy Code.

"**Lonafarnib Antiviral Field**" means the Field, excluding the Progeria Field. For the avoidance of doubt, the Lonafarnib Antiviral Field includes the Lonafarnib HDV Field.

"**Lonafarnib Antiviral Products**" means any and all Licensed Products for use in the Lonafarnib Antiviral Field, excluding the Licensed Progeria Product for use in the Progeria Field.

"**Lonafarnib HDV Field**" means the use of the Licensed Compound or Licensed Product for the treatment of Hepatitis D virus infections, including the treatment of patients co-infected with Hepatitis D virus and either or both of Hepatitis C virus and Hepatitis B virus.

"**Lonafarnib HDV Products**" means any and all Lonafarnib Antiviral Products for use in the Lonafarnib HDV Field.

"**Lonafarnib IND**" means any and all INDs owned or controlled by Seller or its Affiliates for Lonafarnib Antiviral Products anywhere in the world, including IND # 110,877 for the Lonafarnib HDV Product.

"**Lonafarnib IND Transfer Date**" means the date on which the transfer of all Lonafarnib INDs by Seller or its Affiliates to Purchaser under this Agreement is complete such that Purchaser is considered the holder of all Lonafarnib INDs by the applicable Regulatory Authority.

"**Manufacture**" has the meaning given to it in the Merck License Agreement.

"**Material Adverse Effect**" means a material adverse effect on the business, financial condition or results of operations of the Business (including the Transferred Assets and Assumed Liabilities) taken as a whole; *provided, however,* that none of the following shall be deemed (either alone or in combination) to constitute, and none of the following shall be taken into account in determining whether there has been or may be, a Material Adverse Effect: (a) any change in, or effects arising from or relating to, general business or economic conditions affecting any industry in which the Business operates; (b) any change in, or effects arising from or relating to, the United States or foreign economies, or securities, banking or financial markets in general, or other general business, banking, financial or economic conditions (including (i) any disruption in any of the foregoing markets, (ii) debt defaults or other restructuring events of any country with respect to which bondholders take a discount to the debt of any country or any increases in the interest rates for any country's debt, (iii) any change in currency exchange rates, (iv) any decline or rise in the price of any security, commodity, contract or index and (v) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (c) any change from, or effects arising from or relating to, the occurrence, escalation or material worsening of any act of God or other calamity, natural disaster, pandemic or disease, outbreak, hostility, act of war, sabotage, cyber-attack or terrorism or military action; (d) any action taken by Purchaser or its Affiliates with respect to the Transactions or with respect to the Business; (e) any action taken, or failed to be taken, by the Seller at the request of or with the consent of Purchaser or otherwise in compliance with the terms of this Agreement or any change from, or effects arising from or relating to, Purchaser's failure to consent to any action restricted by Section 6.1; (f) any change in, or effects arising from or relating to changes in, Applicable Law or accounting rules (including GAAP) or any interpretation thereof; (g) the failure of the Business to meet any of its projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or representatives); (h) national or international political, labor or social conditions; (i) the public announcement of, entry into or pendency of, actions required or contemplated by or performance of obligations under, this Agreement and the Transactions or the identity of the parties to this Agreement; (j) the sale of any assets other than the Transferred Assets to any third parties by a member of the Seller Group or any of their Affiliates; (k) any effect arising or resulting from or related to the filing of the Bankruptcy Cases; (l) any action required to be taken under any Applicable Law or Order or any existing Contract by which any member of the Seller Group's (or any of their properties) are bound; (m) seasonal changes in the results of operations of the Seller Group; (n) any epidemic, pandemic, outbreak of disease or other public health emergency (including COVID-19) or any escalation or worsening of any such conditions or (o) any objections made in the Bankruptcy Court to this Agreement, the Transactions, the Sale Order or the reorganization, any orders of the Bankruptcy Court and any actions or omissions of the Seller in compliance with any order of the Bankruptcy Court and the assumption or rejection of any Assigned Contract; except in the cause of clauses (a) through (c), (h) and (n), to the extent such conditions, events, changes, crises and disasters, as applicable, do not have a material

and disproportionate impact on the Business, taken as a whole, compared to other industry participants (in which case, only the extent of such disproportionate effect shall be taken into account when determining whether there is a Material Adverse Effect).

"Merck" means Merck Sharp & Dohme Corp. (successor-in-interest of Schering Corporation).

"**Merck License Agreement**" means that certain License Agreement, dated September 3, 2010, by and between the Seller and Merck, and any and all amendments or supplements thereto, including that certain First Amendment, dated January 18, 2011, Amendment to License Agreement, dated June 11, 2013, Amendment #2 to License Agreement, dated November 20, 2014, Amendment #3 to License Agreement, dated March 6, 2015, Amendment #4 to License Agreement, dated June 9, 2015, Amendment #5 to License Agreement, dated December 17, 2015, Amendment #6 to License Agreement, dated May 15, 2018, and Amendment #7 to License Agreement, dated November 3, 2020.

"**Merck Pharmacovigilance Agreement**" means the Safety Agreement, dated February 24, 2021, by and between the Seller and Merck, including any and all amendments, termination agreement or memo of understanding related thereto.

"**Merck Side Letter**" means the letter agreement, dated as of the Closing Date, by and between the Seller, Purchaser and Merck, in a form reasonably acceptable to Purchaser.

"**NDA**" means, with respect to a pharmaceutical product, a New Drug Application submitted to the FDA in accordance with the FD&C Act, and the rules and regulations promulgated thereunder, or any analogous application or submission with any Regulatory Authority outside of the United States.

"**Non-Transferred Asset**" has the meaning set forth in Section 2.6(a).

"**Nonparty Affiliates**" has the meaning set forth in Section 10.15.

"**Notice of Readiness to Close**" has the meaning set forth in Section 8.5.

"**Order**" means any award, decision, injunction, judgment, ruling or verdict entered, issued, made or rendered by any Governmental Authority or arbitrator.

"**Organizational Documents**" means (a) the articles or certificates of incorporation and the by-laws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the operating or limited liability company agreement and the certificate of formation of a limited liability company, (e) any charter, joint venture agreement or similar document adopted or filed in connection with the creation, formation or organization of a Person not described in clauses (a) through (d), and (f) any amendment to or equivalent of any of the foregoing.

"**Outside Date**" has the meaning set forth in Section 9.1(i).

"**Owned Intellectual Property Assets**" means the Intellectual Property owned or purported to be owned by any member of the Seller Group that is used in, held for use in, or related to, the conduct of the Business as currently conducted or proposed to be conducted, including any Intellectual Property related to a combination of the "Licensed Compound" or "Licensed Product" as such terms are defined in the Merck License Agreement with the "Licensed Compound" or "Licensed Product" as such terms are defined in the BMS License Agreement.

"**Permit**" means all permits, authorizations, certificates, franchises, consents and other approvals from any Governmental Authority.

"**Permitted Liens**" means (a) Liens for Taxes, assessments or other governmental charges not yet due and payable or being contested in good faith by appropriate proceedings; (b) mechanics', carriers', workers', repairers' and other similar Liens arising or incurred in the ordinary course of business for obligations that are not overdue or are being contested in good faith by appropriate proceedings; (c) zoning,

entitlement and building regulations and land use restrictions; (d) purchase money Liens and Liens securing rental payments under capital lease arrangements; (e) Liens arising under leases of property or equipment in favor of the owner thereof; (f) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security; (g) deposits to secure the performance of bids, Contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business; (h) licenses of Intellectual Property granted in the ordinary course of business; (i) Liens arising under or created by this Agreement or any of the Related Documents; (j) Liens arising in the ordinary course of business which would not reasonably be expected to have a Material Adverse Effect; and (k) Liens set forth on Schedule 1.1(a).

"**Person**" means any individual, partnership, joint venture, limited liability company, corporation, firm, trust, association, unincorporated organization, governmental authority or agency, or any other entity not specifically listed herein.

"**Personal Information**" means any information in the possession or control of the Seller Group (solely as related to the Business) about an identifiable individual other than the name, title or business address, business email address or telephone number of any employee of the Seller Group.

"**Petition Date**" has the meaning set forth in the Recitals.

"**Plan Consummation Date**" means the date on which the Seller Group's plan in the Bankruptcy Cases is substantially consummated.

"**Pre-Closing Tax Period**" means any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period through the Closing Date.

"**Preliminary Allocation Schedule**" has the meaning set forth in Section 2.11(a).

"**Previously Excluded Contract**" has the meaning set forth in Section 5.5(b).

"**Previously Unknown Contract**" has the meaning set forth in Section 5.5(a).

"**Progeria Field**" has the meaning given to it in the Merck License Agreement.

"**Provision**" has the meaning set forth in Section 10.4.

"**Public Health Measures**" means any closures, "shelter-in-place," "stay at home," workforce reduction, social distancing, shut down, closure, curfew or other restrictions or any other Applicable Law, Orders, directives, guidelines or recommendations issued by any Governmental Authority, the Centers for Disease Control and Prevention, the World Health Organization, or any industry group in connection with COVID-19 or any other epidemic, pandemic, or outbreak of disease, or in connection with or in response to any other public health conditions.

"**Purchase Price**" means the Base Price *plus* the aggregate amount of Purchaser Cure Amounts.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Cure Amounts**" means, with respect each Assigned Contract, the Determined Cure Amounts as follows: (a) if Purchaser does not assume any Cross-Over Contract, then up to $180,000 in the aggregate, (b) if Purchaser assumes the IQVIA Contracts, then up to $2,180,000, (c) if Purchaser assumes the Biorasi Contracts and the IQVIA Contracts, then up to $2,380,000, or (d) if Purchaser assumes the Biorasi Contracts but not the IQVIA Contracts, then up to $380,000 in the aggregate.

"**Purchaser Group Members**" has the meaning set forth in Section 10.17.

"**Purchaser Releasing Party**" has the meaning set forth in Section 10.16(b).

"**Purchaser Schedules**" has the meaning set forth in ARTICLE 4.

"**Purchaser's FDA Transfer Letters**" means the letters from Purchaser to FDA in form and substance acceptable to Purchaser, notifying FDA of the acceptance of the transfer from the Seller to Purchaser of all of Seller's right, title and interest in the Lonafarnib IND.

"**PV Services Stop Date**" has the meaning set forth in Section 7.10(d).

"**Regulatory Applications**" means (a) the single application or set of applications for approval and/or pre-market approval to Manufacture and sell commercially a pharmaceutical therapeutic product submitted to the FDA including, without limitation, any related registrations with or notifications to the FDA, and (b) any foreign equivalents to such applications filed with any other national or supranational Regulatory Authority in the Territory, and (c) all supplements and amendments that may be filed with respect to any of the foregoing.

"**Regulatory Approval**" means any and all approvals (including pricing or pricing reimbursement approvals), licenses, registrations, or authorizations of any federal, national, multinational, state, provincial or local regulatory agency, department, bureau or other governmental entity necessary for the Manufacture, use, storage, import, export, transport, promotion, marketing or sale of a Licensed Product in any field (including the Lonafarnib Antiviral Field and Progeria Field) in the applicable country.

"**Regulatory Authority**" means any United States federal, state, or local government, or any foreign government, or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any governmental arbitrator or arbitral body with responsibility for granting licenses or approvals, including Regulatory Approvals, necessary for the marketing and sale of the Licensed Product in the applicable country in the Territory.

"**Regulatory Information**" means any filings, submissions, applications, data, reports or correspondence, including, without limitation, dossiers, manufacturing data, drug master files, inspection reports, adverse event files and complaint files, with any Governmental Authority that relate to any Licensed Compound or Licensed Product in any field (including the Lonafarnib Antiviral Field and Progeria Field), including any (a) INDs, Regulatory Applications, Regulatory Approvals, drug master files, applications for designation as an "Orphan Product" under the Orphan Drug Act, applications for designation as a humanitarian use device or a breakthrough device, for Fast Track or Breakthrough Therapy Designation, Accelerated Approval or Priority Review or for a Special Protocol Assessment or all other filings (including Regulatory Approval applications and counterparts to any of the foregoing in any country or region), (b) all supplements and amendments to any of the foregoing, and (c) all data and other information contained in, and correspondence relating to, any of the foregoing, in each case of any of the foregoing items listed in this definition, in the possession of, owned by, or under the control (including via license) of the Seller or any of its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of the Seller or any of its Affiliates, directly or indirectly, at any level) as of the Closing Date or at any time thereafter.

"**Related Claims**" means all claims or causes of action (whether in contract or tort, in law or in equity, or granted by statute or otherwise) that may be based upon, arise out of or relate to this Agreement, the Related Documents and any other document or instrument delivered pursuant to this Agreement or the Related Documents, or the negotiation, execution, termination, validity, interpretation, construction, enforcement, performance or nonperformance of this Agreement or the Related Documents or otherwise arising from the Transactions or the relationship between the parties (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with, or as an inducement to enter into, this Agreement or the Related Documents).

"**Related Documents**" means the Escrow Agreement, the Bill of Sale and Assignment and Assumption Agreement, Intellectual Property Assignment Agreement, Sublicense Agreement, and Merck Side Letter; *provided, however,* that the Escrow Agreement, the Bill of Sale and Assignment and Assumption Agreement, Intellectual Property Assignment Agreement, Sublicense Agreement, and Merck Side Letter shall not be a Related Document solely for purposes of applying the provisions in ARTICLE 10 to the extent, and only to the extent, that any such document expressly conflicts with ARTICLE 10.

"**Release**" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Substances.

"**Sale Order**" means an Order of the Bankruptcy Court issued pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code in form and substance acceptable to Purchaser and the Seller, approving this Agreement and all of the terms and conditions hereof and approving and authorizing the Seller to consummate the Transactions contemplated hereby Free and Clear and containing a finding that Purchaser has acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code.

"**Satisfactory IQVIA Cure Resolution**" has the meaning set forth in Section 7.15(c).

"**Satisfactory Other Cure Resolution**" has the meaning set forth in Section 7.15(c).

"**Schedules**" has the meaning set forth in ARTICLE 3.

"**Seller**" has the meaning set forth in the preamble.

"**Seller Access Contact**" has the meaning set forth in Section 6.2(a).

"**Seller Cure Amounts**" means, with respect to Assigned Contracts, any Determined Cure Amounts that are not the then-applicable Purchaser Cure Amounts.

"**Seller Financial Statements**" has the meaning set forth in Section 3.9.

"**Seller Group**" means the Seller and each of its Affiliates.

"**Seller Group Members**" has the meaning set forth in Section 10.17.

"**Seller Group Taxes**" means any (i) Liability of Seller Group for Taxes, (ii) any Liability for Asset Taxes attributable to any Pre-Closing Tax Period, and (iii) any Liability of Seller Group for the unpaid Taxes of any Person under Treasury Regulation §1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract, or otherwise.

"**Seller Permits"** has the meaning set forth in Section 3.5.

"**Seller Releasing Party**" has the meaning set forth in Section 10.16(a).

"**Seller's FDA Transfer Letters**" means the letters from the Seller to FDA in form and substance acceptable to Purchaser, notifying FDA of the transfer from the Seller to Purchaser of all of Seller's rights in the Lonafarnib IND.

"**Solvent**" when used with respect to any Person, means that, as of any date of determination, (a) the fair salable value (determined on a going concern basis) of its assets and property will, as of such date, exceed the amounts required to pay its debts as they become absolute and mature, as of such date, (b) such Person will have adequate capital to carry on its business and (c) such Person will be able to pay its debts as they become absolute and mature, in the ordinary course of business, taking into account the timing of and amounts of cash to be received by it and the timing of and amounts of cash to be payable on or in respect of its indebtedness.

"**Specific Provision**" has the meaning set forth in Section 10.4.

"**Storage Contract**" means each Contract (or portion thereof) with a Third Party pursuant to which any Inventory are held for storage or other activities.

"**Straddle Period**" means any taxable year or other taxable period beginning on or before and ending after the Closing Date.

"**Sublicense Agreement**" means the Sublicense Agreement, dated as of the Closing Date, by and between the Seller and Purchaser, in a form reasonably acceptable to the Seller and Purchaser.

"**Supplemental Assignment Notice**" has the meaning set forth in Section 5.5(a).

"**Supplemental Assignment Notice Objection Deadline**" has the meaning set forth in Section 5.5(a).

"**Tax**" means any tax of any kind whatsoever (including any income tax, franchise tax, branch profits tax, capital gains tax, value-added tax, unclaimed property, escheat, sales tax, use tax, property tax, transfer tax, payroll tax, social security tax or withholding tax), and any related fine, penalty, interest, or addition to tax with respect thereto, imposed, assessed or collected by or under the authority of any Governmental Authority.

"**Tax Return**" means any return (including any information return), report, statement, schedule, notice, form, or other document or information (whether in tangible, electronic or other form), including any amendments, schedules attachments, supplements, appendices and exhibits thereto, filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection, or payment, of any Tax.

"**Termination Fee**" means a fee equal to $36,000.

"**Territory**" has the meaning given to it in the Merck License Agreement.

"**Third Party**" means any Person other than a Contracting Party or its Affiliates.

"**Trademark**" means, collectively, trademarks, service marks trade names, slogans, logos, trade dress or other similar source or origin identifiers (whether statutory or common law, whether registered or unregistered), together with all (a) registrations and applications for any of the foregoing, (b) extensions or renewals thereof, (c) goodwill (if any) connected with use thereof or symbolized thereby, and (d) rights and privileges arising under Applicable Law with respect to any of the foregoing.

"**Transactions**" means the transactions contemplated by this Agreement and the Related Documents.

"**Transfer Taxes**" has the meaning set forth in Section 2.10.

"**Transferred Assets**" has the meaning set forth in Section 2.1.

"**Transferred Business Books and Records**" has the meaning set forth in Section 2.1(d).

"**Transferred Data**" means any and all Data that (a) are owned or purported to be owned by the Seller or its Affiliates (including all such Data held by or on behalf of Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf the Seller or any of its Affiliates, directly or indirectly, at any level)) and (b) exclusively relate to any Lonafarnib Antiviral Product, including any Data related to a combination of the "Licensed Compound" or "Licensed Product" as such terms are defined in the Merck License Agreement with the "Licensed Compound" or "Licensed Product" as such terms are defined in the BMS License Agreement.

"**Transferred Materials**" means the Transferred Data, Transferred Regulatory Information, Transferred Studies, Transferred Business Books and Records, and Inventory.

"**Transferred Regulatory Information**" means any and all Regulatory Information that (a) are owned or purported to be owned by the Seller or its Affiliates (including all such Regulatory Information held by or on behalf of Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf the Seller or any of its Affiliates, directly or indirectly, at any level)) and

(b) exclusively relate to any Lonafarnib Antiviral Product, including any Regulatory Information related to a combination of the "Licensed Compound" or "Licensed Product" as such terms are defined in the Merck License Agreement with the "Licensed Compound" or "Licensed Product" as such terms are defined in the BMS License Agreement.

"**Transferred Studies**" all clinical, preclinical, and non-clinical studies to the extent on-going as of the Closing being conducted by or on behalf of Seller or any of its Affiliates related to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field, including without limitation the virology studies being conducted by Seller in collaboration with (a) INSERM U1110, Université de Strasbourg, France and (b) U1111, Centre International de Recherche en Infectiologie, Lyon, France, team HepVir (each, a "**Virology Collaborator**", and such studies, the "**Virology Studies**") and any studies related to a combination of the "Licensed Compound" or "Licensed Product" as such terms are defined in the Merck License Agreement with the "Licensed Compound" or "Licensed Product" as such terms are defined in the BMS License Agreement.

"**Transition Materials**" means all Licensed Product Data, Licensed Product Regulatory Information, Transferred Studies, Business Books and Records, and Inventory.

"**Virology Collaborator**" has the meaning set forth in the definition of Transferred Studies.

"**Virology Collaborator Confirmation Letters**" means letters of confirmation from each Virology Collaborator in form and substance acceptable to Purchaser confirming that the Virology Studies are ongoing and have not been interrupted, suspended, or delayed and that all payments payable to such Virology Collaborator in connection with the relevant Virology Study has been duly and timely paid in full.

"**Virology Studies**" has the meaning set forth in the definition of Transferred Studies.

"**Zokinvy Buyer**" means Sentynl Therapeutics, Inc.

"**Zokinvy Buyer Agreement**" means an agreement between Purchaser and the Zokinvy Buyer regarding coordination relevant to the Development, Manufacture, and Commercialization of the Lonafarnib Antiviral Products by Purchaser and the Licensed Progeria Product by the Zokinvy Buyer.

"**Zokinvy Buyer-Eiger Agreement**" means that particular Asset Purchase Agreement entered into between Seller and the Zokinvy Buyer, dated March 31, 2024, under which the Seller sold certain assets to the Zokinvy Buyer related to the use of the Licensed Progeria Product in the Progeria Field.

"**Zokinvy Dossier**" means the complete regulatory dossier of the Zokinvy Product, including without limitation (a) all INDs, NDAs, and equivalent foreign applications or registrations for the Zokinvy Product or for Regulatory Approval of the Zokinvy Product (including all modules thereof, and amendments, updates, or supplements thereto); (b) all Regulatory Approvals and any other technical, medical and scientific registrations, authorizations and approvals (including approvals of NDAs or foreign equivalents, supplements and amendments, pre- and post- approvals, pricing and reimbursement approvals, and labeling approvals) of any Regulatory Authority necessary for or applicable to the development (including the conduct of clinical trials), manufacture, distribution, marketing, promotion, offer for sale, use, import, reimbursement, export or sale of the Zokinvy Product in any regulatory jurisdiction, together with all related correspondence to or from any Regulatory Authority and all documents referenced in the complete regulatory chronology for each NDA or foreign equivalent, including the drug master file (if any), IND, NDA and supplemental NDA, or foreign equivalents; and (c) all data and other information contained or referenced in any of (a) or (b) above.

"**Zokinvy Product**" means the pharmaceutical product containing lonafarnib as its active pharmaceutical ingredient and sold under the trademark Zokinvy®.

1.2 **Other Definitional and Interpretive Matters**.

(a) Unless otherwise expressly provided, for purposes of this Agreement and the Related Documents, the following rules of interpretation shall apply:

(i) Calculation of Time Period. All references to a day or days shall be deemed to refer to a calendar day or days, as applicable, unless otherwise specifically provided. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference to $ shall mean U.S. dollars, which is the currency used for all purposes in this Agreement and the Related Documents. The specification of any dollar amount in the representations and warranties or otherwise in this Agreement, the Related Documents or the Schedules is not intended and shall not be deemed to be an admission or acknowledgement of the materiality of such amounts or items, nor shall the same be used in any dispute or controversy between the parties hereto to determine whether any obligation, item or matter (whether or not described herein or included in any schedule) is or is not material for purposes of this Agreement, the Related Documents or the Schedules.

(iii) Exhibits/Schedules. The Exhibits and Schedules to this Agreement are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one Schedule shall be deemed to have been disclosed on each other Schedule. Disclosure of any item on any Schedule shall not constitute an admission or indication that any such item is required to be disclosed, or that such item or matter is material or has resulted in or will result in a Material Adverse Effect or that the included items or actions are not in the ordinary course of business. No disclosure on a Schedule relating to a possible breach or violation of any Contract, Applicable Law or Order shall be construed as an admission or indication that a breach or violation exists or has actually occurred. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a table of contents, the division of this Agreement or Related Documents into articles, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement or Related Document, as applicable. Unless otherwise specified, all references in this Agreement to any "Section" or other subdivision are to the corresponding section or subdivision of this Agreement, and all references in a Related Document to any "Section" or other subdivision are to the corresponding section or subdivision of such Related Document.

(vi) Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" that are used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. Uses of such words in the Related Documents shall refer to such Related Document as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Or. The word "or" shall be construed in the inclusive sense of "and/or" unless otherwise specified.

(viii) Including. The word "including" or any variation thereof means (unless the context of its usage otherwise requires) "including, without limitation" and shall not be

construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(ix) Successors. A reference to any party to this Agreement, any Related Document or any other agreement or document shall include such party's successors and permitted assigns.

(x) Legislation. A reference to any legislation or to any provision of any legislation shall include any amendment thereto, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(xi) Reflected On or Set Forth In. An item arising with respect to a specific representation or warranty shall be deemed to be "reflected on" or "set forth in" a balance sheet or financial statement, to the extent any such phrase appears in such representation or warranty, if (a) there is a reserve, accrual or other similar item underlying a number on such balance sheet or financial statement that relates to the subject matter of such representation, (b) such item is otherwise specifically set forth on the balance sheet or financial statement or (c) such item is set forth in the notes to the balance sheet or financial statement.

(xii) Made Available. Any reference in this Agreement to "made available" means a document or other item of information that was provided or made available to Purchaser or its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions.

(b) All representations and warranties set forth in this Agreement or the Related Documents are contractual in nature only and subject to the sole and exclusive remedies set forth herein. No Person is asserting the truth of any representation and warranty set forth in this Agreement or the Related Documents; rather, the parties have agreed that should any representations and warranties of any party prove untrue, the other parties shall have the specific rights and remedies herein specified as the exclusive remedy therefor, but that no other rights, remedies or causes of action (whether in law or in equity or whether in contract or in tort or otherwise) are permitted to any party hereto as a result of the untruth of any such representation and warranty. The phrase "to Seller's Knowledge" and phrases of similar import or effect are used herein to qualify and limit the scope of any representation or warranty in which they appear and are not affirmations of any Person's "superior knowledge" that the representation or warranty in which they are used is true.

(c) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the Related Documents and, in the event an ambiguity or question of intent or interpretation arises, this Agreement and the Related Documents shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement and the Related Documents. The parties hereto agree that changes from earlier drafts to the final version of this Agreement do not necessarily imply that the party agreeing to such change is agreeing to a change in meaning (as the party agreeing to such change may believe the change is stylistic and non-substantive); consequently, no presumption should exist by virtue of a change from a prior draft.

ARTICLE 2.
THE PURCHASE AND SALE; CLOSING

2.1 **Purchase and Sale**. Upon the terms and subject to the conditions set forth in this Agreement, the Sublicense Agreement, the Merck Side Letter, and the Sale Order, at the Closing, in exchange for an aggregate payment from Purchaser to the Seller equal to the Purchase Price, Purchaser shall purchase, assume and accept from the Seller, and the Seller shall sell, transfer, assign, convey and deliver (or shall cause the sale, transfer, assignment, conveyance and delivery) to Purchaser, Free and Clear (except for Permitted Liens), all of the rights, title and interests in, to and under the following assets and interests used in the Business as the same shall exist on the Closing Date (and, subject to Section 7.11, with respect to the Existing Manufacturing Contracts, on the applicable Existing Manufacturing Contract Transfer Date) (collectively, the "**Transferred Assets**"):

(a) (i) subject to the ensuing clause (ii), all Contracts that are listed on Schedule 2.1(a) (as such Schedule may be amended pursuant to the terms of this Agreement, the "**Contracts List**"), (ii) on the applicable Existing Manufacturing Contract Transfer Date automatically and without further notice, the Existing Manufacturing Contracts, and (iii) all other Contracts that are Assigned Contracts pursuant to Sections 5.3(b), 5.4, 5.5 and 7.15, including all rights, interests, credits, prepaid charges and expenses, deferred charges, advance payments, deposits, and prepaid items of Seller related thereto (collectively, the "**Assigned Contracts**");

(b) the Owned Intellectual Property Assets, including the Intellectual Property Registrations listed on Schedule 3.12(a), as may be amended or supplemented with the agreement of the Seller at the request of Purchaser at any time prior to the Closing; *provided, however*, that any and all filing or transfer fees due to any Third Party (including any Governmental Authority) incurred by either party in connection with the transfer of such Intellectual Property Registrations shall be borne and paid by Purchaser;

(c) the Transferred Regulatory Information, including the information and documents listed on Schedule 2.1(c), as may be amended or supplemented at the request of Purchaser at any time prior to the Closing; *provided, however*, that the Seller may retain copies of such Transferred Regulatory Information or may retain originals of the Transferred Regulatory Information and instead provide Purchaser with copies to the extent permissible under Applicable Laws and shall maintain the confidentiality thereof in accordance with the terms of the Confidentiality Agreement as Confidential Information, except Seller will be deemed the "Recipient" and Purchaser will be deemed "Company under the Confidentiality Agreement and Seller will be obligated to keep such Confidential Information from being disclosed for an indefinite period of time, *mutatis mutandis* unless otherwise required to be disclosed under Applicable Law, including by a Governmental Authority; *provided, further*, that the Parties shall cooperate in good faith to effectuate the assignments and transfer of the Transferred Regulatory Information with any applicable Governmental Authority, including duly executing and delivering, or causing to be duly executed and delivered, such instruments (including the filing of such assignments, agreements and documents) as may be necessary in order to affect such assignment and transfer of the Transferred Regulatory Information from the Seller to Purchaser;

(d) the Business Books and Records exclusively relating to any Lonafarnib Antiviral Product (including any Business Books and Records related to a combination of the "Licensed Compound" or "Licensed Product" as such terms are defined in the Merck License Agreement with the "Licensed Compound" or "Licensed Product" as such terms are defined in the BMS License Agreement, but excluding records and files not reasonably separable from documents and databases that do not relate exclusively to any Lonafarnib Antiviral Product or any Transferred Materials) ("**Transferred Business Books and Records**"); *provided, however*, that the Seller may retain copies of the Transferred Business Books and Records and shall maintain the confidentiality thereof in accordance with the terms of the Confidentiality Agreement as Confidential Information, except Seller will be deemed the "Recipient" and

Purchaser will be deemed "Company under the Confidentiality Agreement and Seller will be obligated to keep such Confidential Information from being disclosed for an indefinite period of time, *mutatis mutandis* unless otherwise required to be disclosed under Applicable Law, including by a Governmental Authority; *provided, further*, that such Transferred Business Books and Records shall include solely such records created or acquired during the last three (3) years; *provided, further*, that the Seller will make available, or cause to be made available, to Purchaser copies of Business Books and Records that are not Transferred Business Books and Records, that are in the possession of, owned by, or under the control (including via license) of the Seller or any of its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of the Seller or any of its Affiliates, directly or indirectly, at any level) as of the Closing Date or at any time thereafter, and the Seller is permitted to redact or remove any extraneous or unrelated confidential or proprietary information in furtherance of such obligation, in each case such that Purchaser is able to conduct the Business and Develop, Manufacture, and Commercialize the Lonafarnib Antiviral Products in the Lonafarnib Antiviral Field in the Territory as contemplated by this Agreement;

(e) all rights to receive mail and other correspondences and communications (including electronic mail) addressed to Seller or any other member of the Seller Group relating to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field (including any such mail and other correspondence and communications (including electronic mail) from the FDA or any other Governmental Authority, customers, advertisers, suppliers, distributors, agents and others) and payments with respect to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field; *provided*, *however*, that with respect rights to receive mail and other and other correspondences and communications (including electronic mail) addressed to Seller or any other member of the Seller Group that is not exclusively relating to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field, such rights will be non-exclusive;

(f) all of the Seller Group's rights, claims or causes of action, whether class, individual or otherwise in nature, under contract or in law or in equity, against third parties relating to the assets, properties, business or operations of the Seller Group with respect to the Business, the Transferred Assets and the Assumed Liabilities (including all guaranties, warranties, indemnities and similar rights in favor of the Seller Group or any their Affiliates to the extent solely related to the Transferred Assets or the Assumed Liabilities), in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date, except for such rights, claims and causes of action related to the Excluded Assets or Excluded Liabilities;

(g) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, choses in action, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against third parties, rights of setoff and rights of recoupment, in each case, to the extent used in or held for use for the Transferred Assets listed in clauses (a) through (f) above or the Assumed Liabilities;

(h) all right, title and interest in and to (i) any raw materials (including work in process, buffer stock held by vendors, dies and active pharmaceutical ingredients inventory, reference standards and materials, and all components and materials used in the Manufacture of any Lonafarnib Antiviral Product), finished goods and other inventory of all Lonafarnib Antiviral Products in the possession or control of, otherwise held by or on behalf of (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level), or owned by the Seller Group; and (ii) all good and marketable unbroken lots of packaged finished goods inventory of all Lonafarnib Antiviral Product in the possession or control of, or otherwise held by or on behalf of (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level), the Seller Group as of Closing, regardless of where located,

and all rights to receive refunds, rebates or credits in connection therewith (for the avoidance of doubt, the Transferred Assets also include all manufactured product, packaging material, compounds and any other similar assets relating to any Lonafarnib Antiviral Product, and any assets that are under manufacture); in each case including the raw materials, reference standards and materials, and inventory listed in Schedule 2.1(h), as may be amended or supplemented at the request of Purchaser at any time prior to the Closing (collectively, "**Inventory**");

(i) all Transferred Data;

(j) all Transferred Studies;

(k) all advertising, marketing, market research, sale and promotional files and materials (including any television, radio and print content and materials), pricing lists, consulting deliverables and other related literature, catalogs, point of sale materials and website content, including all Intellectual Property therein, relating to any Transferred Asset and Assumed Liability that are within the Seller Group's control or reasonably accessible to the Seller Group; and

(l) to the extent not covered above, any goodwill associated with or symbolized by any of the foregoing Transferred Assets described in clauses (a) through (k) above and any properties, rights and interests of every kind and nature, whether tangible or intangible, real, personal or mixed, known or unknown, fixed or unfixed, accrued, absolute, contingent or otherwise, wherever located, associated with or appurtenant to the above-referenced Transferred Assets.

2.2 **Excluded Assets**. Notwithstanding the provisions of Section 2.1 or anything to the contrary herein, any and all assets, rights and properties of the Seller Group that are not specifically identified in Section 2.1 as Transferred Assets, including the following (collectively, the "**Excluded Assets**"), shall be retained by the Seller Group, and Purchaser and its designees shall acquire no right, title or interest in the Excluded Assets in connection with the Transaction:

(a) all (i) cash and cash equivalents, wherever located, including bank balances and bank accounts or safe deposit boxes, monies in the possession of any banks, savings and loans or trust companies and similar cash items, (ii) escrow monies and deposits in the possession of landlords and utility companies, and (iii) investment securities and other short- and medium-term investments;

(b) all records, documents or other information exclusively relating to current or former employees of the Seller Group that are not hired by Purchaser, and any materials to the extent containing information about any employee, disclosure of which would violate Applicable Law or such employee's reasonable expectation of privacy;

(c) any interest of the Seller Group under this Agreement or the Related Documents, including the right to receive the Purchase Price and to enforce the Seller's rights and remedies thereunder;

(d) all Excluded Contracts (including all prepaid assets relating to the Excluded Contracts), other than the Assigned Contracts, to which any member of the Seller Group or any of their respective Affiliates is a party;

(e) any (i) Attorney-Client Information arising from communications prior to the Closing Date between a member of the Seller Group (including any one or more officers, directors or stockholders of such Seller Group member), on the one hand, and its counsel, on the other hand, and (ii) claims under any director and officer, errors and omissions, fiduciary and commercial crime insurance policies; and

(f) any rights of the Seller Group to Tax refunds (or credits for overpayment of Taxes in lieu of a refund) attributable to any Pre-Closing Tax Period;

(g) all Permits (including applications therefor and any trade or import/export Permits) that (i) are not materially related to the Business or (ii) are not transferable to Purchaser under Applicable Law;

(h) the Excluded Books and Records;

(i) any assets not otherwise designated as Transferred Assets or from time to time designated by the parties hereto as Excluded Assets;

(j) all accounts receivable, intercompany obligations and other amounts receivable by the Seller Group;

(k) the Avoidance Actions;

(l) all of the Seller Group's rights, claims or causes of action against third parties relating to the assets, properties, business or operations of the Seller Group (including all guaranties, warranties, indemnities and similar rights in favor of the Sellers Group or any of their Affiliates) to the extent arising under the Bankruptcy Code or relating to any of the Excluded Assets or Excluded Liabilities, in each case, whether arising by way of counterclaim or otherwise, and whether arising out of transactions occurring prior to, on or after the Closing Date; and

(m) all prepaid expenses, claims, deposits, prepayments, refunds, causes of action, demands, actions, suits, rights of recovery, rights under guarantees, warranties, indemnities and all similar rights against third parties, rights of setoff and rights of recoupment, in each case, to the extent exclusively related to or exclusively used in or held for use for the Excluded Assets listed in clauses (a) through (l) above.

Notwithstanding anything to the contrary contained in this Agreement or any of the other Related Documents, Purchaser acknowledges and agrees that all of the following are also Excluded Assets, and all right, title and interest in and to all Excluded Assets shall be retained by the Seller Group and shall remain the property of the Seller Group (and shall expressly be excluded from the sale, transfer, assignment and conveyance to Purchaser hereunder), and neither Purchaser nor any of its Affiliates shall have any interest therein: (x) all records and reports prepared or received by the Seller Group or any of their Affiliates in connection with the sale of the Business and the Transactions, including all analyses relating to the Business or Purchaser so prepared or received; and (y) all confidentiality agreements with prospective purchasers of the Business or any portion thereof and all bids and expressions of interest received from third parties with respect thereto.

2.3 **Assumption of Liabilities**. On the terms and subject to the conditions set forth in this Agreement, Purchaser shall, effective as of the Closing, assume and agree to pay, discharge and perform in accordance with their terms the following Liabilities of the Seller Group arising from or related to the Business or the Transferred Assets as the same shall exist on the Closing Date arising only after the Closing Date (collectively, the "**Assumed Liabilities**"), including:

(a) all Liabilities relating to the Transferred Assets other than the Assigned Contracts (which are addressed in Section 2.3(b)) solely to the extent such Liabilities relate to and arise in periods following the Closing;

(b) subject to Section 2.4, all Liabilities arising under the Assigned Contracts other than the Existing Manufacturing Contracts solely to the extent such Liabilities relate to and arise in periods following the Closing, and all of the Purchaser Cure Amounts;

(c) subject to Section 2.4, all Liabilities arising under each Existing Manufacturing Contract solely to the extent such Liabilities relate to and arise (i) in connection with the transition activities under Section 7.6 performed by the Seller pursuant to Purchaser's instructions following the Closing and before the applicable Existing Manufacturing Contract Transfer Date and (ii) in periods

following the applicable Existing Manufacturing Contract Transfer Date, and all of the Purchaser Cure Amounts; and

(d) all Taxes for which Purchaser is liable pursuant to this Agreement.

2.4 **Excluded Liabilities**. Notwithstanding Section 2.3, Purchaser is assuming only the Assumed Liabilities of the Seller Group and will not assume or be liable for any Excluded Liabilities (including Seller Group Taxes), and the Seller Group shall retain and shall be responsible for, all Liabilities that are not Assumed Liabilities, including all Liabilities related to Excluded Assets or any other Liabilities of the Business (all such Liabilities not being assumed herein referred to as the "**Excluded Liabilities**"). The Excluded Liabilities shall exclude any amounts payable or due to Merck for the assignment by Seller to Purchaser of the Merck License Agreement, respectively, whether arising in periods before or following the Closing, which shall be solely borne by Purchaser.

2.5 **Excluded Contracts**. Purchaser is electing to purchase only the Assigned Contracts, and Purchaser is not purchasing any other Contract of the Seller Group (any such other Contract an "**Excluded Contract**"). The Excluded Contracts shall constitute Excluded Assets and shall not be included in the Transferred Assets for any purposes of this Agreement and Purchaser shall not have any obligation to satisfy or pay any Cure Amounts or other Liabilities with respect to Excluded Contracts.

2.6 **Nontransferable Assets and Liabilities**.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Transferred Asset or any claim, right or benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the Consent of a third party (including any Governmental Authority) (after giving effect to the Sale Order or any other applicable order of the Bankruptcy Court that effects such transfer without any required Consents), would constitute a breach or other contravention thereof or a violation of Applicable Law (each, a "**Non-Transferred Asset**").

(b) If, on the Closing Date, any third-party Consent is not obtained for a Non-Transferred Asset, or if an attempted transfer or assignment thereof would be ineffective or a violation of Applicable Law, then, until any requisite consent is obtained therefor and the same is transferred and assigned to Purchaser or its designee, each such Non-Transferred Asset shall be held by the Seller as agent for Purchaser, and the Seller shall, to the extent permitted by Applicable Law, provide to Purchaser the benefits and Purchaser shall assume the obligations and bear the economic burdens associated with such Non-Transferred Asset. The Seller and Purchaser shall use commercially reasonable efforts to enter into agreements (including subcontracting, sublicensing or subleasing, if permitted) by which (i) the Seller shall, at Purchaser's sole expense, without interruption of the Business, provide Purchaser with the economic and operational equivalent of obtaining the requisite third-party Consent and assigning the applicable Non-Transferred Asset to Purchaser (including, with the prior written consent of Purchaser, enforcing for the benefit of Purchaser, and at Purchaser's sole expense, all claims or rights arising thereunder) and (ii) Purchaser shall perform, at its sole expense, the obligations and assume the economic burdens of the Seller or its Affiliates to be performed after the Closing with respect to such Non-Transferred Asset. Purchaser shall promptly, upon receipt of a written request therefor from the Seller, reimburse the Seller for all monies paid by the Seller on Purchaser's behalf in connection with any Assumed Liability not assigned or transferred to Purchaser pursuant to this Section 2.6.

2.7 **Closing**. The closing of the Transactions (the "**Closing**") will take place remotely by electronic exchange of documents on the date (the "**Closing Date**") that is the second (2nd) Business Day after the date on which all of the conditions set forth in ARTICLE 8 (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction or waiver of all such conditions at the Closing), have been satisfied or waived by the party hereto entitled the benefit of the same, unless another time or date is agreed to in writing by the parties hereto. Except as otherwise set forth herein, all proceedings

to be taken and all documents to be executed and delivered by all parties hereto at the Closing will be deemed to have been taken and executed simultaneously and no proceedings will be deemed to have been taken nor documents executed or delivered until all have been taken, executed, and delivered.

2.8 **Closing Deliveries of the Parties**. On the Closing Date (except as otherwise indicated):

(a) Purchaser and the Seller shall execute and deliver the Bill of Sale and Assignment and Assumption Agreement;

(b) Purchaser and the Seller shall execute and deliver the Intellectual Property Assignment Agreement;

(c) Purchaser and the Seller shall execute and deliver the Sublicense Agreement;

(d) Purchaser and the Seller shall transmit Purchaser's FDA Transfer Letter and the Seller's FDA Transfer Letters, respectively, to the FDA and shall take any other actions reasonably necessary to effect the transfer of the Lonafarnib IND from the Seller to Purchaser;

(e) Purchaser shall deliver, or cause to be delivered, to the Seller or the applicable Person each of the following:

(i) a certificate, dated as of the Closing Date, executed by or on behalf of Purchaser as to the satisfaction of the conditions set forth in Section 8.3(a) and Section 8.3(b); and

(ii) payment of the closing payments set forth in Section 2.9; and

(f) Purchaser and the Seller shall deliver, or cause to be delivered, to Purchaser, the Seller or the applicable Person the Merck Side Letter duly executed by Merck, Purchaser, and the Seller; and

(g) the Seller shall deliver, or cause to be delivered, to Purchaser or the applicable Person each of the following:

(i) a certificate, dated as of the Closing Date, executed by or on behalf of the Seller as to the satisfaction of the conditions set forth in Section 8.2(a) and Section 8.2(b); and

(ii) an IRS Form W-9 with respect to the Seller, duly completed and executed.

(h) The "Closing" as defined in that certain Lambda Asset Purchase Agreement, dated the date hereof, by and between the Seller and Purchaser takes place on the Closing Date of this Agreement.

2.9 **Purchase Price; Assumed Liabilities; Deposits**.

(a) At the Closing, upon the terms and subject to the conditions set forth herein, in full consideration for the sale, transfer, conveyance, assignment and delivery of the Transferred Assets to Purchaser and assumption of the Assumed Liabilities by Purchaser, Purchaser shall (i) pay to the Seller an aggregate amount equal to the Purchase Price *minus* the Deposit Escrow Amount, which shall be released to the Seller by the Escrow Agent pursuant to Section 2.9(c), by irrevocable wire transfer of immediately available funds in accordance with payment instructions delivered by the Seller to Purchaser prior to the Closing; and (ii) assume the Assumed Liabilities.

(b) At the Closing, on the terms and subject to the conditions set forth in this Agreement, Purchaser will assume and become responsible for the Assumed Liabilities. Purchaser agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms hereof, including paying or causing to be paid, at or prior to the Closing, all Purchaser Cure Amounts for Assumed Contracts. Seller agrees to pay all Seller Cure Amounts for Assumed Contracts at or prior to the Closing.

(c) The Deposit Escrow Amount shall be distributed as follows:

(i) if the Closing shall occur, (A) the Seller and Purchaser shall deliver a joint written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to the Seller, by irrevocable wire transfer of immediately available funds, to an account designated by the Seller to the Escrow Agent, and (B) the Deposit Escrow Amount shall be delivered to the Seller at Closing and credited against the amount required to be paid by Purchaser to the Seller at Closing in accordance with Section 2.9(a);

(ii) if this Agreement is terminated by the Seller pursuant to Section 9.1(g), (A) the Seller and Purchaser shall deliver a joint written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to the Seller, by irrevocable wire transfer of immediately available funds, to an account designated by the Seller to the Escrow Agent and (B) the Deposit Escrow Amount, which shall constitute liquidated damages (and not a penalty), shall be delivered to the Seller within two (2) Business Days following delivery of such joint written instruction; or

(iii) if this Agreement is validly terminated for any reason in accordance with the terms of this Agreement other than (x) by the Seller pursuant to Section 9.1(g) or (y) if Purchaser forfeits the Deposit Escrow Amount to the Seller pursuant to Section 8.5, (A) the Seller and Purchaser shall deliver a joint written instruction to the Escrow Agent in accordance with the Escrow Agreement instructing the Escrow Agent to release from the Deposit Escrow Account the entire Deposit Escrow Amount to Purchaser, by irrevocable wire transfer of immediately available funds, to an account designated by Purchaser to the Escrow Agent, and (B) the Deposit Escrow Amount shall be delivered to Purchaser within two (2) Business Days following delivery of such joint written instruction.

Any issue regarding the entitlement to the Deposit Escrow Amount shall be determined by the Bankruptcy Court, and Purchaser consents to the jurisdiction of the Bankruptcy Court for any issue related to this Agreement.

2.10 **Transfer Taxes**. Purchaser shall be solely responsible for, and shall indemnify, defend, and hold harmless the Seller Group for, any transfer, documentary, sales, use, excise, stock transfer, value-added, stamp, recording, registration and other similar taxes, levies and fees (including any penalties, fines and interest), together with any conveyance fees, recording charges and other similar fees and charges, incurred in connection with this Agreement and the Transactions (collectively, "**Transfer Taxes**"). Purchaser and the Seller shall cooperate in good faith to minimize, to the extent permissible under Applicable Law, the amount of any Transfer Taxes due with respect to the Transactions.

2.11 **Allocation of Purchase Price**.

(a) The Purchase Price (including all other amounts treated as consideration for U.S. federal income tax purposes) and Assumed Liabilities shall be allocated as set forth on Schedule 2.11(a)(the "**Preliminary Allocation Schedule**"). Within ninety (90) days following the final determination of the Purchase Price, Purchaser shall deliver to the Seller a schedule allocating the Purchase Price (and all other amounts treated as consideration for U.S. federal income tax purposes) among the Transferred Assets (the "**Allocation Schedule**"). The Allocation Schedule shall be reasonable and shall be prepared in accordance with the Preliminary Allocation Schedule, and Purchaser and the Seller shall negotiate in good faith to resolve disputed items, if any, in the Allocation Schedule as promptly as practicable. If Purchaser and the Seller are unable to reach agreement with respect to the Allocation Schedule within thirty (30) days after the delivery of the Allocation Schedule by Purchaser to

the Seller, the parties shall be entitled to use their own Purchase Price allocations for Tax reporting purposes.

(b) To the extent Purchaser and the Seller agree on the Allocation Schedule pursuant to Section 2.11(a), Purchaser and the Seller shall (i) timely file all Tax Returns required to be filed in connection with the Allocation Schedule, and (ii) prepare and file all Tax Returns and determine all Taxes in a manner consistent with the Allocation Schedule, except as may be required by Applicable Law and except as may be necessary to reflect adjustments to the Allocation Schedule resulting from post-Closing payments or events. Purchaser, on the one hand, and the Seller, on the other hand, shall notify the other if it receives notice that any Governmental Authority proposes any allocation different from Allocation Schedule.

2.12 **Escrow Accounts**. At the Closing, the Deposit Escrow Amount shall be used to satisfy a portion of the payment obligations of Purchaser pursuant to Section 2.9(c), otherwise the Deposit Escrow Amount shall be released to Purchaser or the Seller pursuant to Section 2.9(c). Upon the final release of all of the Deposit Escrow Amount pursuant to the terms of this Agreement and the Escrow Agreement, the Escrow Agreement shall automatically terminate. Any fees owed to the Escrow Agent and obligations under the Escrow Agreement shall be borne by Purchaser. The Deposit Escrow Amount shall be held in trust for the benefit of the Seller and shall not be subject to any encumbrance, attachment, trustee process or any other judicial process of any creditor of any party hereto, and shall be held and disbursed solely for the purposes of and in accordance with the terms of this Agreement and the Escrow Agreement.

2.13 **Tax Withholding**. Notwithstanding anything in this Agreement to the contrary, Purchaser shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Person such amounts as it is required to deduct and withhold from such Person with respect to the making of such payment under the Code and the rules and regulations promulgated thereunder, or any provision of any Applicable Law relating to Taxes; *provided, however,* that Purchaser shall (i) provide commercially reasonable notice to the Person prior to such deduction and withholding and (ii) afford the Person a reasonable opportunity to provide any additional information, forms or certifications to establish an exemption from, or obtain a reduced rate of, withholding. To the extent that amounts are so withheld and properly remitted by Purchaser, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Person in respect of which such deduction and withholding was made by Purchaser.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as disclosed in a document herewith delivered by the Seller to Purchaser (the "**Schedules**"), the Seller hereby makes the representations and warranties contained in this ARTICLE 3 to Purchaser. **Organization, Good Standing and Other Matters**. Each member of the Seller Group is duly organized, validly existing and in good standing under the Applicable Laws of its jurisdiction of organization and has, subject to the necessary authority of the Bankruptcy Court, the requisite corporate power and authority to operate the Business and necessary to own, lease or operate the properties and assets owned, leased or operated by it to carry on the Business as now being conducted, except where the failure to be so duly organized, validly existing and in good standing, or to have such power and authority, would not, individually or in the aggregate, have a Material Adverse Effect. Each member of the Seller Group is duly qualified to do business as a foreign company in each jurisdiction in which the nature of the Business as currently conducted by it or the property owned or leased by it makes such qualification necessary, except where the failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

3.2 **Authority and Enforceability**. Subject to Bankruptcy Court approval, the Seller has all requisite power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to

consummate the Transactions. The execution, delivery and performance of this Agreement and the each of the Related Documents to which the Seller is (or at Closing, will be) a party thereto, and the consummation by the Seller of the Transactions, has been duly authorized and approved by all necessary limited liability company action on the part of the Seller and are subject to the approval of the Bankruptcy Court. This Agreement has been, and each Related Document will be, at or prior to the Closing, duly executed and delivered by the Seller and, assuming the due execution and delivery by the other parties hereto or thereto, and subject to the approval of the Bankruptcy Court, constitutes a valid and binding obligation of the Seller, enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

3.3 **No Conflict; Required Filings and Consents**. Except (a) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (b) as otherwise set forth on Schedule 3.3, the execution and delivery of this Agreement by the Seller does not and the execution and delivery of the Related Documents by the Seller will not, and the consummation of the Transactions hereby and thereby will not (i) violate the provisions of the Organizational Documents of any member of the Seller Group, (ii) subject to the entry of the Sale Order, violate any Applicable Law or Order to which any member of the Seller Group is subject or by which its properties or assets are bound, (iii) require any member of the Seller Group to obtain any Consent, or give any notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date (except as required by the Bankruptcy Code or the Sale Order), (iv) subject to the entry of the Sale Order, result in a breach of or constitute a default (with or without due notice or lapse of time or both), give rise to any right of termination, cancellation or acceleration under, or require the Consent of any third party to, any Assigned Contract or (v) subject to the entry of the Sale Order, result in the imposition or creation of any Lien upon or with respect to any of the assets or properties of the Seller Group; excluding from the foregoing clauses (ii) through (v) any Consents, approvals, notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, have a Material Adverse Effect.

3.4 **Compliance With Laws**. To the Seller's Knowledge, (i) the Seller Group is conducting the Business in compliance in all material respects with all material Applicable Laws applicable to the Business and (ii) no member of the Seller Group has received any written notice since the Petition Date of any material violations of any material Applicable Law applicable to their conduct of the Business. As of the Agreement Date, the Seller has and, to the Seller's Knowledge, has obtained all permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals of the FDA or any other Governmental Authority, currently used in, necessary for and material to the Development, Manufacture, and Commercialization of all Lonafarnib Antiviral Products in the Lonafarnib Antiviral Field as presently conducted, all such permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals are included in the Transferred Assets and Seller has made available to Purchaser true and complete copies of all such permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals. As of the Agreement Date, neither Seller nor, to the Seller's Knowledge, any other Person has received any communication from any Governmental Authority that threatens to withdraw or suspend any such permits, licenses, certifications, registrations, qualifications, authorizations, consents or approvals. Seller has filed with the applicable Governmental Authority all required filings, declarations, listings, registrations, reports or submissions, including adverse event reports, necessary for and material to the Development, Manufacture, and Commercialization of the Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field as presently conducted. All relevant filings, declarations, listings, registrations, reports or submissions were in material compliance with Applicable Law when filed, and no deficiencies have been asserted by any Governmental Authority with respect to any such filings, declarations, listing, registrations, reports or submissions. As of the Agreement Date, the Seller has not received or been subject to: (1) any FDA Form 483s directly relating to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field; (2) any FDA notices of adverse findings relating to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field; or (3) any warning letters or other correspondence from the FDA or any other

Governmental Authority in which the FDA or such other Governmental Authority asserted that the actions of Seller, with respect to any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field, were not in compliance with Applicable Laws. There has not been any occurrence of any product recall, market withdrawal or replacement, or post-sale warning conducted by or on behalf of the Seller concerning any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field or, to the Seller's Knowledge, any product recall, market withdrawal or replacement conducted by or on behalf of any entity as a result of any alleged defect in any Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field.

3.5 **Permits**. To the Seller's Knowledge, (i) the Seller Group possess all material Permits required for the operation of the Business as currently conducted (the "**Seller Permits**") and (ii) no member of the Seller Group has received as of the Agreement Date any written notice of any cancellation, suspension, revocation, invalidation or non-renewal of any Permit since the Petition Date.

3.6 **Litigation**. As of the Agreement Date, there is no Action pending or, to the Seller's Knowledge, formally threatened in writing, against any member of the Seller Group before any Governmental Authority that would have a Material Adverse Effect or affect the Transferred Assets in any material respect after the entry of the Sale Order, if determined adversely and after taking into effect applicable insurance coverage.

3.7 **Real Property**. The Seller Group does not own any real property.

3.8 **Assigned Contracts**. With respect to the Assigned Contracts, (i) except as a result of, or arising in connection with, the filing of the Bankruptcy Cases, no member of the Seller Group has received any written notice of any default or event that (with due notice or lapse of time or both) would constitute a default by the applicable member of the Seller Group under any Assigned Contract, other than defaults that have been cured or waived in writing or would not reasonably be expected to have a Material Adverse Effect, (ii) to the Seller's Knowledge, each Assigned Contract is a legal, valid and binding obligation of the applicable member of the Seller Group and is in full force and effect (except to the extent subject to, and limited by, the Enforceability Exceptions), (iii) to the Seller's Knowledge, no other party to any Assigned Contract is (with or without the lapse of time or the giving of notice, or both) in material breach of or in material default under any Assigned Contract and (iv) to the Seller's Knowledge, no member of the Seller Group has provided or received any notice of any intention to terminate any Assigned Contract. The Seller has made available to Purchaser true, correct and complete copies of each of the Assigned Contracts listed on Schedule 2.1(a), together with all amendments thereto.

3.9 **Financial Statements**. The Seller's financial statements included in the Seller's Annual Report on Form 10-K filed with SEC on April 8, 2024 (the "**Seller Financial Statements**") have been prepared in accordance with GAAP (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, except as permitted by the SEC on Form 10-K under the Exchange Act, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments), have been prepared on a consistent basis throughout the periods covered thereby and presents fairly in all respects the financial condition of the Seller as of such dates and the results of operations of Seller for such periods, and are consistent with the books and records of Seller (which books and records are correct and complete in all material respects).

3.10 **Absence of Material Developments**. Except as disclosed on Schedule 3.10, since the Petition Date, there has occurred no fact, event, condition, change or circumstance which has had or would reasonably be expected to have a Material Adverse Effect.

3.11 **Customers and Suppliers.** Except as disclosed on Schedule 3.11(a), to the Knowledge of the Seller, since the Petition Date, no customer has or has threatened to stop or decrease the rate of, or as a result of the Bankruptcy Cases or the Transactions, purchasing materials, products or services from the Business. Except as disclosed on Schedule 3.11(b), to the Knowledge of the Seller, no supplier has or has

threatened to stop or decrease the rate of, or as a result of the Bankruptcy Cases or the Transactions. supplying materials, products or services to the Business.

3.12 **Intellectual Property.**

(a) A true, correct and complete list of all Intellectual Property Registrations included in the Owned Intellectual Property Assets is set forth on Schedule 3.12(a), including the Trademarks and domain names pertaining to Lonafarnib Antiviral Products in the Lonafarnib Antiviral Field that are owned by the Seller or its Affiliates as of the Agreement Date.

(b) The Seller Group exclusively owns all Owned Intellectual Property Assets. Except as set forth on Schedule 3.12(b), and no member of the Seller Group is a party to, or bound by, (i) any license, royalty agreement, or other agreement relating to the use of any material Business Intellectual Property (other than non-exclusive licenses grant to a member of the Seller Group for commercially available, unmodified, off-the-shelf software licensed for aggregate annual fees of less than $50,000), and (ii) agreements pursuant to which a member of the Seller Group settled any action, litigation, suit or other judicial or administrative proceeding, claim, assertion, or threat with respect to any material Business Intellectual Property, including settlement agreements, coexistence agreements, and consent agreements.

(c) Other than with respect to Excluded Contracts or Assigned Contracts that Purchaser does not ultimately assume, no current or former Affiliate, partner, director, stockholder, officer, member, manager, employee, consultant or contractor of the Seller Group will, after giving effect to the Transactions, own, license or retain any Owned Intellectual Property Assets.

(d) All material Intellectual Property Registrations remain pending or in full force and effect and have not expired or been abandoned or cancelled. To Seller's Knowledge, no interference, opposition, reissue, reexamination, or other proceeding is or has been pending or threatened, in which the scope, validity, or enforceability of any material Owned Intellectual Property Assets is being, has been challenged.

(e) To the Knowledge of the Seller, the conduct of the Business does not infringe, misappropriate or otherwise violate in any material respect any Person's Intellectual Property.

(f) To the Knowledge of the Seller's, no Person is currently infringing, misappropriating or otherwise violating any material Owned Intellectual Property Assets.

(g) The Seller Group has taken commercially reasonable steps to safeguard and maintain the confidentiality of all trade secrets that constitute Owned Intellectual Property Assets, including by using good faith efforts to require all Persons having access thereto to execute written non-disclosure agreements.

(h) The Seller Group complies with all Applicable Laws, internal policies and contractual obligations relating to privacy, data protection and cybersecurity.

3.13 **Taxes.** The Seller Group has timely filed all Tax Returns that it was required to file with respect to Transferred Assets. All such Tax Returns were correct and complete in all material respects. All Taxes owed by the Seller Group (whether or not shown or required to be shown on any Tax Return) with respect to Transferred Assets have been paid. There are no Liens on any of the Transferred Assets that arose in connection with any failure (or alleged failure) to pay any Tax. There is no dispute, examination, judicial proceeding or claim concerning any Taxes of the Seller Group with respect to the Transferred Assets.

3.14 **Product Liability.** Except as disclosed on Schedule 3.14, within the three (3) year period prior to the Closing Date there has not been any, and as of the Closing Date there is no pending, material litigation commenced against any member of the Seller Group relating to the sale, distribution or use of any

item sold or used in the Business (the "**Goods**"), including litigation with respect to product liability or recall claims.

3.15 **Product Warranties; Product Returns.** Except for warranties arising solely pursuant to Applicable Law or in the ordinary course of business, (a) no member of the Seller Group has made any material warranties, express or implied, written or oral, to any third party with respect to any of the Goods within the three (3) year period prior to the Closing Date, and (b) there is no, and within the three (3) year period prior to the Closing Date there has not been any, material litigation pending or, to the Seller's Knowledge, threatened with respect to any such warranty.

3.16 **Brokers and Finders**. Except for SSG Advisors, LLC, the Seller has not, directly or indirectly, entered into any agreement with any Person that would obligate the Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

3.17 **Virology Studies**. Each Virology Study is on-going, has been conducted in a professional manner, in accordance with industry standards, and in compliance with all Applicable Laws, there has not been any interruption, suspension, or delay in the conduct of each such Virology Study, and all payments payable to each Virology Collaborator in connection with each such Virology Study has been duly and timely paid in full.

3.18 **Inventory**. To Seller's Knowledge, the Inventory consists of all materials used to Manufacture or otherwise incorporated into the Licensed Product (including raw materials and active pharmaceutical ingredients) and inventory of Licensed Product exclusively owned by the Seller and its Affiliates as of the Closing Date. As of the Closing Date, Schedule 3.18 identifies the location of all Inventory and sets forth a complete and accurate list of all Storage Contracts and provides reasonable details with respect to the Inventory subject to each such Storage Contract.

3.19 **No Other Representations or Warranties**. Except for the representations and warranties contained in this ARTICLE 3 and the Related Documents, the Seller does not, nor do any other Persons on behalf of the Seller, make any other express or implied representation or warranty with respect to itself, the Business, the Transferred Assets or the Assumed Liabilities, or with respect to any other information provided to Purchaser or its representatives, and the Seller disclaims any other representations or warranties, whether made by or on behalf of the Seller or any other Person. The Seller will not, and no other Persons will, have or be subject to any Liability to Purchaser or any other Person resulting from the distribution to Purchaser, or Purchaser's use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser or its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever (electronic or otherwise) or otherwise in expectation of the Transactions.

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as disclosed in a document herewith delivered by Purchaser to the Seller (the "**Purchaser Schedules**"), Purchaser hereby makes the representations and warranties contained in this ARTICLE 4 to the Seller.

4.1 **Organization, Good Standing and Other Matters**. Purchaser is duly organized, validly existing and in good standing under the Applicable Laws of its jurisdiction of organization and has all requisite corporate power or other entity power and authority to own its properties and to carry on its business as now being conducted. Purchaser is duly qualified or licensed to conduct its business as currently conducted and is in good standing in each jurisdiction in which the location of the property owned, leased or operated by it or the nature of its business makes such qualification necessary, except where the failure

to be so qualified or licensed would not, individually or in the aggregate, materially impair or delay Purchaser's ability to consummate the Transactions.

4.2 **Authority and Enforceability**. Purchaser has all requisite corporate power or other entity power and authority to execute and deliver this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance of this Agreement and each of the Related Documents to which it is (or at Closing, will be) a party, and the consummation of the Transactions, have been duly authorized and approved by its board of directors (or equivalent governing body) and no other action on the part of Purchaser or its members is necessary to authorize the execution, delivery and performance of this Agreement and the Related Documents by Purchaser and the consummation of the Transactions. This Agreement has been, and each Related Document will be at or prior to Closing, duly executed and delivered by Purchaser and, assuming the due execution and delivery by the other parties hereto or thereto, constitutes a valid and binding obligation of Purchaser enforceable against it in accordance with its respective terms, except to the extent that such enforceability may be subject to, and limited by, the Enforceability Exceptions.

4.3 **No Conflict: Required Filings and Consents**. Except (a) such filings as may be required in connection with the Transfer Taxes described in Section 2.10 and (b) as set forth on Schedule 4.3, the execution and delivery of this Agreement and of the Related Documents and the consummation of the Transactions by Purchaser will not (i) violate the provisions of its Organizational Documents, (ii) violate any Applicable Law or Order to which it is subject or by which any of its properties or assets are bound, (iii) require it to obtain any Consent, or give any notice to, or make any filing with, any Governmental Authority on or prior to the Closing Date, (iv) result in a material breach of or constitute a default (with or without due notice or lapse of time or both), give rise to any right of termination, cancellation or acceleration under, or require the Consent of any third party to, any material Contract to which it is a party or (v) result in the imposition or creation of any Lien upon or with respect to any of its assets or properties; excluding from the foregoing clauses (ii) through (v) Consents, approvals, notices and filings the absence of which, and violations, breaches, defaults, rights of acceleration, cancellation or termination, and Liens, the existence of which would not, individually or in the aggregate, (A) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (B) otherwise prevent, hinder or delay the consummation of the Transactions.

4.4 **Financing**. Purchaser has, and at the Closing will have, (a) sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price in accordance with the terms hereof and any other payments required hereunder and any expenses incurred or required to be paid by Purchaser in connection with the Transactions, and (b) the resources and capabilities (financial or otherwise) to perform its obligations hereunder and under the Related Documents. Purchaser has not incurred any obligation, commitment, restriction, or Liability of any kind, which would impair or adversely affect such resources and capabilities.

4.5 **Solvency**. Purchaser is not entering into this Agreement with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the Transactions**,** including the making of the payments contemplated by Section 2.9, and assuming satisfaction of the conditions to Purchaser's obligation to consummate the Transactions as set forth herein, the accuracy of the representations and warranties of Purchaser set forth herein and the performance by Purchaser of its obligations hereunder in all material respects, Purchaser will be Solvent.

4.6 **Litigation**. There is no Action pending or, to Purchaser's Knowledge, formally threatened against Purchaser or involving any of its properties or assets that would be reasonably be expected to

(a) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (b) otherwise prevent, hinder, or delay the consummation of the Transactions.

4.7 **Brokers and Finders**. None of Purchaser or its Affiliates have, directly or indirectly, entered into any agreement with any Person that would obligate the Seller to pay any commission, brokerage fee or "finder's fee" in connection with the Transactions.

4.8 **Non-Reliance of Purchaser; No Other Representations and Warranties**.

(a) Except for the specific representations and warranties expressly made by the Seller in ARTICLE 3 and Related Documents as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement, and the representations and warranties made by the Seller in the Sublicense Agreement or any Related Document, Purchaser acknowledges and agrees that (i) the Seller is not making and have not made any representation or warranty, expressed or implied, at law or in equity, in respect of the Business, the Transferred Assets, the Assumed Liabilities, or any of its operations, prospects or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any Liabilities, the prospects of the Business, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Business furnished to Purchaser or its representatives or made available to Purchaser and its representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the Transactions, or in respect of any other matter or thing whatsoever, and (ii) no officer, director, manager, stockholder, agent, Affiliate, advisor, representative or employee of the Seller Group has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in ARTICLE 3 and subject to the limited remedies herein provided, or any representations, warranties or agreements not specifically set forth in the Sublicense Agreement or any Related Document.

(b) Other than the specific representations and warranties expressly set forth in ARTICLE 3 as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement, and the representations and warranties made by the Seller in the Sublicense Agreement or any Related Document, Purchaser specifically disclaims that it is relying upon or has relied upon any such other representations or warranties that may have been made by any Person, and acknowledges and agrees that the Seller and the Seller's Affiliates have specifically disclaimed and do hereby specifically disclaim, and shall not have or be subject to any Liability for reliance on any such other representation or warranty made by any Person. Purchaser specifically waives any obligation or duty by the Seller or the Seller's Affiliates to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties expressly set forth in ARTICLE 3 or in the Sublicense Agreement or any Related Document and disclaim reliance on any information not specifically required to be provided or disclosed pursuant to the specific representations and warranties set forth in ARTICLE 3 or in the Sublicense Agreement or any Related Document.

(c) Purchaser is acquiring the Business, the Transferred Assets and the Assumed Liabilities subject only to the specific representations and warranties expressly set forth in ARTICLE 3 as further limited by the specifically bargained-for exclusive remedies as set forth in ARTICLE 9 of this Agreement, and the representations and warranties expressly set forth in the Sublicense Agreement or any Related Document.

4.9 **No Other Representations or Warranties.** Except for the representations and warranties contained in this ARTICLE 4, neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to the Seller or its representatives, and Purchaser disclaims any other representations

or warranties, whether made by Purchaser or any of its Affiliates, officers, directors, employees, agents or representatives.

ARTICLE 5.
BANKRUPTCY COURT MATTERS

5.1 **Competing Transaction**. This Agreement is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids in respect of all or any part of the Transferred Assets (whether in combination with other assets of the Seller Group or otherwise) in accordance with the terms of the Bid Procedures Order (each, a "**Competing Bid**"). From the Agreement Date (and any prior time) and until the Closing, the Seller is permitted to, and to cause its representatives to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates and representatives) in connection with any sale or other disposition of the Transferred Assets. In addition, the Seller shall have the authority to respond to any inquiries or offers to purchase all or any part of the Transferred Assets (whether in combination with other assets of the Seller Group or otherwise) and perform any and all other acts related thereto which are required under the Bankruptcy Code, the Bid Procedures Order or other Applicable Law, including supplying information relating to the Business and the assets of the Seller Group to prospective purchasers.

5.2 **Bankruptcy Court Filings**.

(a) Subject to its right to pursue a Competing Bid in accordance with the Bid Procedures Order, the Seller shall diligently pursue the entry by the Bankruptcy Court of the Sale Order, which Sale Order shall provide for the transfer of the Transferred Assets and the Assumed Liabilities to Purchaser free from all successor or transferee Liability to the fullest extent permitted by Section 363 of the Bankruptcy Code. The Seller shall comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the Bankruptcy Court in obtaining the entry of the Sale Order. The Seller further covenants and agrees that, after entry by the Bankruptcy Court of the Sale Order, and provided that the Sale Order becomes a Final Order, the terms of any other proposed order submitted by the Seller to the Bankruptcy Court shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the Transactions. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Seller to assist in obtaining entry of the Sale Order, including by furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. In the event, if the entry of the Sale Order shall be appealed, the Seller and Purchaser shall use their respective commercially reasonable efforts to defend such appeal.

(b) Seller shall use commercially reasonable efforts to provide Purchaser with a reasonable opportunity to review and comment upon all motions, applications, and supporting papers relating to the transactions contemplated by this Agreement prepared by Seller or any Affiliates (including forms of orders and notices to interested parties) prior to the filing thereof in the Bankruptcy Cases; provided that the foregoing shall not require the Seller to take any action that would, in Seller's reasonable business judgment, threaten to harm the overall value to be produced by the Seller's in-court sale process.

(c) The form of Sale Order submitted by the Seller to the Bankruptcy Court for approval shall be in a form and substance reasonably acceptable to Purchaser.

(d) Seller shall not seek any modification to the Bid Procedures, Bid Procedures Order, or Sale Order by the Bankruptcy Court that are materially adverse to Purchaser without the prior written consent of Purchaser, which such consent shall not be unreasonably withheld.

(e) Each of Purchaser and Seller will promptly take such actions as are reasonably requested by the other party to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Seller of its obligations under this Agreement and demonstrating that Purchaser is a good faith buyer under section 363(m) of the Bankruptcy Code.

(f) Seller shall use commercially reasonable efforts to provide appropriate notice of the hearings on the Sale Order to all Persons entitled to notice, including, but not limited to, all Persons that have asserted Liens on the Transferred Assets, all parties to the Assigned Contracts and all taxing authorities in jurisdictions applicable to Seller and as otherwise required by the Bankruptcy Code and bankruptcy rules.

(g) Within five (5) Business Days of the Auction (subject to the Bankruptcy Court's availability), if Purchaser is the successful bidder at the Auction (or if there is no Auction), Seller will seek entry of the Sale Order by the Bankruptcy Court.

(h) The Seller and Purchaser agree that, in the event that Purchaser is not the winning bidder at an auction undertaken pursuant to the Bid Procedures Order (the "**Auction**"), and (i) Purchaser submits the Back-Up Bid at the Auction or (ii) the terms of this Agreement are deemed to constitute a Back-Up Bid, then Purchaser shall be obligated to promptly consummate the Transactions upon the terms and conditions as set forth herein, including the payment of the Purchase Price as the same may be increased by Purchaser at the Auction; provided that the Seller gives written notice to Purchaser on or before the Back-up Termination Date, stating that the Seller (A) failed to consummate the sale of the Transferred Assets with the winning bidder, and (B) terminated the purchase agreement with the winning bidder.

5.3 **Assumption of Assigned Contracts**.

(a) On June 4, 2024, the Seller filed (or caused to be filed) a notice of assumption (the "**Assumption Notice**") with the Bankruptcy Court and served such notice on each counterparty to a Contract listed thereon. The Assumption Notice identified all Contracts that the Seller and Purchaser believe may be assumed and assigned in connection with the sale of the Transferred Assets and set forth a good faith estimate of the amount of Cure Amounts applicable to each such Contract (and if no Cure Amount is estimated to be applicable with respect to any particular Contract, the amount of such Cure Amount designated for such Contract shall be "$0.00"). In accordance with the Bid Procedures Order, the Seller reserves the right to supplement such list of Contracts and provide additional notice of assumption.

(b) On or before the date that is three (3) Business Days before the Closing Date (the "**Designation Deadline**"), Purchaser shall provide to the Seller a Contracts List, which shall identify all Contracts that Purchaser elects to have assumed and assigned to Purchaser on the Closing Date (and with respect to the Existing Manufacturing Contracts, assumed and assigned to Purchaser which will be automatically effective as of the applicable Existing Manufacturing Contract Transfer Date without further notice). For the avoidance of doubt, Purchaser shall be entitled, with the agreement of Seller, to add, or, in the sole discretion of Purchaser, to remove, any Contracts from the Contracts List at any time (or multiple times) prior to the Designation Deadline by providing to the Seller by email a copy of the amended Contracts List. Any Contracts List that Purchaser delivers to the Seller prior to the Designation Deadline shall be deemed to replace and supersede any Contracts List that Purchaser had previously delivered to Seller. For the avoidance of doubt, only those Contracts that are identified on the Contracts List as of the Designation Deadline shall constitute Assigned Contracts and will be assumed by the Seller and assigned to Purchaser pursuant to the Sale Order. The Seller shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Assigned Contracts and to determine the amount of the Cure Amounts; provided that nothing herein shall preclude the Seller from filing one or

more motions to reject any Contracts that are not identified on the Contracts List as of the Designation Deadline.

(c) Notwithstanding any provision in this Agreement to the contrary, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract is (i) deemed rejected under Section 365 of the Bankruptcy Code, (ii) the subject of an objection to assignment or assumption or requires the consent of any Governmental Authority or other third party (other than, and in addition to, the Bankruptcy Court) in order to permit the assumption and assignment by the applicable Seller to Purchaser of such Contract pursuant to Section 365 of the Bankruptcy Code, and such objection has not been resolved or such consent has not been obtained prior to the thirtieth (30th) day following the Closing Date (as such period may be extended by mutual agreement of Seller and Purchaser), or (iii) terminated by any party thereto other than Seller, or terminates or expires by its terms, on or prior to such time as it is to be assumed by and assigned to Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption. In no event shall the failure to assign to Purchaser any Contract in accordance with subsections (i) through (iii) above reduce the Purchase Price payable to Seller or constitute a failure to satisfy the conditions precedent of Seller under Section 8.3.

(d) Subject to the terms of Section 2.5, Section 2.8, Section 5.3(a) and Section 5.3(b), and subject to the entry of an order (which may be the Sale Order) of the Bankruptcy Court authorizing the assignment to Purchaser of the Assigned Contracts, Purchaser shall make provision for the payment of the Purchaser Cure Amounts for Assumed Contracts, and Seller shall make provision for the payment of the Seller Cure Amounts for Assumed Contracts, in cash at Closing in accordance with the Sale Order.

(e) Notwithstanding any provision in this Agreement to the contrary, from and after the date of the Assumption Notice through the Closing Date, the Seller will not reject or take any action (or fail to take any action that would result in rejection by operation of Applicable Law) to reject, withdraw, repudiate or disclaim any Assigned Contract unless (i) Purchaser has provided its prior written consent; or (ii) Purchaser has removed such Assigned Contract from the list of Assigned Contracts.

5.4 **Disputed Contracts**. In the event of an objection by a Contract counterparty to the Cure Amount asserted by Seller with regard to any Contract on the Contract List (such contract, a "**Disputed Contract**"), Seller shall either settle the objection of such party or shall litigate such objection under procedures as established by the Bankruptcy Court. In no event shall the Seller settle a Cure Amount objection with regard to any potential Assigned Contract without the express written consent (such consent not to be unreasonably withheld) of Purchaser (with an email consent being sufficient). In the event that a dispute regarding the Cure Amounts with respect to a Contract has not been resolved as of the Closing, the parties shall nonetheless remain obligated to consummate the transactions contemplated by this Agreement. Upon entry of an Order of the Bankruptcy Court (if necessary) determining any Cure Amount and authorizing the assumption and assignment to Purchaser of such Disputed Contract after the Closing, which order shall be in form and substance acceptable to Purchaser (a "**Disputed Contract Order**"), Purchaser shall have the option to designate the Disputed Contract as an Assigned Contract or an Excluded Contract (regardless of whether such contract was identified on the Contracts List). If Purchaser elects to designate the Disputed Contract as an Excluded Contract, (a) such Disputed Contract shall automatically be deemed to be an Excluded Contract for all purposes under the Sale Order and this Agreement, and (b) Purchaser shall not be obligated to pay any Cure Amount or liabilities associated with such Disputed Contract. If Purchaser elects to designate the Disputed Contract as an Assigned Contract, such Disputed Contract shall be deemed an Assigned Contract for all purposes hereunder and, for the avoidance of doubt, Purchaser shall assume the Disputed Contract and shall be responsible for paying the associated Purchaser Cure Amount (if any) with respect to such Disputed Contract; and (if applicable) Seller shall be responsible for paying all related Seller Cure Amounts; provided, however, that if Purchaser does not designate such Disputed Contract as either an Excluded Contract or an Assigned Contract within five (5) Business Days after the date of the Disputed Contract Order (or such later date as agreed by the Seller and Purchaser), (a) such

Disputed Contract shall automatically be deemed to be an Excluded Contract for all purposes under the Sale Order and this Agreement, and (b) Purchaser shall not be obligated to pay any Cure Amount or liabilities associated with such Disputed Contract.

5.5 **Previously Unknown and Previously Excluded Contracts.**

(a) If at any time, prior to the earlier of confirmation of a plan in the Chapter 11 Cases or entry of an order dismissing the Chapter 11 Cases, it is discovered that a Contract material to the operation of the Business should have been identified on the Assumption Notice but was not so listed (any such Contract, a "**Previously Unknown Contract**"), Seller shall, promptly following the discovery thereof (but in no event later than five (5) Business Days following the discovery thereof), notify Purchaser in writing of such Previously Unknown Contract and provide Purchaser with a copy of such Previously Unknown Contract and the Cure Amount (if any) in respect thereof. Purchaser shall thereafter deliver written notice to Seller (email being sufficient), no later than ten (10) Business Days following such notice of such Previously Unknown Contract from Seller, if Purchaser elects for such Previously Unknown Contract to be an Assigned Contract. If Purchaser elects for a Previously Unknown Contract to be an Assigned Contract in accordance with this Section, then to the extent not previously filed and served, Seller shall file and serve an assignment and assumption notice on the Contract counterparty to such Previously Unknown Contract (a "**Supplemental Assignment Notice**") notifying such Contract counterparty of Seller's intention to assume and assign to Purchaser such Previously Unknown Contract, including the proposed Cure Amount (if any). Such notice shall state that such Contract counterparty shall have fourteen (14) days to object to the assumption and assignment of the Contract to Purchaser (the "**Supplemental Assignment Notice Objection Deadline**"). Following expiration of the Supplemental Assignment Notice Objection Deadline and, if no objections are received, Seller shall submit a proposed order (in form and substance reasonably acceptable to Purchaser) to the Bankruptcy Court under certification of counsel authorizing the assumption and assignment of such Contract to Purchaser and, upon the entry of such an order, such Contract shall be deemed an Assigned Contract for all purposes under this Agreement and the Sale Order. If such Contract counterparty objects to the proposed assumption and assignment, the Contract at issue shall be deemed a Disputed Contract for all purposes under this Agreement.

(b) At any time prior to the earlier of confirmation of a plan in the Chapter 11 Cases or entry of an order dismissing the Chapter 11 Cases, Purchaser may elect to take an assignment of any Excluded Contract that has not yet been assumed and assigned pursuant to an order of the Bankruptcy Court (a "**Previously Excluded Contract**") by sending a written notice to Seller (email being sufficient) of such election. If Purchaser elects for a Previously Excluded Contract to be an Assigned Contract in accordance with this Section, then to the extent not previously filed and served, Seller shall file and serve a Supplemental Assignment Notice on the Contract counterparty to such Previously Excluded Contract. Such Supplemental Assignment Notice Objection Deadline shall state that such Contract counterparty shall have fourteen (14) days to object to the assumption and assignment of the Contract to Purchaser. Following expiration of the Supplemental Assignment Notice Objection Deadline and if no objections are received, Seller shall submit a proposed order (in form and substance reasonably acceptable to Purchaser) to the Bankruptcy Court under certification of counsel authorizing the assumption and assignment of such Contract to Purchaser and, upon the entry of such an order, such Contract shall be deemed an Assigned Contract for all purposes under this Agreement and the Sale Order and, subject to Section 7.15 with respect to Cross-Over Contracts, the Purchaser shall be responsible for satisfying or paying any Cure Amounts or other Liabilities with respect to such Contract, whether or not such Cure Amounts or other Liabilities exceed the Purchaser Cure Amounts. For the avoidance of doubt, the Cross-Over Contracts are not Previously Excluded Contracts. If such Contract counterparty objects to the proposed assumption and assignment, the Contract at issue shall be deemed a Disputed Contract for all purposes under this Agreement.

(c) Seller and Purchaser agree that the Sale Order shall contain language approving the assumption and assignment procedures with respect to Disputed Contracts, Previously Unknown Contracts and Previously Excluded Contracts as set forth in Sections 5.3(b), 5.4 and 5.5 hereof.

ARTICLE 6.
PRE-CLOSING COVENANTS

6.1 **Conduct of Business**. Except (i) as set forth on Schedule 6.1, (ii) as may be approved by Purchaser (which approval will not be unreasonably withheld, delayed or conditioned; *provided, however,* that the consent of Purchaser shall be deemed to have been given if Purchaser does not object within forty-eight (48) hours after written request for such consent is provided by the Seller to Purchaser), (iii) for actions taken or omitted to be taken by any member of the Seller Group in response to any Public Health Measure, or (iv) as is otherwise permitted, contemplated or required by this Agreement, any Assigned Contract, by Applicable Laws or by order of the Bankruptcy Court, from the Agreement Date through the earlier of the Closing Date or the termination of this Agreement in accordance with its terms:

(a) The Seller Group shall use their commercially reasonable efforts to carry on the Business in all material respects in the ordinary course of business as it has been conducted since the Petition Date; and

(b) The Seller shall not, and shall cause its Affiliates not to:

(i) sell, license, abandon or otherwise dispose of any material asset or property constituting Transferred Assets other than, in each case, in the ordinary course of business or for the purpose of disposing of obsolete or worthless assets;

(ii) except in the ordinary course of business, acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of any business or any corporation, partnership or other business organization or otherwise acquire any assets (except inventory), that as of the Closing would constitute Transferred Assets, except for the acquisition of assets in the ordinary course of business;

(iii) change its present accounting methods or principles in any material respect, except as required by GAAP or Applicable Law;

(iv) make or change any Tax election, change an annual accounting period, adopt or change any Tax accounting method, file any amended Tax Return, enter into any closing agreement, settle any material Tax claim or assessment or surrender any right to claim a refund of Taxes, other than in the ordinary course of business or as required by the Code or Applicable Law, and in each case that could have a material effect on the amount of Taxes due from the Business or due as a result of the Transferred Assets for a taxable period (or portion thereof) beginning after the Closing Date;

(v) compromise or settle any material litigation relating to the Business or cancel or compromise any material claim or waive or release any material right that, in each case, is related to the Business or a Transferred Asset;

(vi) encumber, transfer, abandon, allow to lapse, fail to prosecute or maintain, exclusively license, or otherwise dispose of any material Business Intellectual Property or Regulatory Approvals, except, in each case, other than in the ordinary course of business and other than the expiration of the statutory term of any Intellectual Property;

(vii) materially modify, materially breach, repudiate, reject, or terminate any Assigned Contract, or waive, release or assign any material rights or claims under any Assigned Contract;

(viii) grant, impose or suffer to be imposed any Lien upon any of the Transferred Assets other than Permitted Liens or Liens that will be cured prior to the Closing; and

(ix) authorize, agree or otherwise commit, whether or not in writing, to do any of the foregoing.

(c) Notwithstanding anything to the contrary, nothing contained in this Agreement shall give Purchaser or any of its Affiliates, directly or indirectly, any right to control or direct the Business, assets and operations prior to the Closing. Prior to the Closing, the Seller shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its Business, assets and operations, subject to Purchaser's consent rights and Seller's obligations, in each case as expressly set forth in this Agreement.

6.2 **Access to Information; Confidentiality**.

(a) From the Agreement Date until the earlier of the Closing Date and the termination of this Agreement, the Seller shall grant Purchaser and its representatives (at Purchaser's sole cost and expense) reasonable access, during normal business hours and upon reasonable notice (and in the event of a facility visit request, at least forty-eight (48) hours prior notice), and subject to any limitations resulting from any Public Health Measures, to the personnel, facilities, book and records of the Seller Group related to the Business or the Transferred Assets that are in the possession of, owned by, or under the control (including via license) of the Seller Group, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller Group (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level); *provided, however,* that (i) all requests for access shall be directed to such other person(s) as the Seller may designate in writing from time to time (the "**Seller Access Contact**"), (ii) such activities do not unreasonably interfere with the ongoing business or operations of the Seller Group, (iii) the Seller shall have the right to have one or more of its representatives present at all times during any visits, examinations, discussions or contacts contemplated by this Section 6.2(a), (iv) Purchaser shall have no right to perform invasive or subsurface investigations or conduct any sampling or analysis of environmental media of the nature commonly referred to as a "Phase II Environmental Investigation," such as any soil or groundwater testing, (v) such access or related activities would not cause a violation of any agreement to which any Seller Group Member is a party, (vi) no Personal Information shall be disclosed or used other than in compliance with applicable privacy law and (vii) nothing herein shall require any member of the Seller Group or their representatives to furnish to Purchaser or provide Purchaser with access to information that (A) is subject to an attorney-client or an attorney work-product privilege, (B) legal counsel for the Seller Group reasonably concludes may give rise to antitrust or competition law issues or violate a protective order or otherwise may not be disclosed pursuant to Applicable Law (including any Public Health Measure) or (C) would cause significant competitive harm to the Seller Group if the Transactions are not consummated.

(b) Notwithstanding anything to the contrary contained in this Agreement, from the Agreement Date until the Closing Date, Purchaser shall not, and shall cause its representatives not to, have any contact or discussions concerning any member of the Seller Group, the Business, the Transaction or any other matters with any lender, borrower, creditor, guarantor, business partner, bank, landlord, tenant, supplier, customer, employee, manager, franchisee, distributer, noteholder, independent contractor, consultant or other material business relation of any Seller Group Member, in each case, without the prior written consent of the Seller Access Contact (which consent may be withheld in the Seller's sole discretion and, if given, may be conditioned on the Seller Access Contact or his or her designee having the right to participate in any meeting or discussion); provided, however, that no such consent is required for Purchaser to exercise its rights or perform its obligations under Sections 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, and 7.16, to contact Merck in connection with the Merck Side Letter or Sublicense Agreement, to contact any of the counterparties to any Existing Manufacturing Contract or

any Cross-Over Contracts, or contact any of the buyers of Seller's assets that are beneficiaries of such Cross-Over Contracts, and Purchaser is hereby authorized to engage in such contact and discussions.

(c) Any information provided to or obtained by Purchaser or its representatives, including pursuant to this Section 6.2 is confidential information and subject to the terms of, and the restrictions contained in, the Confidentiality Agreement. Purchaser agrees to be bound by and comply with the provisions set forth in the Confidentiality Agreement as if such provisions were set forth herein, and such provisions are hereby incorporated herein by reference. Effective upon (and only upon) the Closing, the Confidentiality Agreement shall automatically terminate and none of the parties thereto shall have any further Liability or obligation thereunder except with respect to any confidential information provided to or obtained by Purchaser or its representatives concerning the Seller Group, which information shall remain subject to the terms and conditions of the Confidentiality Agreement after the Closing Date. If this Agreement is terminated prior to Closing for any reason, the duration of the confidentiality of the Confidentiality Agreement shall be deemed extended, without any further action by the parties, for a period of time equal to the period of time elapsed between the date such Confidentiality Agreement was initially signed and the date of termination of this Agreement.

6.3 **Efforts to Consummate.** Except as otherwise provided in this Agreement, each of the parties hereto agrees to use its commercially reasonable efforts to cause the Closing to occur as soon as possible after the Agreement Date, including satisfying the conditions precedent set forth in ARTICLE 8 applicable to such party including (a) defending against any Actions, judicial or administrative, challenging this Agreement or the consummation of the Transactions, (b) seeking to have any preliminary injunction, temporary restraining order, stay or other legal restraint or prohibition entered or imposed by any court or other Governmental Authority that is not yet final and non-appealable vacated or reversed, and (c) and executing any additional instruments reasonably requested by another party hereto (without cost or expense to the executing party) necessary to carry out the Transactions and to fully carry out the purposes of this Agreement; *provided, however,* that, for purposes of "commercially reasonable efforts" standard as required by this Section 6.3, Section 6.4 or Section 6.5, neither the Seller nor its Affiliates or representatives shall be required to offer or grant any accommodation or concession (financial or otherwise) to any third party or to otherwise expend any money or suffer any detriment, to expend any money to remedy any breach of any representation or warranty hereunder, to commence any Action, to waive or surrender any right, to modify any agreement (including any Assigned Contract) or to provide financing to Purchaser for the consummation of the Transactions.

6.4 **Notices and Consents**. Reasonably promptly following the execution of this Agreement, the Seller will give, or cause to be given, applicable notices to third parties and thereafter will use commercially reasonable efforts (as limited by Section 6.3) to obtain the third-party consents set forth on Schedule 6.4; *provided, however,* that no representation, warranty, covenant or agreement of the Seller shall be breached or deemed breached, and no condition shall be deemed not satisfied, as a result of (a) the failure to obtain any such third-party consent (unless such consent is part of a closing condition of Seller), (b) any termination of a Contract as a result of the failure to obtain such third-party consent (unless such consent is part of a closing condition of Seller) or (c) any Action commenced or threatened by or on behalf of any Person arising out of or relating to the failure to obtain any such consent or any such termination; *provided, further,* that nothing in this Section 6.4 shall require the Seller to expend any money or grant any concessions to obtain any such third-party consent (unless Purchaser provides the funds for or reimburses the Seller for such payment).

6.5 **Regulatory Matters**.

(a) Purchaser and the Seller will establish a mutually acceptable and prompt communication and interaction process to ensure the orderly transfer of the Lonafarnib IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States. Promptly after Closing, the parties shall file with the FDA, and any other relevant Governmental

Authority all information required in order to transfer the Lonafarnib IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States from the Seller to Purchaser, including the information required pursuant to 21 C.F.R. § 314.72, or any successor regulation thereto, any authorization letters or notices, and letters of acceptance. Seller shall file the information required of a former owner, and Purchaser shall file the information required of a new owner, at each party's own expense. Both Purchaser and the Seller also agree to use all commercially reasonable efforts to take any actions required by the Governmental Authority or other government/health agencies to effect the transfer of the Lonafarnib IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States from the Seller to Purchaser, and hereby further agree to cooperate with each other in order to effectuate the foregoing transfer of the Lonafarnib IND. The parties agree to use all commercially reasonable efforts to complete the filing of the transfer of the Lonafarnib IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States within ten (10) days from the Closing Date. The Seller may retain an archival copy of the Lonafarnib IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States, including supplements and records that are required to be kept under 21 C.F.R. § 314.81 or other similar regulation.

(b) From and after the Closing Date until the Seller is dissolved, the Seller shall cooperate with Purchaser in preparing, disclosing and providing any relevant records, reports, responses or any other documentation that are required to be made, maintained and reported pursuant to the Governmental Authority. The parties agree to use their commercially reasonable efforts to take any other actions required by the FDA or any other Governmental Authority to effect the transaction.

(c) Until the completion of the transfer of the Lonafarnib IND to Purchaser, the Seller shall take all reasonably necessary or advisable actions to maintain the relevant Lonafarnib IND and other similar regulatory approval and authorization documents for jurisdictions outside of the United States.

6.6 **Public Announcements**. Between the Agreement Date and the Closing Date, except to the extent required by any Applicable Law or Action (including the Bankruptcy Cases), neither Purchaser nor the Seller shall, and Purchaser and the Seller shall cause their respective Affiliates and representatives not to, directly or indirectly, issue any press release or public announcement of any kind without the prior written consent of Purchaser and the Seller; *provided, however,* that the Seller and its Affiliates may make announcements from time to time to their respective employees, customers, suppliers, and other business relations and otherwise as the Seller may reasonably determine is necessary to comply with Applicable Law or the requirements of this Agreement or any other agreement to which any Seller Group Member or any such Affiliate is a party. Purchaser and the Seller shall cooperate in good faith to prepare a joint press release to be issued on the Closing Date, the terms of which shall be mutually agreed upon by the parties.

6.7 **Update of Schedules; Knowledge of Breach**. From time to time prior to the Closing, the Seller may supplement or amend the Schedules with respect to any matter first arising after the Agreement Date that would have been required to be set forth or described in such Schedules. Any such supplemental or amended disclosure shall not be deemed to have cured any such breach of representation or warranty for purposes of determining whether or not the conditions set forth in Section 8.2(a) have been satisfied. From and after the Closing, references to the Schedules shall be references to the Schedules as supplemented, modified and/or updated. If, prior to the Closing, Purchaser shall have reason to believe that any breach of a representation or warranty of the Seller has occurred (other than through notice from the Seller), Purchaser shall promptly so notify the Seller, in reasonable detail. Nothing in this Agreement, including this Section 6.7, shall imply that the Seller is making any representation or warranty as of any date other than the Closing Date (other than representations and warranties that are expressly made as of an earlier date).

ARTICLE 7.
POST-CLOSING COVENANTS

7.1 **Access to Information; Books and Records**. From and after the Closing, Purchaser and its Affiliates shall (i) afford the Seller Group and their respective representatives reasonable access, during normal business hours, upon reasonable advance notice and under reasonable circumstances, to the books and records of Purchaser and the Business shall permit the Seller Group and their respective representatives to examine and copy such books and records to the extent reasonably requested by such party and (ii) cause their representatives to furnish all information reasonably requested by any member of the Seller Group or their representatives in connection with financial or regulatory reporting, audit, third party litigation, preparing or filing of any Tax Return or the defense of any Tax claim or assessment or any other business purpose; *provided, however,* that nothing in this Section 7.1 shall require Purchaser or its Affiliates to furnish to the Seller Group or their respective representatives any material that is subject to an attorney-client or solicitor-client privilege or an attorney or solicitor work-product privilege or which may not be disclosed pursuant to Applicable Law. For a period of six (6) years following the Closing Date, or such longer period as may be required by Applicable Law or necessitated by applicable statutes of limitations, Purchaser shall, and shall cause its Affiliates to, maintain all such books and records in the jurisdiction in which such books and records were located prior to the Closing Date and shall not destroy, alter or otherwise dispose of any such books and records. On and after the end of such period, Purchaser shall, and shall cause its Affiliates to, provide the Seller with at least ten Business Days prior written notice before destroying, altering or otherwise disposing any such books and records, during which period the Seller may elect to take possession, at its own expense, of such books and records.

7.2 **Post-Closing Receipt and Possession of Assets**.

(a) After the Closing Date, the Seller shall transfer promptly to Purchaser from time to time (but in any event on a monthly basis) any payments constituting Transferred Assets received by the Seller. After the Closing Date, Purchaser shall transfer promptly to the Seller, from time to time (but in any event on a monthly basis), any payments constituting Excluded Assets, including any accounts receivable constituting Excluded Assets, received by Purchaser after the Closing.

(b) In the event that, after the Closing Date, Purchaser receives or otherwise is in possession of any other Excluded Asset, Purchaser shall promptly notify the Seller of its receipt or possession of such other Excluded Asset and transfer, at the Seller's expense, such Excluded Asset to the Seller. In the event that, after the Closing Date, the Seller receives or otherwise is in possession of any other Transferred Asset, the Seller shall promptly notify Purchaser of its receipt or possession of such other Transferred Asset and transfer, at Purchaser's expense (unless the Seller was required to transfer such Transferred Asset to Purchaser at Closing, in which case, and without limitation of any other remedies available to Purchaser, such transfer will be at the Seller's expense), such Transferred Asset to Purchaser.

7.3 **Tax Matters**.

(a) All Taxes with respect to the income or operations of the Business or the ownership of the Transferred Assets that relate to any Straddle Period shall be apportioned between Seller and Purchaser as follows: (i) in the case of ad valorem or other property Taxes, on a per diem basis; and (ii) in the case of income, sales and use and withholding Taxes, employment Taxes, or other Taxes based on or measured by income, receipts or profits, as determined from the closing of the books and records of Seller and the Business at the close of business on the Closing Date.

(b) After the Closing Date, Purchaser and Seller shall furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books, records, work papers and Tax Returns for Pre-Closing Tax Periods) relating to the Business or the Transferred Assets as is reasonably necessary for the preparation of any Tax Return, claim for refund or audit, and the prosecution or defense of any claim, suit or proceeding relating to any proposed Tax adjustment. Upon reasonable notice, Seller and Purchaser shall make its employees and facilities available on a mutually convenient basis to provide reasonable explanation of any documents or

information provided hereunder. The other party hereto shall promptly (and in no event later than 30 days after receipt of the request) provide the requested information. The requesting party shall indemnify the other party for any out-of-pocket expenses incurred by such party in connection with providing any information or documentation pursuant to this Section 7.3(b). Any information obtained under this Section 7.3(b) shall be kept confidential, except as otherwise reasonably may be necessary in connection with the filing of Tax Returns or claims for refund or in conducting any Tax audit, dispute or contest.

7.4 **Wrong Pockets.**

(a) Assets. If either Purchaser or Seller becomes aware that any of the Transferred Assets has not been transferred to Purchaser or that any of the Excluded Assets has been transferred to Purchaser, it shall promptly notify the other and the parties shall, as soon as reasonably practicable, ensure that such property is transferred, at the expense of Seller and with any necessary prior third party consent or approval, to (i) Purchaser, in the case of any Transferred Asset that was not transferred to Purchaser at the Closing; or (ii) Seller, in the case of any Excluded Asset that was transferred to Purchaser at the Closing.

(b) Payments. If, on or after the Closing, either party shall receive any payments or other funds due to the other pursuant to the terms of this Agreement or any Related Document, then the party receiving such funds shall, within 30 days after receipt of such funds, forward such funds to the proper party. The parties acknowledge and agree there is no right of offset regarding such payments and a party may not withhold funds received from third parties for the account of the other party in the event there is a dispute regarding any other issue under this Agreement.

7.5 **Purchased Intellectual Property and Purchased Product Information**. Promptly following the Closing, at Purchaser's sole cost and expense, Seller shall take such further actions and execute such further documents as may be necessary or reasonably requested by Purchaser to effectuate, evidence and perfect the assignment and transfer of the Owned Intellectual Property Assets and Regulatory Approvals to Purchaser, including making such filings with any Governmental Authorities as may be required to transfer the Owned Intellectual Property Assets and Regulatory Approvals to Purchaser or to further the prosecution, issuance or maintenance of the Owned Intellectual Property Assets and Regulatory Approvals.

7.6 **Delivery of Transition Materials; Transition Activities**. The Seller will, as soon as reasonably practicable after the Closing Date, (a) in any event within seven (7) Business Days after the Closing Date, effect the delivery of a complete and true copy of the Zokinvy Dossier as of such date of delivery and all Licensed Product Data, Licensed Product Regulatory Information, and Business Books and Records, and (b) within thirty (30) days after the Closing Date, (i) effect the delivery of all Inventory in accordance with Purchaser's instructions at Purchaser's cost and all other Transition Materials not otherwise delivered to Purchaser, and (ii) use commercially reasonable efforts to perform, and cooperate with Purchaser regarding, the transition activities set forth on Schedule 7.6.

7.7 **Licenses**.

(a) To Seller. From and after the Closing, subject to the terms and conditions of this Agreement, including Purchaser's retained rights in Section 7.8 related to the Licensed Compound and Licensed Product in the Lonafarnib Antiviral Field, Purchaser hereby grants to Seller, during the period from the Closing until and expiring on completion of the wind-up of Seller, a non-exclusive, sublicensable (solely to a permitted sublicensee under the Merck License Agreement), royalty-free license, under Purchaser's rights to the Transferred Regulatory Information and Transferred Data to Develop, make, have made, use, import, export, Commercialize, sell, offer for sale, and market the Licensed Progeria Product in the Progeria Field in the Territory.

(b) To Purchaser. From and after the Closing, subject to the terms and conditions of this Agreement, including Seller's retained rights in Section 7.8 related to the Licensed Compound and Licensed Product in the Progeria Field, Seller hereby grants to Purchaser, (i) a perpetual, irrevocable, non-exclusive, sublicensable (solely to a permitted sublicensee under the Sublicense Agreement), royalty-free license, under Seller's rights to the Licensed Progeria Product Regulatory Information, General Licensed Product Regulatory Information, Licensed Progeria Product Data, and General Licensed Product Data to Develop, make, have made, use, import, export, Commercialize, sell, offer for sale, and market the Lonafarnib Antiviral Product in the Lonafarnib Antiviral Field in the Territory, and (ii) a perpetual, irrevocable, non-exclusive, sublicensable, royalty-free license under Seller's rights to the Business Books and Records that are not Transferred Business Books and Records to conduct the Business.

7.8 **Retained Rights; Covenants**. From and after the Closing:

(a) Seller acknowledges and agrees that as between the parties, subject to Section 7.7 and Section 7.9, Purchaser retains any and all other rights under the Transferred Regulatory Information and Transferred Data (i) to the extent necessary to perform any of Purchaser's obligations hereunder, and (ii) that are outside the scope of the license granted to Seller under Section 7.7(a), including, for the avoidance of doubt, the right to Develop, make, have made, use, import, export, Commercialize, sell, offer for sale, and market the Licensed Compound and Licensed Product in the Lonafarnib Antiviral Field in the Territory.

(b) Seller shall not grant any Third Party any license or right under any Transferred Regulatory Information and Transferred Data, other than as expressly permitted by this Agreement or as required to fulfill its obligations under the Zokinvy Buyer-Eiger Agreement or the Merck License Agreement. Any breach of this Section 7.8 by Seller shall be deemed a material breach of this Agreement.

(c) Purchaser acknowledges and agrees that as between the parties, subject to Section 7.7 and Section 7.9, Seller retains any and all other rights under the Licensed Progeria Product Regulatory Information, General Licensed Product Regulatory Information, Licensed Progeria Product Data, and General Licensed Product Data (i) to the extent necessary to perform any of Purchaser's obligations hereunder, and (ii) that are outside the scope of the license granted to Purchaser under Section 7.7(b), including, for the avoidance of doubt, the right to Develop, make, have made, use, import, export, Commercialize, sell, offer for sale, and market the Licensed Compound and Licensed Product in the Progeria Field in the Territory.

(d) Purchaser shall not grant any Third Party any license or right under any Licensed Progeria Product Regulatory Information, General Licensed Product Regulatory Information, Licensed Progeria Product Data, and General Licensed Product Data, other than as expressly permitted by this Agreement or as required to fulfill its obligations under the Zokinvy Buyer Agreement or the Sublicense Agreement.

7.9 **Right of Reference**. From and after the Closing:

(a) The Seller and its Affiliates shall grant, and hereby grant, and shall use reasonable efforts to cause its licensees and sublicensees of the Licensed Progeria Product to grant, to Purchaser and its Affiliates an irrevocable, perpetual, fully paid-up right to reference and access and receive a copy of, and shall provide, and shall use reasonable efforts to cause such licensees and sublicensees to provide, to Purchaser and its Affiliates, (i) the Regulatory Information, Regulatory Application(s), and Regulatory Approval(s) related to any Licensed Product in any field (including the

Lonafarnib Antiviral Field and Progeria Field), and (ii) all data included or referenced in such Regulatory Information, Regulatory Application(s), and Regulatory Approval(s), in each case (i) and (ii), in the possession of, owned by, or under the control (including via license) of Seller or its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of the Seller or any of its Affiliates, directly or indirectly, at any level), to the extent necessary or reasonably useful for Purchaser to Develop, Manufacture, and obtain and maintain Regulatory Approvals for, Commercialize the Lonafarnib Antiviral Products in the Lonafarnib Antiviral Field in the Territory, and comply with its obligations under Applicable Laws and to Regulatory Authorities and investigators with respect thereto; provided, however, that (A) such right of reference shall be used solely for exercising its license and rights and performing its obligations under the Sublicense Agreement and the Merck Side Letter and (B) all information that is subject to the right of reference shall be treated by Purchaser and its Affiliates, as between the parties, as confidential information of the Seller and its Affiliates under the Confidentiality Agreement.

(b) Purchaser and its Affiliates shall grant, and hereby grant, and shall use reasonable efforts to cause its licensees and sublicensees of the Lonafarnib Antiviral Products to grant, to the Seller and its Affiliates an irrevocable, perpetual right, fully paid-up right to reference and access and receive a copy of, and shall provide, and shall use reasonable efforts to cause such licensees and sublicensees to provide, to Seller and its Affiliates, (i) the Regulatory Information, Regulatory Application(s), and Regulatory Approval(s) related to any Licensed Product in any field (including the Lonafarnib Antiviral Field and Progeria Field), and (ii) all data included or referenced in such Regulatory Information, Regulatory Application(s), and Regulatory Approval(s), in each case (i) and (ii), in the possession of, owned by, or under the control (including via license) of Purchaser or its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of Purchaser or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of Purchaser or any of its Affiliates, directly or indirectly, at any level), to the extent necessary or reasonably useful for Seller to Develop, Manufacture, and obtain and maintain Regulatory Approvals for, Commercialize the Licensed Progeria Products in the Progeria Field in the Territory, and comply with its obligations under Applicable Laws and to Regulatory Authorities and investigators with respect thereto; provided, however, that (A) such right of reference shall be used solely for exercising its license and rights and performing its obligations under the Merck License Agreement, as retained by the Seller and its Affiliates and (B) all information that is subject to the right of reference shall be treated by the Seller and its Affiliates, as between the parties, as confidential information of Purchaser and its Affiliates under the Confidentiality Agreement.

(c) Within thirty (30) days after the Closing Date, the party and its Affiliates granting a right of reference and other rights under this Section 7.9 will provide, and will cause its applicable licensees and sublicensees (to the extent such party and/or its Affiliates have the right to cause such licensee or sublicensee to do so) to provide, a signed statement to the other party and its Affiliates and applicable licensees or sublicensees that they may rely on, in support of the approval of Regulatory Applications and Regulatory Approval(s) controlled by them, and provide the applicable Regulatory Authority access to (i) such Regulatory Applications and Regulatory Approval(s) and (ii) the underlying data, including raw data, controlled by them included or referenced in such Regulatory Applications and Regulatory Approval(s) (such letter, a "**Letter of Authorization**"). Each party and its Affiliates will take such actions as may be reasonably requested by the other party and its Affiliates, including providing copies of Regulatory Applications and Regulatory Approval(s) and related data and providing letters of authorization or other documentation, to give effect to the intent of this Section 7.9 and to give the other party and its Affiliates the benefit of such party's and its Affiliates' Regulatory Applications, Regulatory Approval(s), and the underlying data, including raw data, included or referenced therein, as provided herein. The party and its Affiliates granting a right of reference and other rights under this Section 7.9

will bear its own costs and expenses associated with providing, or causing its applicable licensees and sublicensees to provide to, the other party and its Affiliates with such right of reference and other rights.

7.10 **Pharmacovigilance**. From and after the Closing:

(a) Within thirty (30) days after the Closing Date, Seller shall provide Purchaser with all adverse events ("**AEs**") for Licensed Products, Lonafarnib HDV Products, and Licensed Progeria Products to the extent not previously provided to Purchaser that are in the possession of, owned by, or under the control (including via license) of Seller or its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of the Seller or any of its Affiliates, directly or indirectly, at any level). In addition to the foregoing, Seller shall transfer to Purchaser in an agreed upon format, all relevant information (sufficient for Purchaser to comply with its obligations to Regulatory Authorities and investigators) regarding AEs that have been observed during any clinical trials conducted with Licensed Products, Lonafarnib HDV Products, and Licensed Progeria Products prior to the Closing Date that are in the possession of, owned by, or under the control (including via license) of Seller or its Affiliates, including such foregoing items that are controlled by Seller or its Affiliates as a result of being held by or on behalf of the Seller or any of its Affiliates (including by or on behalf of any contractors or other service providers acting on behalf of the Seller or any of its Affiliates, directly or indirectly, at any level).

(b) Each party (with respect to Seller, to the extent permitted to do so under the Zokinvy Buyer-Eiger Agreement and the Merck License Agreement, and with respect to Purchaser, to the extent permitted to do so under the Zokinvy Buyer Agreement and the Sublicense Agreement) shall (i) notify the other party of all information coming into its possession concerning AEs associated with commercial or clinical uses, studies, investigations or tests with Licensed Products, Lonafarnib HDV Products, or Licensed Progeria Products, in the Territory, as applicable, involving Licensed Products, Lonafarnib HDV Products, or Licensed Progeria Products, as applicable, and (ii) forward to the other party, completed AE case reports associated with commercial or clinical uses, studies, investigations or tests with Licensed Products, Lonafarnib HDV Products, or Licensed Progeria Products, as applicable, within five (5) Business Days for any death/fatal-life threatening assessed AEs or, within ten (10) Business Days for all other serious AEs, to assure such party remains in compliance with investigator notifications in its respective field. Such AE information should be sent to Seller via email at dapelian@eigerbio.com or sent to Purchaser via email at the email address notified by Purchaser in writing, as applicable. Within thirty (30) days of the Closing, the parties shall enter into a separate written pharmacovigilance agreement with respect to the Licensed Progeria Products and other Licensed Products, as applicable, to enable the parties to fulfill their respective regulatory reporting obligations under Applicable Laws.

(c) Without limiting any party's rights or obligations in the foregoing, at the request of a party, the other party shall provide the requesting party with all materials, data, information or other documents necessary in form and substance to allow the requesting party to comply with its obligations under Section 5.3 of the Merck License Agreement (in the case of Seller as the requesting party) and under the Sublicense Agreement (in the case of Purchaser as the requesting party).

(d) Prior to the Lonafarnib IND Transfer Date, Seller will comply with its obligations under Applicable Laws, including drug surveillance, safety data reporting, and other required pharmacovigilance activities, as the holder of the Lonafarnib INDs. After the Lonafarnib IND Transfer Date, Purchaser will comply with its obligations under Applicable Laws, including drug surveillance, safety data reporting, and other required pharmacovigilance activities, as the holder of the Lonafarnib INDs. The Seller Group shall, at no cost to Purchaser, (i) maintain and administer the Global Safety

Databases itself and through its Third Party service provider under the Global Safety Database Contracts, (ii) provide Purchaser the pharmacovigilance services set forth on Schedule 7.10(d)(1) from the Closing Date until the Lonafarnib IND Transfer Date, and (iii) provide Purchaser the pharmacovigilance services set forth on Schedule 7.10(d)(2) from the Lonafarnib IND Transfer Date until the date that is ninety (90) days after the Closing Date, which services in clauses (ii) and (iii) will be provided by Seller as Purchaser's service provider and under the reasonable direction and supervision of Purchaser in order to assist Purchaser as reasonably necessary to comply with its obligations under Applicable Laws, including drug surveillance, safety data reporting, and other required pharmacovigilance activities, as the holder of the Lonafarnib INDs. Notwithstanding the foregoing, in each case of the foregoing clauses (i), (ii), and (iii), the Seller Group will no longer be required to perform such activities following the earlier of (A) the Plan Consummation Date and (B) the date on which ownership or administration of the Global Safety Databases has been fully transferred and transitioned to Purchaser, the Zokinvy Buyer, and/or a Third Party service provider, as mutually agreed by the Purchaser and the Zokinvy Buyer (such earlier date, the "**PV Services Stop Date**"). Until the PV Services Stop Date , the Seller Group shall not without Purchaser's prior written consent, (y) sell, assign, license, transfer, convey, deliver or otherwise divest its interests in any of the Global Safety Database Contracts to a Third Party, or amend or modify any of the Global Safety Database Contracts, in each case, in a manner that adversely affects, or would reasonably be expected to adversely affect, Purchaser's ability to access, receive, or be provided data from the Global Safety Databases, Purchaser's rights or obligations under this Agreement, or Purchaser's ability to Develop or Commercialize any Lonafarnib Antiviral Products, or (z) undertake any action that would constitute a material breach of, or reduce the Seller Group's rights under, any Global Safety Database Contract.

7.11 **Existing Manufacturing Contracts**. From and after the Closing:

(a) For each Existing Manufacturing Contract, which assignment to Purchaser will become effective as of the applicable Existing Manufacturing Contract Transfer Date, during the period of time beginning on the Closing Date and ending on the Existing Manufacturing Contract Transfer Date for the applicable Existing Manufacturing Contract (the "**Existing Manufacturing Contract Interim Term**"), to the extent permitted to do so under Applicable Law, including any Order or Final Order, Seller shall retain each such Existing Manufacturing Contract in full force and effect until the applicable Existing Manufacturing Contract Transfer Date, including as necessary to (i) grant and provide the benefit to Purchaser of Seller's rights under such Existing Manufacturing Contracts, and (ii) delegate Seller's obligations under such Existing Manufacturing Contract to Purchaser, in each case (i) and (ii), for Purchaser to fully exercise Purchaser's rights and perform Purchaser's obligations pursuant to this Agreement, the Sublicense Agreement, or the Merck Side Letter, conduct the Business, and use and exploit the Transferred Assets. During the Existing Manufacturing Contract Interim Term, Purchaser hereby agrees to be bound by and comply with, and agrees to cause its Affiliates to be bound by and comply with, all of the terms, conditions, obligations, and any restriction of rights, applicable to a sublicensee of Seller under the Existing Manufacturing Contracts. Seller will use reasonable efforts to not, and to ensure that its Affiliates do not (A) sell, assign, transfer, convey, deliver or otherwise divest its interests in any of the Existing Manufacturing Contracts to a Third Party in a manner that adversely affects, or would reasonably be expected to adversely affect, Purchaser's rights or obligations under this Agreement or Purchaser's ability to Commercialize any Lonafarnib Antiviral Products, (B) amend any of the Existing Manufacturing Contracts in a manner that adversely affects the rights granted to Purchaser under this Agreement or Purchaser's ability to Commercialize any Lonafarnib Antiviral Products, or (C) undertake any action that would constitute a material breach of, and allow the Third Party that is a party to any Existing Manufacturing Contract to terminate, any Existing Manufacturing Contract, in each case, with respect to any Lonafarnib Antiviral Product.

(b) Seller will provide to Purchaser, within thirty (30) days following the end of a Calendar Quarter, an invoice for each preceding Calendar Quarter, which will include all fees, costs and expenses incurred by Seller in connection with, or other amounts due under, any Existing Manufacturing Contract to the extent such fees, costs, expenses or amounts relate to any Lonafarnib Antiviral Product or any Third Party services provided under such Existing Manufacturing Contracts to the extent related to any Lonafarnib Antiviral Product. Purchaser will pay each invoice no later than thirty (30) days after receipt. If Purchaser fails to pay the full amount of any invoice within such thirty (30) day period, then Seller may, upon reasonable notice to Purchaser, suspend its obligations hereunder to provide any and all services or other benefits under such Existing Manufacturing Contracts until such time as all invoices have been paid in full.

(c) As of each Existing Manufacturing Contract Date, except with respect to rights exercised by Seller on behalf of, or obligations delegated to, Purchaser pursuant to Section 7.11(a), or payments invoiced to Purchaser under Section 7.11(b) that have not been paid in full, the representations and warranties of Seller under Section 3.8 solely with respect to the Existing Manufacturing Contracts shall be true and correct in all respects as of applicable Existing Manufacturing Contract Date as though made at and as of such time.

7.12 **Zokinvy Buyer Agreement**. Following the Closing, Purchaser shall negotiate in good faith with the Zokinvy Buyer a Zokinvy Buyer Agreement which addresses the following matters: (a) the determination and allocation of Cross-Field Sales (as defined in the Merck License Agreement); (b) a safety data exchange agreement for the exchange of safety data relating to the Zokinvy Product and Lonafarnib Antiviral Products and responsibility for maintaining the Global Safety Databases; (c) a grant by Purchaser to the Zokinvy Buyer of a license to the Transferred Regulatory Information and Transferred Data to replace the license granted to Seller under Section 7.7, (d) a license and right of reference to, and right to access and receive copies of, the INDs and NDAs, including all modules thereof, related to the Zokinvy Product and all data related thereto directly from the Zokinvy Buyer, and letters of authorization in furtherance thereof; (e) a co-existence agreement for trademarks containing the word "Eiger"; and (f) supply by Purchaser to the Zokinvy Buyer of the Zokinvy Product under Purchaser's rights under the Existing Manufacturing Contracts after the Existing Manufacturing Contract Transfer Date for such Existing Manufacturing Contract.

7.13 **Joint Ownership of General Licensed Product Regulatory Information, General Licensed Product Data, and General Business Books and Records**. As of the Closing Date, Seller shall assign, and hereby assigns, its entire right, title, and interest in and to all General Licensed Product Regulatory Information, General Licensed Product Data, and General Business Books and Records to Purchaser and the Zokinvy Buyer as equal joint owners, subject to and conditioned solely upon the agreement of Purchaser and the Zokinvy Buyer with respect to such joint ownership (the "**Joint Ownership Agreement**"). Such assignment shall be effective automatically and without further notice immediately and solely upon the effectiveness of the Joint Ownership Agreement. Following the Closing, Purchaser shall use good faith efforts to negotiate with the Zokinvy Buyer the Joint Ownership Agreement. Unless otherwise required under Applicable Law, including any Order or Final Order, Seller shall not grant any Third Party any license or right to, or sell, transfer, encumber, or distribute, any of its right, title, or interest in any General Licensed Product Regulatory Information, General Licensed Product Data, or General Business Books and Records without the prior written agreement of both Seller and the Zokinvy Buyer.

Any breach of this Section 7.13 by Seller shall be deemed a material breach of this Agreement and entitle the Purchaser to seek specific performance.

7.14 **Virology Collaborator Confirmation Letters**. Within thirty (30) days after the Closing Date, the Seller and Purchaser shall use commercially reasonable efforts to obtain a Virology Collaborator Confirmation Letter from each Virology Collaborator.

7.15 **Cross-Over Contracts**.

(a) From the Agreement Date until the Plan Consummation Date, the Seller Group shall not, and shall cause its Affiliates not, to reject, amend, modify, sell, assign, license, transfer, convey, deliver or otherwise divest its interests in any of the agreements on Schedule 7.15 (the "**Cross-Over Contracts**") in a manner that adversely affects, or would reasonably be expected to adversely affect, Purchaser's rights or obligations under this Agreement, or Purchaser's ability to Develop or Commercialize any Lonafarnib Antiviral Products.

(b) Except for those Cross-Over Contracts rejected, transferred, assigned or terminated by the Seller Group without violating Section 7.15(a), the Seller Group shall, upon Purchaser's written request, transfer and assign, and hereby transfers and assigns, automatically and without further notice, to the Purchaser, each other Cross-Over Contract, effective on the date that is the earliest to occur of (a) the date that each and every Cross-Over Contract Benefited Party of such Cross-Over Contract obtains (i) a new agreement with the applicable counterparty of such Cross-Over Contract for substantially the same services as those then being provided to Seller by such counterparty under such Cross-Over Contract, or (ii) an agreement with a Third Party such that such services then being provided under such Cross-Over Contract to such Cross-Over Benefited Party are no longer needed by such Cross-Over Benefited Party, (b) the date Purchaser and all Cross-Over Contract Benefited Parties of such Cross-Over Contract agree to such transfer and assignment of such Cross-Over Contract, and (c) the date all Cross-Over Benefited Parties are no longer receiving any services under such Cross-Over Contract; and upon such transfer and assignment, such Cross-Over Contract shall be deemed an Assigned Contract for all purposes under this Agreement; the Purchaser shall be responsible for paying the associated Purchaser Cure Amount (if any) with respect to such Cross-Over Contract; and (if applicable) Seller shall be responsible for paying all related Seller Cure Amounts.

(c) Notwithstanding the foregoing Sections 7.15(a) and 7.15(c), (x) the IQVIA Contracts shall be Assigned Contracts upon the occurrence of the Satisfactory IQVIA Cure Resolution, and (y) the Cross-Over Contracts that are not IQVIA Contracts (the "**Other Cross-Over Contracts**") shall be Assigned Contracts upon the occurrence of the Satisfactory Other Cure Resolution, provided that if the Satisfactory IQVIA Cure Resolution does not occur by the Plan Consummation Date, the IQVIA Contract shall be Excluded Contracts, and if the Satisfactory Other Cure Resolution does not occur by the Plan Consummation Date, the Other Cross-Over Contracts shall be Excluded Contracts. "**Satisfactory IQVIA Cure Resolution**" means a resolution of the cure objection with respect to the IQVIA Contracts that provides for a Cure Amount of no greater than $2,000,000 or that is otherwise acceptable to Purchaser in its sole discretion. "**Satisfactory Other Cure Resolution**" means a resolution of the cure objections with respect to the Other Cross-Over Contracts that provides for a Cure Amount either (i) in the aggregate with the Cure Amount of the Satisfactory IQVIA Cure Resolution, of no greater than $2,000,000, or (ii) if in excess of (i), that is otherwise acceptable to Purchaser in its sole discretion. In the event that the a Cross-Over Contract becomes an Excluded Contract, Purchaser agrees to use commercially reasonable efforts to preserve the Transferred Data, including the Global Safety Databases, and fully transfer and transition the Transferred Data and Transferred Regulatory Information to Purchaser, and shall not instruct the counterparties to the IQVIA Contracts to delete or remove the Transferred Data from the Global Safety Databases.

(d) For the avoidance of doubt, after the Closing Date, when any Cross-Over Contract becomes an Assumed Contract, the Seller and Purchaser shall each promptly pay or cause to be paid all Purchaser Cure Amounts and Seller Cure Amounts (if any) for such Assumed Contract.

7.16 **Confirmation Letters**. Within seven (7) Business Days after Purchaser's written request provided to Seller after the Closing, Seller and its Affiliates shall provide a letter of confirmation to Purchaser for delivery by Purchaser to any Person that possesses or otherwise holds any Transferred Assets that confirms that Purchaser acquired and is the exclusive owner of the relevant Transferred Assets held by such Person in a form reasonably acceptable to Purchaser. Purchaser will have the right to provide any such letter of confirmation to any Person.

ARTICLE 8.
CONDITIONS PRECEDENT

8.1 **Conditions to Each Party's Obligation**. The respective obligations of the parties hereto to effect the Transactions are subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Seller and Purchaser), at or prior to the Closing, of the following conditions:

(a) **No Injunctions or Restraints**. No Order or Applicable Law preventing the consummation of the Transactions shall be in effect.

(b) **Sale Order**. The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall be a Final Order (unless such Final Order requirement is waived by the Seller and Purchaser in their respective sole discretion).

8.2 **Conditions to Obligations of Purchaser**. The obligations of Purchaser to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by Purchaser), at or prior to the Closing, of the following conditions:

(a) **Representations and Warranties**. Each of the representations and warranties of the Seller set forth in ARTICLE 3 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality", "Material Adverse Effect" or words of similar import set forth therein) as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect.

(b) **Performance of Covenants and Obligations**. The Seller shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing, except to the extent of changes or developments contemplated expressly by the terms of this Agreement or caused by the Transactions.

(c) **Effective Assignment of Contracts**. The Bankruptcy Court shall have entered an order (which may be the Sale Order) approving the assumption and assignment to Purchaser of the Assigned Contracts, which order shall be a Final Order and in full force and effect and in a form and substance satisfactory to Purchaser.

(d) **Closing Deliverables**. The Seller shall have delivered to Purchaser the closing deliveries required to be delivered by the Seller pursuant to Section 2.8(a), Section 2.8(b), Section 2.8(c), Section 2.8(d), Section 2.8(f), and Section 2.8(g).

8.3 **Conditions to Obligations of the Seller**. The obligation of the Seller to effect the Transactions is subject to the satisfaction (or, to the extent permitted by Applicable Law, waiver by the Seller), at or prior to the Closing, of the following conditions:

(a) **Representations and Warranties**. Each of the representations and warranties of Purchaser set forth in ARTICLE 4 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality" or words of similar import set forth therein) as of the Closing as though made at and as of such time (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, (i) have a material adverse effect on the ability of Purchaser to perform its obligations under this Agreement or (ii) otherwise prevent, hinder or delay the consummation of the Transactions.

(b) **Performance of Covenants and Obligations of Purchaser**. Purchaser shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing, except to the extent of changes or developments contemplated by the terms of this Agreement or caused by the Transactions.

(c) **Closing Deliverables**. Purchaser shall have delivered to the Seller the closing deliveries required to be delivered by Purchaser pursuant to Section 2.8(a), Section 2.8(b), Section 2.8(c), Section 2.8(d), Section 2.8(e), and Section 2.8(f).

8.4 **Waiver of Condition; Frustration of Conditions**. All conditions to the Closing shall be deemed to have been satisfied or waived from and after the Closing. Neither Purchaser nor the Seller may rely on the failure of any condition set forth in this ARTICLE 8, as applicable, to be satisfied if such failure was caused by such party's failure to use, as required by this Agreement, its reasonable best efforts to consummate the Transactions.

8.5 **Delivery of a Notice of Readiness to Close**. At any time after the Seller's satisfaction of its conditions to Closing in accordance with the terms of Section 8.1 and Section 8.3 of this Agreement, the Seller may deliver a notice to Purchaser (a "**Notice of Readiness to Close**"). Purchaser shall have three (3) Business Days from delivery of a Notice of Readiness to Close to satisfy its conditions to Closing in accordance with the terms of Section 8.1 and Section 8.2 of this Agreement and consummate the Transactions. If Purchaser does not satisfy its conditions to Closing and consummate the Transaction within three (3) Business Days, Purchaser shall forfeit the entire Deposit Escrow Amount to the Seller.

ARTICLE 9.
TERMINATION

9.1 **Events of Termination**. Notwithstanding anything to the contrary, this Agreement may be terminated and the Transactions may be abandoned at any time prior to the Closing:

(a) by mutual written consent of Purchaser and the Seller;

(b) automatically, upon (i) the consummation of a sale or other disposition of all or substantially all of the Transferred Assets to a Person other than Purchaser (each, an "**Alternate Transaction**"), (ii) if, at close of the Auction, Purchaser's bid has not been selected as either the winning bid or the Back-Up Bid or (iii) if, at the close of the Auction, Purchaser's bid was selected as the Back-Up Bid, upon the consummation of a Competing Bid or Alternate Transaction;

(c) by Purchaser or the Seller by written notice to Purchaser or the Seller from the other, if the Bankruptcy Case is dismissed or converted to a case under chapter 7 of the Bankruptcy Code;

(d) by Purchaser or the Seller by written notice to Purchaser or the Seller from the other, if Purchaser is not selected as having the winning bid or Back-Up Bid at Auction, if any;

(e) by Purchaser if the Seller (i) withdraws the motion for the Sale Order, or publicly announces its intention to withdraw such motion, (ii) moves to voluntarily dismiss the Bankruptcy Cases, (iii) moves for conversion of the Bankruptcy Cases to Chapter 7 of the Bankruptcy Code, or (iv) moves for appointment of an examiner with expanded powers pursuant to Section 1104 of the Bankruptcy Code or a trustee in the Bankruptcy Cases;

(f) by Purchaser, by written notice from Purchaser to the Seller, if there has been a breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement, such that the conditions in Section 8.1 or Section 8.2 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by the Seller prior to the earlier of (i) twenty (20) Business Days after receipt of written notice from Purchaser requesting such breach be cured or (ii) the Outside Date; *provided, however,* that the right to terminate this Agreement pursuant to this Section 9.1(f) shall not be available to Purchaser if the failure of Purchaser to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement;

(g) by the Seller, by written notice from the Seller to Purchaser, if there has been a breach or inaccuracy of a covenant, representation or warranty made by Purchaser in this Agreement, such that the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied and which breach is incapable of being cured or, if capable of being cured, has not been cured by Purchaser prior to the earlier of (i) 20 Business Days after receipt of written notice from the Seller requesting such breach be cured or (ii) the Outside Date; *provided, however,* that the right to terminate this Agreement pursuant to this Section 9.1(g) shall not be available to the Seller if the failure of the Seller to fulfill any of its obligations under this Agreement has been the primary cause of, or resulted in, such breach, or if the conditions in Section 8.1 or Section 8.3 are not capable of being satisfied because there is then a breach or inaccuracy of a covenant, representation or warranty made by the Seller in this Agreement;

(h) by Purchaser or the Seller, by written notice from Purchaser or the Seller to the other, if any Governmental Authority of competent jurisdiction shall have issued an Order, enacted any Applicable Law or taken any other action restraining, enjoining or otherwise prohibiting the consummation of the Transactions and, in the case of Orders and other actions, such Order or other action shall have become Final Orders; *provided, however,* that the right to terminate this Agreement pursuant to this Section 9.1(h) shall not be available to the party seeking to terminate if any action of such party or any failure of such party to act has contributed to such Order or other action and such action or failure constitutes a breach of this Agreement;

(i) by Purchaser or the Seller, by written notice from Purchaser or the Seller to the other, if the Closing has not occurred on or prior to October 5, 2024 (the "**Outside Date**"); *provided, however,* that the party exercising the right to terminate this Agreement pursuant to this Section 9.1(i) shall not have been responsible for such failure of the Closing to occur through a breach or inaccuracy of a covenant, representation or warranty contained in this Agreement (it being understood, acknowledged, and agreed that if Seller is unable to provide any required Closing deliverable of Seller, then Seller shall be deemed to have been responsible for such failure of the Closing for purposes of this Section 9.1(i)); or

(j) by Purchaser by written notice to the Seller if the Bankruptcy Court does not approve the Bid Procedures Order without any material modifications (other than such modifications reasonably acceptable to Purchaser) to the protections to Purchaser set forth in Section 9.3(a), Section 9.3(b), and Section 9.3(c).

9.2 **Effect of Termination**.

(a) In the event that this Agreement shall be terminated pursuant to Section 9.1, (a) Purchaser and its representatives shall promptly return all documents, work papers and other materials of

the Seller including any confidential information and (b) all further obligations of the parties hereto under this Agreement shall terminate without further Liability or obligation to the other parties hereto; *provided, however,* that, notwithstanding the foregoing, the Liabilities and obligations under (i) the Confidentiality Agreement, and (ii) Section 2.9(c), Section 6.2(c), this Section 9.2, Section 9.3, and ARTICLE 10 shall continue in full force and effect.

(b) Notwithstanding anything to the contrary in this Agreement, in the event of valid termination of this Agreement pursuant to Section 9.1, (i) Seller's Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement shall be capped at an amount equal to the Deposit Escrow Amount, and Purchaser shall be entitled to all remedies available at law or in equity, including payment of the Termination Fee and Expense Reimbursement pursuant to Section 9.3, and (ii) Purchaser's Liability hereunder for any and all breaches of this Agreement prior to such termination of this Agreement shall be capped at an amount equal to the Deposit Escrow Amount and Seller shall be entitled to all remedies available at law or in equity, including payment of the Deposit Escrow Amount pursuant to Section 2.9(c).

9.3 **Termination Fee and Expense Reimbursement**.

(a) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, and to compensate Purchaser as a stalking-horse bidder, the Seller shall pay in cash to Purchaser, by wire transfer of immediately available funds to the account specified by Purchaser to the Seller in writing, an amount equal to the Termination Fee in the event that this Agreement is terminated pursuant to any of Sections 9.1(b)-(f) or 9.1(h)-(i) in which case the Termination Fee shall be due and payable simultaneously with any termination of this Agreement; provided that Purchaser shall not be entitled to the fee described in this Section 9.3(a) to the extent Purchaser is in material breach of this Agreement at the time this Agreement is terminated pursuant to Sections 9.1(b)-(f) or 9.1(h)-(i) if Seller has provided notice of such material breach to Purchaser and such material breach has remained uncured for more than five (5) Business Days after Purchaser's receipt of such notice. The Seller's obligation to pay the Termination Fee pursuant to this Section 9.3(a) shall survive termination of this Agreement and shall constitute an administrative expense of the Seller under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind, including those specified in section 503(b) or 507(b) of the Bankruptcy Code.

(b) Subject to limitations set forth in the Bid Procedures Order, in consideration of Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, and the identification and quantification of assets to be included in the Transferred Assets, if this Agreement is terminated in accordance with the terms set forth in any of Sections 9.1(b)-(f) or 9.1(h)-(i), then the Seller shall pay to Purchaser in cash not later than two (2) Business Days following receipt of documentation supporting the request for reimbursement of costs, fees and expenses, the Expense Reimbursement, in an amount not to exceed $224,000, by wire transfer of immediately available funds to an account specified by Purchaser to the Seller in writing; provided that Purchaser shall not be entitled to the fee described in this Section 9.3(b) to the extent Purchaser is in material breach of this Agreement at the time this Agreement is terminated pursuant to Sections 9.1(b)-(f) or 9.1(h)-(i) if Seller has provided notice of such material breach to Purchaser and such material breach has remained uncured for more than five (5) Business Days after Purchaser's receipt of such notice. The Seller's obligation to pay the Expense Reimbursement pursuant to this Section 9.3(b) shall survive termination of this Agreement and shall constitute an administrative expense of Seller under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind, including those specified in section 503(b) or 507(b) of the Bankruptcy Code.

(c) The Seller agrees and acknowledges that Purchaser's due diligence, efforts, negotiation, and execution of this Agreement have involved substantial investment of management time and have required significant commitment of financial, legal, and other resources by Purchaser, and that such due diligence, efforts, negotiation, and execution have provided value to the Seller and, in the Seller's reasonable business judgment, is necessary for the preservation of the value of the Seller's estate. The Seller further agrees and acknowledges that the Termination Fee and the Expense Reimbursement are not a penalty, but rather represent liquidated damages that are reasonable in relation to Purchaser's efforts, Purchaser's lost opportunities from pursuing the Transactions, and the magnitude of the Transactions. The provision of the Termination Fee and the Expense Reimbursement is an integral part of this Agreement, without which Purchaser would not have entered into this Agreement.

ARTICLE 10.
GENERAL PROVISIONS

10.1 **Survival of Representations, Warranties and Covenants.** All covenants and agreements contained in this Agreement that by their term are to be performed in whole or in part, or which prohibit actions, subsequent to Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to Closing, survive the Closing in accordance with their terms until fully performed or satisfied. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder shall not survive Closing and shall therefor terminate, including any Action for damages in respect of any breach or inaccuracy thereof. Notwithstanding the foregoing, the provisions of Section 2.9(c), Section 6.2, Section 9.2, this ARTICLE 10 and the Confidentiality Agreement shall survive the Closing. For the avoidance of doubt, nothing in this Section 10.1 shall affect the survival of the covenants or representations or warranties of Seller under the Sublicense Agreement or its related agreements.

10.2 **Entire Agreement**. This Agreement, including the Exhibits and Schedules hereto, the Confidentiality Agreement and the Related Documents, contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (including any letters of intent or term sheets), whether written or oral, among the parties with respect to such subject matter (other than, for the avoidance of doubt, the Confidentiality Agreement and the Related Documents) or any prior course of dealings. The parties hereto have voluntarily agreed to define their rights, Liabilities and obligations respecting the Transactions exclusively in contract pursuant to the express terms and conditions of this Agreement, the Confidentiality Agreement and the Related Documents, and the parties hereto expressly disclaim that they are owed any duties or entitled to any remedies not expressly set forth in this Agreement, the Confidentiality Agreement and the Related Documents. Furthermore, the parties each hereby acknowledge that this Agreement, the Confidentiality Agreement and the Related Documents embody the justifiable expectations of sophisticated parties derived from arm's-length negotiations, and all parties to this Agreement, the Confidentiality Agreement and the Related Documents specifically acknowledge that no party has any special relationship with another party that would justify any expectation beyond that of an ordinary purchaser and an ordinary seller in an arm's-length transaction. The sole and exclusive remedies for any Related Claims shall be those remedies available at law or in equity for breach of contract only (as such contractual remedies have been further limited or excluded pursuant to the express terms of this Agreement); and the parties hereby agree that neither party hereto shall have any remedies or cause of action (whether in contract or in tort or otherwise) of any statements, communications, disclosures, failures to disclose, representations or warranties not set forth in this Agreement.

10.3 **Amendment; No Waiver**. This Agreement and the Related Documents may be amended, supplemented or changed, and any provision hereof or thereof can be waived, only by a written instrument making specific reference to this Agreement (and, if applicable, the Related Documents) executed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought.

The waiver by any party of a breach of any provision of this Agreement or the Related Documents shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall a single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.4 **Severability; Specific Versus General Provisions**. Whenever possible, each provision of this Agreement and the Related Documents shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any term or other provision of this Agreement or the Related Documents is invalid, illegal, or incapable of being enforced by any Applicable Law or public policy, all other terms or provisions of this Agreement and the Related Documents shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, in whole or in part, such term or provision is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under Applicable Law. No party hereto shall assert, and each party shall cause its respective Affiliates or related parties not to assert, that this Agreement or any part hereof is invalid, illegal or unenforceable. Notwithstanding anything to the contrary, to the extent that a representation, warranty, covenant or agreement of the Seller contained in this Agreement or the Schedules (each, a "**Provision**") addresses a particular issue with specificity (a "**Specific Provision**"), and no breach by the Seller exists under such Specific Provision, the Seller shall not be deemed to be in breach of any other Provision (with respect to such issue) that addresses such issue with less specificity than the Specific Provision, and if such Specific Provision is qualified or limited by the Seller's Knowledge, or in any other manner, no other Provision shall supersede or limit such qualification in any manner.

10.5 **Expenses and Obligations**. Except as otherwise provided in this Agreement, all costs and expenses incurred by the parties hereto in connection with the Transactions, including the costs, expenses and disbursements of counsel and accountants, shall be borne solely and entirely by the party that has incurred such expenses; *provided, however,* that Purchaser shall pay, or promptly reimburse the Seller for, any filing fees which relate to any required governmental filing or notification and Purchaser shall pay any Transfer Taxes.

10.6 **Notices**. All notices, consents, waivers, and other communications under this Agreement or the Related Documents shall be in writing and will be deemed to have been duly given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing for next day delivery (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if delivered by electronic mail (unless the sender receives an automated message that the email has not been delivered) on the date of transmission if on a Business Day before 5:00 p.m. local time of the business address of the recipient party (otherwise on the next succeeding Business Day) and (d) if deposited in the United States mail, first-class postage prepaid, on the date of delivery, in each case to the appropriate addresses or email addresses set forth below (or to such other addresses as a party may designate by notice to the other parties in accordance with this Section 10.6):

If to Purchaser:
Eiger InnoTherapeutics, Inc.
2061 Webster Street
Palo Alto, CA 94301
Attn: Dr. Jeffrey Glenn
Email: jsglenn@stanford.edu

with a copy to (which will not constitute notice):
Goodwin Procter LLP

The New York Times Building
620 Eighth Avenue
New York, New York 10018
Attn: Kizzy Jarashow, Maggie Wong, and David Chen
email: kjarashow@goodwinlaw.com; mwong@goodwinlaw.com;
dchen@goodwinlaw.com

If to the Seller:
Eiger BioPharmaceuticals, Inc.
2100 Ross Avenue
Dallas, Texas 75201
Attn: David Apelian, Chief Executive Officer
Email: dapelian@eigerbio.com

with a copy to (which will not constitute notice):
Sidley Austin LLP
2021 McKinney Ave., Suite 2000
Dallas, TX 75201
Attention: Thomas R. Califano, William E. Curtin and Anne G. Wallice
Email: tom.califano@sidley.com, wcurtin@sidley.com, and anne.wallice@sidley.com

10.7 **Counterparts**. This Agreement may be executed in two or more counterparts (any of which may be delivered by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by electronic transmission in .PDF format, or other agreed format shall be sufficient to bind the parties to the terms and conditions of this Agreement. Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any Related Document, shall be disregarded in determining the party's intent or the effectiveness of such signature.

10.8 **Governing Law.** This Agreement, the Related Documents and all Related Claims shall be governed by the internal laws of the State of Delaware (including its statute of limitations), without giving effect to any choice or conflict of law principles or rules that would cause the application of the Applicable Laws of any other jurisdiction.

10.9 **Submission to Jurisdiction; Consent to Service of Process**.

(a) Without limiting any party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to interpret and/or enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any Related Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.6; *provided, however,* that if the Bankruptcy Cases have closed, the parties agree to irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Texas over all Related Claims, and each party hereto hereby irrevocably agrees that all Related Claims may be heard and determined in such courts. The parties hereto hereby irrevocably and unconditionally waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Related Claim brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Applicable Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any Related Claim by the delivery of a copy thereof in accordance with the provisions of Section 10.6 (other than by email) along with a notification that service of process is being served in conformance with this Section 10.9(b). Nothing in this Agreement will affect the right of any party to serve process in any other manner permitted by Applicable Law.

10.10 **Waiver of Jury Trial**. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING OR RELATED CLAIM BROUGHT BY OR AGAINST IT, DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATED DOCUMENTS OR ANY RELATED CLAIMS.

10.11 **Rights Cumulative**. All rights and remedies of each of the parties under this Agreement and the Related Documents will be cumulative, and the exercise of one or more rights or remedies will not preclude the exercise of any other right or remedy available under this Agreement, the Related Documents or Applicable Law.

10.12 **Assignment**. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement or any of the rights, interests or obligations under this Agreement may be made by any party hereto at any time, whether or not by operation of law, without the prior written consent of the Seller and Purchaser, and any attempted assignment without the required consent shall be void; *provided, however,* that (a) Purchaser may assign (i) any of its rights or delegate any of its duties under this Agreement to any of its Affiliates, and (ii) its rights, but not its duties, under this Agreement to any of its financing sources and (b), the Seller may assign any of its rights or delegate any of its duties under this Agreement (i) to any of its Affiliates, (ii) to any creditor or group of creditors pursuant to an order of the Bankruptcy Court entered in the Bankruptcy Cases, including Seller's rights to payment hereunder and rights and ability to enforce the terms of this Agreement and (iii) for collateral security purposes to any lender of the Seller or its Affiliates; *provided, further, however,* that, in each case, such assignment shall not release Purchaser from its obligations under this Agreement and the Seller shall have no obligation to pursue remedies against any assignee of Purchaser before proceeding against Purchaser for any breach of Purchaser's obligations hereunder.

10.13 **Specific Enforcement; Remedies**. The parties hereto agree that irreparable damage (for which monetary relief, even if available, would not be an adequate remedy) would occur in the event that any of the provisions of this Agreement were not performed by the parties hereto in accordance with their specific terms or were otherwise breached. It is accordingly agreed that (i) Purchaser, on the one hand, and the Seller, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction without proof of damages or otherwise and that this shall include the right of the Seller to cause Purchaser to fully perform the terms of this Agreement to the fullest extent permissible pursuant to this Agreement and Applicable Laws and to thereafter cause this Agreement and the Transactions to be consummated on the terms and subject to the conditions thereto set forth in this Agreement, and (ii) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither the Seller nor Purchaser would have entered into this Agreement. Remedies shall be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement. Each of the parties hereto hereby (A) waives any defenses in any action for specific performance, including the defense that a remedy at law would be adequate, (B) waives any requirement under any Applicable Law to post a bond or other security as a prerequisite to obtaining equitable relief and (C) agrees not to assert that a remedy of specific performance or other equitable relief is unenforceable, invalid, contrary to law or

inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy or that the parties otherwise have an adequate remedy at law. Notwithstanding anything to the contrary, in no event shall this Section 10.13 be used, alone or together with any other provision of this Agreement, to require the Seller to remedy any breach of any representation or warranty of the Seller.

10.14 **Third-Party Beneficiaries**. Except as set forth in ARTICLE 2 (with respect to the Seller), Section 10.15 (with respect to the Nonparty Affiliates), Section 10.16 (with respect to the released parties identified therein), Section 10.17 (with respect to the Sellers' Group Members) and the next sentence, nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto any rights or remedies of any nature whatsoever under or by reason of this Agreement. From and after the Closing, all of the Persons identified as third-party beneficiaries in the first sentence of this Section 10.14 shall be entitled to enforce such provisions and to avail themselves of the benefits of any remedy for any breach of such provisions, all to the same extent as if such Persons were parties to this Agreement. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with this Agreement without notice or Liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any party hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the Agreement Date or as of any other date.

10.15 **No Personal Liability of Directors, Officers and Owners**. All Related Claims may be made only against (and are those solely of) the entities that are expressly identified as parties in the preamble to this Agreement (the "**Contracting Parties**"). No Person who is not a Contracting Party, including any current, former or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, representative or assignee of, or any financial advisor or lender to, any Contracting Party, or any current, former or future director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney, representative or assignee of, or any financial advisor or lender to, any of the foregoing (collectively, "**Nonparty Affiliates**"), shall have any Liability pursuant to any Related Claim; and, to the maximum extent permitted by Applicable Law, each Contracting Party hereby waives and releases all such Liabilities, claims, causes of action, and obligations against any such Nonparty Affiliates. Without limiting the foregoing, to the maximum extent permitted by Applicable Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at Applicable Law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Nonparty Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Nonparty Affiliates with respect to the performance of this Agreement or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Documents.

10.16 **General Release**.

(a) Effective as of the Closing, the Seller, on behalf of itself, its Affiliates and each of their respective successors and assigns (each of the foregoing, a "**Seller Releasing Party**"), hereby fully, irrevocably and unconditionally releases and forever discharges Purchaser and its respective past and present directors, managers, officers, employees, agents, stockholders, members, representatives and Affiliates from and against, and covenants that it will not (directly or indirectly) assert any claim or proceeding of any kind before any Governmental Authority based upon, any and all claims, Actions, causes of action, suits, rights, agreements, Liabilities and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity, whether existing as of the Closing or arising thereafter, that a Seller Releasing Party

has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date. The foregoing sentence shall not be deemed to be a release or waiver by a Seller Releasing Party of any Action it may have under this Agreement or any of the other Related Documents.

(b) Effective as of the Closing, Purchaser, on behalf of itself, its Affiliates and each of their respective successors and assigns (each of the foregoing, a "**Purchaser Releasing Party**"), hereby fully, irrevocably and unconditionally releases and forever discharges the Seller, the Seller's Affiliates and its and their respective past and present directors, managers, officers, agents, stockholders, members, representatives and Affiliates from and against, and covenants that it will not (directly or indirectly) assert any claim or proceeding of any kind before any Governmental Authority based upon, all claims, Actions, causes of action, suits, rights, agreements, Liabilities and demands whatsoever and all consequences thereof, known or unknown, actual or potential, suspected or unsuspected, fixed or contingent, both in law and in equity, whether existing as of the Closing or arising thereafter, that a Purchaser Releasing Party has or may have, now or in the future, arising out of, relating to, or resulting from any act or omission, error, negligence, breach of contract, tort, violation of law, matter or cause whatsoever from the beginning of time to the Closing Date. The foregoing sentence shall not be deemed to be a release or waiver by a Purchaser Releasing Party of any Action it may have under this Agreement or any of the other Related Documents.

10.17 **Legal Representation**. Purchaser and the Seller acknowledge and agree that the Law Firm has represented the Seller Group in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the Related Documents and the consummation of the Transactions, and that the Seller, its Affiliates and its partners, officers, directors and representatives (the "**Seller Group Members**") have a reasonable expectation that the Law Firm will represent them in connection with any Action involving any Seller Group Member, on the one hand, and Purchaser or any of its Affiliates and representatives (the "**Purchaser Group Members**"), on the other hand, arising under this Agreement, the Related Documents or the Transactions. Purchaser hereby, on behalf of itself and the other Purchaser Group Members, irrevocably: (a) acknowledges and agrees that any attorney-client privilege, solicitor-client privilege, work product or other attorney-client or solicitor-client confidential information ("**Attorney-Client Information**") arising from communications prior to the Closing between the Seller (including any one or more officers, directors or stockholders of such Seller), on the one hand, and the Law Firm, on the other hand, is not included in the property, rights, privileges, powers, franchises and other interests that are possessed by or vested in the Business or the Transferred Assets, that any such Attorney-Client Information shall be deemed property of, and controlled solely by, such Seller for the benefit and on behalf of the Seller Group Members and, upon request, convey and transfer any Attorney-Client Information to the Seller; (b) acknowledge and agree that the Seller Group Members shall have the right to retain, or cause the Law Firm to retain, any such documentation or information in the possession of the Law Firm or such Seller Group Members at the Closing; (c) agree not to access, retain or use any documentation or information constituting Attorney-Client Information and that no Purchaser Group Member shall have any right to waive any attorney-client privilege or other right to confidentiality with respect to such Attorney-Client Information; (d) disclaim the right to assert a waiver by any Seller Group Member with regard to the attorney-client privilege, solicitor-client privilege or other right to confidentiality with respect to such Attorney-Client Information solely due to the fact that such documentation or information is physically in the possession of Purchaser after the Closing; (e) consent to the Law Firm's representation after the Closing of any Seller Group Member in any Action that may relate to a Purchaser Group Member or the Transactions and consent to and waive any conflict of interest arising therefrom without the need for any future waiver or consent; and (f) consent to the disclosure by the Law Firm to any Seller Group Member of any documentation or information obtained by the Law Firm during the course of its representation of Seller or any Affiliate prior to the Closing, whether related to this Agreement, the Related Documents, the Transactions or otherwise, whether or not such disclosure is made prior to or after the Closing and whether

or not the documentation or information disclosed is subject to any attorney-client privilege, solicitor-client privilege or confidentiality obligation to any Seller Group Member, any Affiliate of the Seller or any other Person. In the event that any Action arises after the Closing between any Purchaser Group Member and a Person other than a Seller Group Member, such Purchaser Group Member shall not disclose any documentation or information that is subject to an attorney-client privilege or other rights of confidentiality referenced in this Section 10.17 without the prior written consent of the applicable Seller; *provided, however,* that if such Purchaser Group Member is required by judicial order or other legal process to make such disclosure, such Purchaser Group Member shall promptly notify the applicable Seller in writing of such requirement (without making disclosure) and shall provide such Seller with such cooperation and assistance as shall be necessary to enable such Seller to prevent disclosure by reason of such attorney-client privilege, solicitor-client privilege or other rights of confidentiality. This Section 10.17 is for the benefit of the Seller Group Members and such Persons are intended third-party beneficiaries of this Section 10.17.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

PURCHASER:

EIGER INNOTHERAPEUTICS, INC.

By: DocuSigned by: Jeffrey Glenn F185C4B639F848A...

Name: Dr. Jeffrey Glenn
Title: Founding President

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

SELLER:

EIGER BIOPHARMACEUTICALS, INC.

By: DocuSigned by: David Apelian 0F1FCA681024459...

Name: David Apelian
Title: Chief Executive Officer

EXHIBIT 5

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

Signed August 21, 2024

United States Bankruptcy Judge

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

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

REVISED ORDER (I) AUTHORIZING THE SALE OF THE LONAFARNIB AND LAMBDA ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (III) GRANTING THE PURCHASER THE PROTECTIONS AFFORDED TO A GOOD FAITH PURCHASER, (IV) APPROVING PURCHASER PROTECTIONS IN CONNECTION WITH THE SALE OF THE LONAFARNIB AND LAMBDA ASSETS, AND (V) GRANTING RELATED RELIEF

[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.

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Upon consideration of the Motion[2] of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") for entry of an order (this "Revised Lonafarnib/Lambda Sale Order"), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rule 9013-1 of the Bankruptcy Local Rules for the Northern District of Texas (the "Bankruptcy Local Rules"), and Section E of the *Procedures for Complex Chapter 11 Cases in the Northern District of Texas* (the "Complex Case Procedures"), authorizing (a) the Debtors' sale of certain of their property free and clear of liens, claims, encumbrances, and interests on the terms set forth in that certain (i) *Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024* for the sale of the Lonafarnib Assets (the "Lonafarnib APA") attached hereto as **Exhibit A** and (ii) *Asset Purchase Agreement by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024* for the sale of the Lambda Assets (the "Lambda APA" and together with the Lonafarnib APA, the "Lonafarnib/Lambda APAs") attached hereto as **Exhibit B**; (b) the assumption and assignment of the Assigned Contracts in connection with the Lonafarnib/Lambda APAs; and (c) granting related relief, all as more fully set forth in the Motion; and this Court having previously entered the *Order (I)(A) Approving the Bid Procedures;*

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the *Debtors' Emergency Motion for the Entry of an Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection With the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 490] (the "Motion") or the Lonafarnib/Lambda APAs. If there are any inconsistencies between the defined terms in the Lonafarnib/Lambda APAs and the Motion, the defined terms of the Lonafarnib/Lambda APAs shall control.

(B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; and (III) Granting Related Relief [Docket No. 94] (the "Bid Procedures Order"); and the Debtors having filed the *Notice of Cancellation of Auction(s), Designation of Winning Bid for the Lonafarnib Sale Transaction, and Transition To Private Sale Process for Lonafarnib/Lambda Sale Transactions* [Docket No. 489] (the "Lonafarnib/Lambda Sale Notice") selecting Eiger InnoTherapeutics, Inc. ("Inno") as the highest and best bidder for the Transferred Assets (the "Purchaser") pursuant to the Lonafarnib/Lambda APAs with the Purchaser having submitted the highest and best offer for the Transferred Assets to be sold to the Purchaser as identified in the Lonafarnib/Lambda APAs, as reflected in the Lonafarnib/Lambda APAs and as from time to time may be amended in accordance with this Revised Lonafarnib/Lambda Sale Order or further order of this Court, including by the Lonafarnib/Lambda APAs, pursuant to which the Debtors have agreed, among other things, to sell the Transferred Assets to the Purchaser, including the Assigned Contracts that will be assumed and assigned to the Purchaser on the terms and conditions set forth in the Lonafarnib/Lambda APAs inclusive of the Lonafarnib Purchase Price (the "Lonafarnib Sale Transaction") and Lambda Purchase Price (the "Lonafarnib Sale Transaction" and together with the Lonafarnib Sale Transaction, the "Lonafarnib/Lambda Sale Transactions"); and the Debtors having filed the *Notice of Cure Amounts and Potential Assumption and Assignment of Executory Contracts and Unexpired*

Leases in Connection with the Remaining Sale Transaction(s) [Docket No. 313] (the "Cure Notice") and the *Amended Notice of Cure Amounts and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Remaining Assets Sale Transaction(s)* [Docket No. 351] (the "Amended Cure Notice") and served the *Lonafarnib Assigned Contracts and Cure Amounts* [Lonafarnib/Lambda Sale Notice, Ex. A] and the *Lambda Assigned Contracts and Cure Amounts* [Lonafarnib/Lambda Sale Notice, Ex. B] (the "Assignment Notice"); and this Court having conducted the hearing to consider approval of the Lonafarnib/Lambda Sale Transactions (the "Lonafarnib/Lambda Sale Hearing"), at which time all interested parties were offered an opportunity to be heard with respect to the Lonafarnib/Lambda Sale Transactions; and this Court having reviewed and considered (i) the Motion and the exhibits thereto, (ii) the First Day Declaration [Docket No. 27], (iii) and the *Declaration of J. Scott Victor in Support of the Debtors' Emergency Motion for the Entry of an Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection With the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 491], and the arguments and representations of counsel made, and the evidence proffered or adduced at the Lonafarnib/Lambda Sale Hearing; and it appearing that due and proper notice of the Motion, the Lonafarnib/Lambda APAs, the Cure Notice, the Amended Cure Notice, and the Assignment Notice having been provided; and all objections, if any, to approval of the Lonafarnib/Lambda Sale Transactions having been withdrawn, resolved (including by separate agreement between the objecting party and the Debtors), adjourned, or overruled as provided in this Revised Lonafarnib/Lambda Sale Order; and

it appearing entry of this Revised Lonafarnib/Lambda Sale Order and consummation of the Lonafarnib/Lambda Sale Transactions are in the best interests of the Debtors, their estates and creditors, and all parties in interest in these chapter 11 cases; and upon the record of the Lonafarnib/Lambda Sale Hearing and these chapter 11 cases; and after due deliberation thereon; and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052**. The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. This Court's findings shall also include any oral findings of fact and conclusions of law made by this Court during or at the conclusion of the Lonafarnib/Lambda Sale Hearing. To the extent of any conflict, the oral rulings control.

B. **Jurisdiction and Venue**. This Court has jurisdiction over the Motion and the Lonafarnib/Lambda Sale Transactions described therein, and in the Lonafarnib/Lambda APAs, including, without limitation, the sale of the Transferred Assets, pursuant to 28 U.S.C. §§ 157 and 1334. Venue for these Chapter 11 Cases is proper pursuant to 28 U.S.C. § 1408. This Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

C. **Statutory Predicates**. The statutory authorization for the relief granted herein is found in sections 105(a), 363, and 365 of the Bankruptcy Code; Bankruptcy Rules 2002, 6004,

and 9014; Rule 9013-1 of the Bankruptcy Local Rules; and Section E of the Complex Case Procedures.

D. This Revised Lonafarnib/Lambda Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Time is of the essence in closing the Lonafarnib/Lambda Sale Transactions referenced herein, and the Debtors and the Purchaser intend to close the Lonafarnib/Lambda Sale Transactions as soon as practicable in accordance with the Lonafarnib/Lambda APAs, and there is no just reason for delay in the implementation of this Revised Lonafarnib/Lambda Sale Order. Specifically, the Lonafarnib/Lambda Sale Transactions must be approved and consummated promptly in accordance with the Lonafarnib/Lambda APAs to preserve the viability of the business in the hands of the Purchaser as a going concern, and to maximize the value to the Debtors, their estates, their creditors, and all other parties in interest. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Revised Lonafarnib/Lambda Sale Order in accordance with the Lonafarnib/Lambda APAs, waives any stay, and expressly directs entry of judgment as set forth herein.

E. **Marketing Process**. The Debtors and their professionals adequately marketed the Transferred Assets to all Potential Bidders in accordance with the Bid Procedures Order. The sale process set forth in the Bid Procedures Order afforded all Potential Bidders (as defined in the Bid Procedures, attached as Exhibit 1 to the Bid Procedures Order and revised in that *Notice of Filing of Revised Bidding Procedures*, filed on April 15, 2024 [Docket No. 119]), as modified by the *Revised Notice of Sale, Bid Procedures, Auction, and Sale Hearing* [Docket No. 331], as further

modified by the *Further Revised Notice of Bid Deadlines* [Docket No. 422], a full, fair, and reasonable opportunity to submit a higher or otherwise better offer to purchase the Transferred Assets and participate in the sale process. On August 2, 2024 the Debtors filed the Lonafarnib/Lambda Sale Notice that cancelled the Auctions. The value provided by the Purchaser pursuant to the Lonafarnib/Lambda APAs, which reflect (i) the final bid of a Base Price in the amount of $5,200,000 *plus* the Purchaser Cure Amounts and Assumed Liabilities (collectively, the "Lonafarnib Purchase Price") and (ii) the final bid of a Base Price in the amount of $1,000,000 *plus* the Purchaser Cure Amounts and Assumed Liabilities (collectively, the "Lambda Purchase Price" and together with the Lonafarnib Purchase Price, the "Purchase Price") provides the greatest value to the Debtors for the Transferred Assets. The Purchase Price constitutes the highest and best bid for the Transferred Assets. The marketing process was robust and sufficiently tested the market to determine the highest and best offer for the Transferred Assets.

F. **Purchaser Protections.** The Purchaser Protections contained in the Lambda APA and the Lonafarnib APA (i) were necessary to preserve the value of the Debtors' estates by inducing the Purchaser to enter into the Lambda APA and the Lonafarnib APA, and (ii) are in compliance with the Bid Procedures and authorized by the Bid Procedures Order.

G. **Sale Hearing**. This Court conducted the Lonafarnib/Lambda Sale Hearing on August 20, 2024, at which time this Court considered the Motion, the evidence and testimony presented, and the statements and argument of counsel, as applicable, in support of the Motion, the Lonafarnib/Lambda APAs, and the Lonafarnib/Lambda Sale Transactions. Except as otherwise expressly provided in this Revised Lonafarnib/Lambda Sale Order, all objections to the Lonafarnib/Lambda Sale Transactions and the relief requested in the Motion, whether timely or untimely and whether written or made orally at the Lonafarnib/Lambda Sale Hearing, if any, were

heard and considered by this Court. All such objections, if any, were either overruled by this Court, are resolved by the terms hereof or by separate agreement between the objecting party and the Debtors, or were adjourned or withdrawn as a result of an agreement between the objecting party and the Debtors.

H. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for consummation of the Lonafarnib/Lambda Sale Transactions pursuant to the Lonafarnib/Lambda APAs and all other agreements, instruments, certificates, and other documents to be entered into or delivered by any party in connection with the Lonafarnib/Lambda Sale Transactions, including, without limitation, any assumption and assignment agreements entered into in connection therewith and any agreement entered into or to be entered into by the Purchaser with Merck Sharp & Dohme LLC ("Merck") contemplated by the Lonafarnib APA (collectively, the "Transaction Documents"), outside of the ordinary course of business and in accordance with the requirements of section 363(b) of the Bankruptcy Code. Consummation of the Lonafarnib/Lambda Sale Transactions prior to and not as part of a chapter 11 plan is (i) justified under the circumstances, (ii) an appropriate exercise of the Debtors' business judgment, and (iii) in the best interests of the Debtors, their estates, and their creditors.

I. Following a robust marketing process, the Lonafarnib/Lambda APAs and the Purchase Price constitute the highest and best offer for the Transferred Assets. No other person, or group of persons, has offered to purchase the Transferred Assets for an amount that would give greater value to the Debtors than the value provided by the Purchase Price. The Lonafarnib/Lambda Sale Transactions are the best means available to the Debtors to maximize the return to their creditors and limit the losses to counterparties to the Assigned Contracts. No

alternative to the Lonafarnib/Lambda Sale Transactions exists that would provide a greater value to the Debtors, their creditors, or other parties in interest.

J. Approval of the Lonafarnib/Lambda Sale Transactions is necessary to maximize the value the Debtors' estates will receive for the Transferred Assets. It is important to the Debtors' customers and suppliers that the transition from the Debtors to the Purchaser occurs smoothly and without unnecessary delay, so that any customer and vendor issues may be minimized. It is also important that the Lonafarnib/Lambda Sale Transactions be consummated as expeditiously as possible to avoid any disruption to the ongoing development of the Lonafarnib/Lambda Assets and so there is no uncertainty about the future of the Lonafarnib/Lambda Assets.

K. Accordingly, the sale of the Transferred Assets pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code upon the terms and conditions set forth in the Lonafarnib/Lambda APAs is the optimal means to create value for the benefit of the Debtors' estates. The Lonafarnib/Lambda Sale Transactions maximize the value of the Transferred Assets because the Transferred Assets are being sold as part of a going concern, thereby preserving the continuity and remaining goodwill value associated with the Transferred Assets. Unless the sale is concluded expeditiously, as provided for in the Motion and the Lonafarnib/Lambda APAs, creditor recoveries may be substantially diminished.

L. **Fair Purchase Price**. The Purchase Price provided by the Purchaser (i) is fair and adequate; (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (iii) will provide an equal or greater recovery for the Debtors' creditors

than would be provided by any other available alternative. The terms of the Lonafarnib/Lambda APAs, the Transaction Documents, and the Lonafarnib/Lambda Sale Transactions are fair and reasonable under the circumstances of the Debtors' chapter 11 cases, and the Debtors' determination to proceed with such transaction constitutes a valid and sound exercise of the Debtors' business judgment.

M. **Adequate and Reasonable Notice**. As evidenced by the affidavits of service filed with this Court [Docket Nos. 42, 114, 128, 140, 319, 320, 324, 509, 512], and based upon the record of the Lonafarnib/Lambda Sale Hearing, (i) due, proper, timely, adequate, and sufficient notice of the Motion, the Lonafarnib/Lambda Sale Notice, the Lonafarnib/Lambda Sale Hearing, the Lonafarnib/Lambda APAs, and the Lonafarnib/Lambda Sale Transactions has been provided to all parties in interest, (ii) such notice was and is good, sufficient, and appropriate under the circumstances, and reasonably calculated to reach and apprise all holders of Liens, claims, encumbrances, and other Interests (as defined herein), including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities, and was provided in accordance with the applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, the Complex Case Procedures, and the procedural due process requirements of the United States Constitution, and (iii) no other or further notice of the Motion, the Lonafarnib/Lambda Sale Hearing, the Lonafarnib/Lambda APAs, the Lonafarnib/Lambda Sale Transactions, or of the entry of this Revised Lonafarnib/Lambda Sale Order is necessary or shall be required.

N. In accordance with the Bid Procedures Order, the Debtors filed with this Court and served the Cure Notice and Amended Cure Notice, containing (i) the list of all Contracts to potentially be assigned in connection with the Lonafarnib/Lambda Sale Transactions,

(ii) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of Potentially Assigned Contracts (as defined in the Cure Notice and Amended Cure Notice) and rights thereunder, (iii) Cure Amounts, where applicable, and (iv) the procedures for objecting thereto, on all counterparties to such Potentially Assigned Contracts and any party that has requested notice pursuant to Bankruptcy Rule 2002 ("Rule 2002 Notice List"), and caused such notice to be published on the website of the Debtors' noticing agent, Kurtzman Carson Consultants LLC dba Verita Global ("Verita") [Docket No. 313]. The Cure Notice and Amended Cure Notice (a) included the Debtors' good faith calculation of the Cure Amounts with respect to each Potentially Assigned Contract; (b) stated that assumption or assignment of any Potentially Assigned Contract is not guaranteed and is subject to this Court's approval; and (c) prominently displayed the deadline to file a Cure Objection (as defined herein). The service and provision of the Cure Notice and Amended Cure Notice were good, sufficient, and appropriate under the circumstances, and no other or further notice need be given.

O. The Debtors also served the Assignment Notice on the counterparties to the Assigned Contracts, which contained (i) the list of Assigned Contracts selected by the Purchaser, (ii) information necessary and appropriate to provide notice of the relevant proposed assumption and assignment of the Assigned Contracts and rights thereunder, (iii) the Cure Amounts, and (iv) the procedures for requesting adequate assurance of future performance. The Debtors also served the [Notice of Lonafarnib/Lambda Sale Hearing] [Docket No. 509] (the "Notice of Lonafarnib/Lambda Sale Hearing") on the counterparties to the Assigned Contracts. The service and provision of the Assignment Notice and Notice of Lonafarnib/Lambda Sale Hearing was good, sufficient, and appropriate under the circumstances, and no other or further notice need be given in connection with the assumption and assignment of the Assigned Contracts.

P. A reasonable opportunity to object and to be heard with respect to the sale of the Transferred Assets, the assumption and assignment of the Assigned Contracts, and the determination of defaults and Cure Amounts related thereto, as well as the Lonafarnib/Lambda APAs and the entry of this Revised Lonafarnib/Lambda Sale Order, has been given to all interested Persons.

Q. **Good Faith Purchaser**. The Debtors, the Purchaser, and their respective principals, counsel, and advisors have negotiated, proposed, and entered into the Lonafarnib/Lambda APAs, the Transaction Documents, and each of the transactions contemplated therein in good faith, without collusion and from arm's-length bargaining positions. The Purchaser is a "good faith purchaser" and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in connection with the Lonafarnib/Lambda Sale Transactions and, as such, is entitled to all the protections afforded thereby. The Purchaser has proceeded in good faith in all respects. The terms of the Lonafarnib/Lambda Sale Transactions, including the Purchase Price, were not controlled by any agreement among Potential Bidders and neither the Debtors nor the Purchaser have engaged in collusion or any conduct that would cause or permit the Lonafarnib/Lambda APAs to be challenged, avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code or any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. The Lonafarnib/Lambda APAs were not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States, any state, territory, or possession, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser entered into the Lonafarnib/Lambda APAs or are consummating the Lonafarnib/Lambda Sale Transactions with any fraudulent or otherwise improper purpose. The

Purchaser is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Purchaser and the Debtors.

R. The Lonafarnib/Lambda Sale Transactions, which include the sale of the Transferred Assets pursuant to the Lonafarnib/Lambda APAs and all covenants in and conditions thereto, is an integrated transaction, meaning that each component is an essential part of every other component and that the Lonafarnib/Lambda Sale Transactions can be consummated only if all of the components are consummated. Accordingly, each component of the Lonafarnib/Lambda Sale Transactions is subject to, and is protected by, the provisions of section 363(m) of the Bankruptcy Code.

S. **Sale Free and Clear under Section 363(f)**. The Purchaser would not have entered into the Lonafarnib/Lambda APAs and would not consummate the Lonafarnib/Lambda Sale Transactions without entry of this Revised Lonafarnib/Lambda Sale Order approving the Lonafarnib/Lambda Sale Transactions pursuant to section 363(f) of the Bankruptcy Code. Except as expressly provided otherwise in the Lonafarnib/Lambda APAs or this Revised Lonafarnib/Lambda Sale Order, the Debtors have satisfied the standard set forth in section 363(f) of the Bankruptcy Code for selling the Transferred Assets free and clear of all of the following (collectively, "Interests"): Liens (including Permitted Liens), claims (including, but not limited to, those that constitute a "claim" as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, pledges, charges, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, royalties, hypothecations, preferences, debts, easements, suits, licenses, rights of recovery, judgments, orders and decrees of

any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), covenants, indentures, instruments, leases, claims for reimbursement or subrogation, contribution, indemnity or exoneration, encumbrances, or interests of any kind or nature whatsoever against the Debtors, or any of the Transferred Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employment or labor law claims or liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims or claims for taxes of or against the Debtors or against any property of the Debtors, claims arising under state or federal antitrust laws, any indemnification claim or liabilities relating to any act or omission of the Debtors or any other person prior to the Closing Date or any Excluded Liabilities, any derivative, vicarious, transferee or successor liability claims, alter ego claims, de facto merger claims, rights or causes of action (whether known or unknown, legal or equitable, contingent, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, allowed or disallowed, noticed or unnoticed, recorded or unrecorded, material or non-material, statutory or non-statutory, and asserted or unasserted), whether arising prior to or subsequent to the commencement of the Debtors' chapter 11 cases (other than the Assumed Liabilities), whether imposed by agreement, understanding, law, equity or otherwise, including without limitation (i) those Interests that purport to give to any party a right or option to effect a setoff against or any forfeiture, modification, or termination of the Debtors' interests in the Transferred Assets, or any similar rights, if any, (ii) those Interests arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges,

hypothecations, liens, judgments, demands, encumbrances, rights of first refusal or charges of any land or nature, if any, (iii) those Interests that are Excluded Liabilities as set forth in the Lonafarnib/Lambda APAs, (iv) those Interests held by the Prepetition Term Loan Lenders (as defined in the Final Cash Collateral Order) as provided in the order entered by the Court at Docket No. 161 (the "Final Cash Collateral Order"), and (v) those Interests arising under or out of, in connection with, or in any way related to the Debtors or any of the Debtors' predecessors, Affiliates, or representatives, any of the Debtors' interests in the Transferred Assets, or the operation of any of the Debtors' businesses before the applicable Closing Date, including, without limitation, Interests based on successor liability, transferee liability, derivative liability, vicarious liability, de facto merger, continuation or continuity, or any similar theories under applicable state or federal law or otherwise. Each holder of an Interest in the Transferred Assets (a) has, subject to the terms and conditions of this Revised Lonafarnib/Lambda Sale Order, consented or shall be deemed to have consented to the relief requested in the Motion and with respect to the Lonafarnib/Lambda Sale Transactions, (b) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest, or (c) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Interests that did not object to, or withdrew their objections, if any, to, the relief requested in the Motion, the Lonafarnib/Lambda APAs, the Lonafarnib/Lambda Sale Transactions, the Cure Notice, the Amended Cure Notice, or the Assignment Notices are deemed to have consented to the relief requested in the Motion, including, without limitation, the sale of the Transferred Assets and the assumption and assignment of the Assigned Contracts to the Purchaser, pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests that did object that have an Interest in the Transferred Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest pursuant

to section 363(f)(5) of the Bankruptcy Code or fall within one or more of the other subsections of 363(f) of the Bankruptcy Code and, therefore, are adequately protected by having their Interests that constitute interests in the Transferred Assets, if any, attach solely to the proceeds of the Lonafarnib/Lambda Sale Transactions ultimately attributable to the property in which they have an Interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Lonafarnib/Lambda Sale Transactions, subject to any defenses of the Debtors.

T. Except as expressly provided otherwise in the Lonafarnib/Lambda APAs or this Revised Lonafarnib/Lambda Sale Order, neither the Purchaser nor any of the Purchasers' Affiliates (including any subsidiary of the Purchaser, any person or entity that could be treated as a single employer with the Purchaser pursuant to Section 4001(b) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") or Section 414(b), (c), (m) or (o) of the Internal Revenue Code of 1986, as amended ("IRC"), and any of their respective managed funds or accounts, any of their respective lenders or investors, and, in each case of the foregoing, each of their respective former, current, or future, shareholders, equity holders, owners, members, managers, employees, representatives, officers, limited or general partners, directors, agents, professionals, successors, affiliates, or permitted assignees) (collectively with the Purchaser, the "Purchaser Group") shall be responsible for any Interests, including in respect of, based on, relating to, or arising under, without limitation, the following: (i) any labor, collective bargaining, or employment agreements; (ii) any mortgages, deeds of trust, or security interests; (iii) any intercompany loans and receivables between one or more of the Seller and any Debtor; (iv) any pension, multiemployer (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare plan participation or benefit trust, compensation or other employee benefit plans,

agreements, practices and programs (including any Employee Benefit Plan) of or related to any of the Debtors or any of the Debtors' Affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, any pension plan of any of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) the Debtors' business operations or cessation thereof; (vi) any litigation involving one or more of the Debtors; (vii) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the Multi-Employer Pension Plan Amendments Act of 1980, including all amendments thereto, (f) the Worker Adjustment and Retraining Notification Act of 1988 or any similar state or local law ("WARN"), (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the IRC and of any similar state law (collectively, "COBRA"), (i) the National Labor Relations Act, (j) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, as amended, (k) state harassment, discrimination, or retaliation laws, (l) state unemployment compensation laws or any other similar state laws, or (m) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, or relating to any wages, benefits, employment, or termination of employment with any or all Debtors or any of their predecessors; (viii) any liabilities arising under any Environmental Laws with respect to any assets owned or operated by any of the Debtors or any corporate predecessor of any of the Debtors at any time prior to the applicable Closing Date; (ix) any product liability law; (x) any antitrust laws;

(xi) any bulk sales or similar law; (xii) any tax statutes or ordinances, including, without limitation, the IRC; and (xiii) any Excluded Liabilities.

U. **No Successor, Transferee, or Similar Liability**. Except for the Assumed Liabilities, as expressly set forth in the Lonafarnib/Lambda APAs or this Revised Lonafarnib/Lambda Sale Order, the Purchaser has not expressly or impliedly assumed any obligation of the Debtors, or any other party, with respect to the Interests and the Excluded Liabilities, whether at law or in equity, whether by payment, setoff, recoupment, or otherwise, directly or indirectly, and whether from the Transferred Assets or otherwise, including, without limitation, based on successor, transferee, derivative, or vicarious liability.

V. The Lonafarnib/Lambda Sale Transactions described by the Lonafarnib/Lambda APAs and the Transaction Documents does not amount to a consolidation, merger, or de facto merger of the Purchaser and any of the Debtors and/or any of the Debtors' estates.

W. There is no continuity between the Purchaser and any of the Debtors. The Purchaser is not holding itself out to the public as a continuation of any of the Debtors or their respective estates, businesses, or operations. The Purchaser is not a mere continuation of any of the Debtors or their respective estates, businesses, or operations. There is no common identity between any of the Debtors and the Purchaser. The Purchaser does not constitute a successor or a successor in interest to any of the Debtors or their estates.

X. The Purchaser and the Debtors are not entering into the Lonafarnib/Lambda APAs and Transaction Documents or consummating the Lonafarnib/Lambda Sale Transactions for the fraudulent purpose of escaping liability for the Debtors' obligations or to defraud creditors in any way.

Y. **Sale Free and Clear and Continuation of Existing Approvals Required by the Purchaser**. The Purchaser expressly negotiated for the protection of obtaining the Transferred Assets free and clear of all Interests, including, without limitation, any potential successor liability claims (other than the Assumed Liabilities). The total consideration to be provided under the Lonafarnib/Lambda APAs reflects the Purchaser's reliance on this Revised Lonafarnib/Lambda Sale Order to provide it, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, with title to and possession of the Transferred Assets free and clear of all Interests of any kind or nature whatsoever (including, without limitation, any potential successor liability claims (other than the Assumed Liabilities)). The Purchaser would not have entered into the Lonafarnib/Lambda APAs and would not consummate the Lonafarnib/Lambda Sale Transactions if the sale of the Transferred Assets to the Purchaser and the assumption and assignment of the Assigned Contracts to the Purchaser by the Debtors were not free and clear of all Interests of any kind or nature whatsoever (other than the Assumed Liabilities), as contemplated by this Revised Lonafarnib/Lambda Sale Order, or if the Purchaser would, or in the future could, be liable for any of the Interests, including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities. The Purchaser would not have entered into the Lonafarnib/Lambda APAs and would not consummate the Lonafarnib/Lambda Sale Transactions if the Purchaser would not be authorized, as of the Closing Date, to operate under or renew any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Transferred Assets (subject, in each case, to the terms and conditions of the Lonafarnib/Lambda APAs); if such licenses, permits, registrations, and governmental authorizations or approvals would not be deemed to have been transferred to the Purchaser as of the Closing Date; or if existing licenses or

permits applicable to the business would not remain active and in place for the Purchaser's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred.

Z. **Assumption and Assignment of the Assigned Contracts**. The Assumption and Assignment of the Assigned Contracts are integral to the Lonafarnib/Lambda APAs, do not constitute unfair discrimination, are in the best interests of the Debtors, their estates and creditors, and all other parties in interest, and are based on the reasonable exercise of sound business judgment by the Debtors. At the Closing and pursuant to Section 365 of the Bankruptcy Code and this Revised Lonafarnib/Lambda Sale Order, the Debtors shall assume and, subject to the terms in the Lonafarnib/Lambda APAs, assign to the Purchaser, and Purchaser shall take assignment from the Debtors of, the Assigned Contracts.

AA. On or after the Closing Date, the Purchaser will pay all Purchaser Cure Amounts for Assigned Contracts (if any), and the Seller will pay all Seller Cure Amounts (if any) for Assigned Contracts, including with respect to the Assigned Contracts proposed to be resolved after the Closing Date in accordance with Paragraph 19 hereof. Accordingly, the Debtors or the Purchaser, as applicable, will have, to the extent necessary, (i) cured any default existing prior to the Closing with respect to the Assigned Contracts, and (ii) provided compensation, if any, to each counterparty to an Assigned Contract for any actual pecuniary loss to such party resulting from a default prior to the Closing with respect to the Assigned Contract with such counterparty, all within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code.

BB. Pursuant to section 365(f) of the Bankruptcy Code, each Assigned Contract required to be assumed and assigned under the Lonafarnib/Lambda APAs shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Purchaser, in accordance with their respective terms, notwithstanding any provision in such contract or other restrictions

prohibiting its assignment or transfer. No section of any of the Assigned Contracts that would directly or indirectly prohibit, restrict, or condition the assumption or assignment of any of the Assigned Contracts or would permit termination or modification of such Assigned Contracts, or rights and obligations thereunder, by a party other than the Debtors, on account of assignment of such shall have any force or effect in connection with the Transferred Assets.

CC. The assumption and assignment of the Assigned Contracts (i) are necessary to sell the Transferred Assets to the Purchaser, (ii) allow the Debtors to sell the Transferred Assets to the Purchaser as a going concern, (iii) limit the losses suffered by counterparties to the Assigned Contracts, and (iv) maximize the recoveries to other creditors of the Debtors by limiting the number of claims against the Debtors' estates by avoiding the rejection of the Assigned Contracts. For these reasons, the Debtors have exercised sound business judgment in assuming and assigning the Assigned Contracts and such assumption and assignment is in the best interests of the Debtors' estates.

DD. **Adequate Assurance of Future Performance**. Counterparties to the Assigned Contracts were provided with the Assignment Notice and had the opportunity to request and review information with respect to the Purchaser's adequate assurance of future performance (*see* Lonafarnib/Lambda Sale Notice). No counterparties to Assigned Contacts filed any objections to the Purchaser's ability to provide adequate assurance of future performance as contemplated under sections 365(b)(l)(C), 365(b)(3) (to the extent applicable) and 365(f)(1) of the Bankruptcy Code (each, an "Adequate Assurance Objection") prior to the Lonafarnib/Lambda Sale Hearing. Counterparties to Assigned Contracts that failed to timely file an Adequate Assurance Objection are hereby forever barred from objecting to the assumption and assignment of Assigned Contracts on the grounds of a failure to provide adequate assurance of future performance. Based

on evidence adduced at the Lonafarnib/Lambda Sale Hearing and based on the record in these chapter 11 cases, to the extent necessary, the Debtors have satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(l)(A), 365(b)(l)(B), 365(b)(l)(C), 365(b)(3) (to the extent applicable) and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Assigned Contracts to the extent provided under the Lonafarnib/Lambda APAs. Accordingly, subject to payment of the Cure Amounts, the Assigned Contracts may be assumed by the Debtors and assigned to the Purchaser as provided under the Lonafarnib/Lambda APAs and this Revised Lonafarnib/Lambda Sale Order.

EE. **Revised Lonafarnib/Lambda Sale Order Required by the Purchaser.** Entry of this Revised Lonafarnib/Lambda Sale Order approving the Lonafarnib/Lambda APAs is a requirement of the Lonafarnib/Lambda APAs and such requirement is a reasonable and appropriate condition precedent to the Purchaser's consummation of the Lonafarnib/Lambda Sale Transactions.

FF. **Transferred Assets Property of the Estates**. The Transferred Assets constitute property of the selling Debtors' estates and title thereto is vested in the selling Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The selling Debtors have all title, interest, and/or rights in the Transferred Assets required to transfer and to convey the Transferred Assets to the Purchaser, as required by the Lonafarnib/Lambda APAs.

GG. **Corporate Authority**. Subject to the entry of this Revised Lonafarnib/Lambda Sale Order, (i) the Debtors have full corporate power and authority to perform all of their obligations under the Lonafarnib/Lambda APAs and the Transaction Documents, and the Debtors' prior execution and delivery of, and performance of obligations under, the Lonafarnib/Lambda APAs and the Transaction Documents is hereby ratified, (ii) the Debtors have all of the corporate

power and authority necessary to consummate the Lonafarnib/Lambda Sale Transactions, (iii) the Debtors have taken all corporate actions necessary to authorize, approve, execute, and deliver the Lonafarnib/Lambda APAs and the Transaction Documents and to consummate the Lonafarnib/Lambda Sale Transactions, except for the closing conditions expressly provided in the Lonafarnib/Lambda APAs and the Transaction Documents, and (iv) no consents or approvals are required to consummate the Lonafarnib/Lambda Sale Transactions or otherwise perform the obligations under the Lonafarnib/Lambda APAs or the Transaction Documents, except for the closing conditions expressly provided herein or therein.

HH. **Sale in Best Interests**. The relief requested in the Motion and set forth in this Revised Lonafarnib/Lambda Sale Order is in the best interests of the Debtors, their respective creditors, estates, and all other parties in interest in the Debtors' chapter 11 cases.

II. **Prompt Consummation**. To maximize the value of the Transferred Assets, it is essential that the Lonafarnib/Lambda Sale Transactions occur within the timeframe set forth in the Lonafarnib/Lambda APAs. Time is of the essence in consummating the Lonafarnib/Lambda Sale Transactions. Accordingly, there is cause to lift the stays established by Bankruptcy Rules 6004 and 6006 with regards to the Lonafarnib/Lambda Sale Transactions and the assignment of the Assigned Contracts.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Motion Is Granted**. The Motion and the relief requested therein, and entry into and performance under the Lonafarnib/Lambda APAs, is GRANTED and APPROVED, as set forth herein.

2. **Objections Overruled**. Except as stated otherwise herein, all objections to, or reservation of rights regarding, the relief requested in the Motion, the entry of this Revised

Lonafarnib/Lambda Sale Order, or the relief granted herein, including, without limitation, any objections to the assumption or assignment of the Assigned Contracts (including Cure Amounts related thereto) or relating to the cure of any defaults under any of the Assigned Contracts or to the assumption and assignment of any of the Assigned Contracts to the Purchaser by the Debtors, that have not been withdrawn, waived, settled, or adjourned as provided in Paragraphs 17-19 below or otherwise, or that have not otherwise been resolved pursuant to the terms hereof are hereby denied and overruled on the merits with prejudice. All Persons that failed to timely object, or withdrew their objections, to the Motion or the entry of this Revised Lonafarnib/Lambda Sale Order are deemed to consent to the relief granted herein for all purposes, including, without limitation, pursuant to section 363(f)(2) of the Bankruptcy Code.

3. **Notice**. Notice of the Motion, the Lonafarnib/Lambda Sale Hearing, and the assumption and assignment of Assigned Contracts was adequate, appropriate, fair, and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006, and the Bankruptcy Local Rules, and as such no further or other notice is required.

4. **Approval and Authorization**. The sale of the Transferred Assets to the Purchaser on the terms and conditions contained in the Lonafarnib/Lambda APAs and the Transaction Documents, including, without limitation, the Closing of the Lonafarnib/Lambda Sale Transactions as required by the Lonafarnib/Lambda APAs, is hereby approved in all respects pursuant to sections 105(a), 363(b), 363(f), 363(m), and 365 of the Bankruptcy Code and Bankruptcy Rules 6004 and 6006. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform all obligations under and make all payments required by the Lonafarnib/Lambda APAs and the Transaction Documents as and when due thereunder without

further order of this Court. The Debtors, the Purchaser, and each of their respective officers, employees, and agents are hereby authorized to (i) execute the Lonafarnib/Lambda APAs and the Transaction Documents, including the Lonafarnib/Lambda APAs, and any prior execution of such agreements, documents, and instruments, including the Transaction Documents, is hereby ratified, (ii) perform all obligations under the Lonafarnib/Lambda APAs and the Transaction Documents, to consummate each of the foregoing, including, without limitation, deeds, assignments, and other instruments of transfer, and to consummate the Lonafarnib/Lambda Sale Transactions, and any prior performance of such obligations or any prior consummation of such Lonafarnib/Lambda Sale Transactions is hereby ratified, (iii) assume and assign the Assigned Contracts to the Purchaser, and (iv) take all other and further actions as may be reasonably necessary to consummate and implement the Lonafarnib/Lambda Sale Transactions and to perform all obligations under the Lonafarnib/Lambda APAs and the Transaction Documents and the consummation thereof, without any further corporate action or order of this Court. The Purchaser shall not be obligated to proceed with the Closing under the Lonafarnib/Lambda APAs until all conditions precedent to its obligation to do so thereunder have been satisfied or waived.

5. **No Sub Rosa Plan**. The sale of the Transferred Assets, including, without limitation, the assignment of the Assigned Contracts, pursuant to the Lonafarnib/Lambda APAs outside a chapter 11 plan neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of the Debtors' subsequent chapter 11 plan. Neither the Lonafarnib/Lambda APAs nor the Lonafarnib/Lambda Sale Transactions constitute a sub rosa chapter 11 plan.

6. **Valid Transfer**. As of the Closing, the consummation of the Lonafarnib/Lambda Sale Transactions shall effect a legal, valid, and enforceable sale and transfer of the Transferred

Assets to the Purchaser, and shall vest the Purchaser with all legal, equitable, and beneficial right, title, and interest in and to the Transferred Assets free and clear of all Interests of any kind or nature whatsoever. The Lonafarnib/Lambda APAs and the Transaction Documents are valid and binding contracts between the Debtors and the Purchaser and shall be enforceable pursuant to their terms. The Lonafarnib/Lambda APAs, the Transaction Documents, and the Lonafarnib/Lambda Sale Transactions themself, and the consummation thereof, shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and their respective Affiliates and subsidiaries and such parties' successors and assigns, the Debtors' estates, all creditors thereof (whether known or unknown), all holders of equity interests in any Debtor, holders of Interests in, against, or on all or any portion of the Transferred Assets, all non-Debtor parties to the Assigned Contracts, the Purchaser and its respective successors and assigns, any chapter 11 trustee appointed in these chapter 11 cases or any chapter 7 trustee appointed upon a conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

7. **Free and Clear**. Except as expressly provided for in the Lonafarnib/Lambda APAs or this Revised Lonafarnib/Lambda Sale Order, pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Transferred Assets to the Purchaser and, upon the Closing, other than the Purchaser's assumption of the Assumed Liabilities and the Purchaser's obligations under the Lonafarnib/Lambda APAs and the Assigned Contracts, the Purchaser shall have and take title to and possession of the Transferred Assets free and clear of and shall have no obligation with respect to all Interests (other than the Assumed Liabilities) of any kind or nature whatsoever, including, without limitation, rights or claims based on any successor, transferee, derivative, or vicarious liabilities; de facto

merger, continuation or continuity, or any similar theories under applicable state or federal law or otherwise. All holders of Interests fall within one or more of the subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Interests attach to the net proceeds ultimately received by the Debtors and attributable to the Transferred Assets against or in which such Interests are asserted, subject to the terms of such Interests, with the same validity, force, and effect, and in the same order of priority that such Interests now have against the Transferred Assets or their proceeds as of Closing, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto, in addition to any limitations on the use of such proceeds pursuant to any provision of this Revised Lonafarnib/Lambda Sale Order. This Revised Lonafarnib/Lambda Sale Order: (a) is and shall be effective as a determination that, other than Assumed Liabilities or as otherwise provided herein, upon the applicable Closing in accordance with the Lonafarnib/Lambda APAs, all claims of any kind or nature whatsoever existing as to Transferred Assets, and any tax liability, prior to the applicable Closing have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected, with such Interests and liens attaching in order of priority to the proceeds of the Lonafarnib/Lambda Sale Transactions, and (b) is and shall be binding upon and shall authorize all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Transferred Assets conveyed to the Purchaser. All recorded Interests against the

Transferred Assets from their records, official and otherwise, shall be deemed stricken upon the Closing in accordance with the Lonafarnib/Lambda APAs and the terms of this Revised Lonafarnib/Lambda Sale Order without the need for further action on the part of either the Purchaser or the Seller. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtor is authorized and directed to sell the Transferred Assets free and clear of any liens, claims, and/or interests (other than the Assumed Liabilities).

8. Those holders of Interests or claims who did not object (or who ultimately withdrew their objections, if any) to the Lonafarnib/Lambda Sale Transactions are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests or claims who did object that have an interest in the Transferred Assets fall within one or more of sections 363(f)(1), 363(f)(3), 363(f)(4), or 363(f)(5) of the Bankruptcy Code and are therefore adequately protected by having their Interests or claims that constitute interests in the Transferred Assets, if any, attach solely to the proceeds of the Lonafarnib/Lambda Sale Transactions ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Lonafarnib/Lambda Sale Transactions, subject to any defenses of the Debtors.

9. **Release of Interests**. Any and all Persons that have filed a financing statement, mortgage, mechanic's lien, *lis pendens*, or other document or agreement evidencing an Interest against or in the Transferred Assets shall deliver to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases, and/or any other similar documents necessary for the purpose of documenting all Interests that such Person has against or in the Transferred Assets. For any Person who has not delivered such termination statements to the Debtors prior to the Closing, (i) the

Debtors and/or the Purchaser are hereby authorized to execute and file such statements, instruments, releases, and/or other similar documents on behalf of such Person with respect to the Transferred Assets, (ii) the Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Revised Lonafarnib/Lambda Sale Order that, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all Interests of any kind or nature against or in the Transferred Assets, and (iii) the Purchaser may seek in this Court, or any other court of appropriate jurisdiction, to compel the appropriate parties to execute termination statements, instruments of satisfaction, releases, and/or other similar documents with respect to all Interests that such Person has against or in the Transferred Assets. This Revised Lonafarnib/Lambda Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Revised Lonafarnib/Lambda Sale Order authorizing the sale and assignment of the Transferred Assets free and clear of all Interests shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Revised Lonafarnib/Lambda Sale Order.

10. **Surrender of Transferred Assets**. All Persons that are presently or on the Closing Date may be in possession of some or all of the Transferred Assets are directed to surrender possession of such Transferred Assets to the Purchaser as of the Closing Date.

11. **Continuation of Existing Approvals**. The Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Transferred Assets (subject, in each case, to the

terms of the Lonafarnib/Lambda APAs), and all such licenses, permits, registrations, and governmental authorizations or any other approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date. All existing licenses or permits applicable to the business shall remain active, in place, and, as applicable, shall be renewed for the Purchaser's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the maximum extent permitted by section 525(a) of the Bankruptcy Code, no governmental unit (as defined in Bankruptcy Code § 101(27)) or any representative thereof may revoke or suspend, or in any way challenge or fail to consent to any renewal of any permit or license relating to the operation of the Transferred Assets because of the filing or pendency of the Debtors' chapter 11 cases or the consummation of the Lonafarnib/Lambda Sale Transactions.

12. **Injunction**. All Persons are hereby prohibited and enjoined from taking any action that would adversely affect or interfere with, or that would be inconsistent with, the ability of the Debtors to sell and transfer the Transferred Assets to the Purchaser in accordance with the terms of the Lonafarnib/Lambda APAs, the Transaction Documents, or this Revised Lonafarnib/Lambda Sale Order. Except as expressly permitted by the Lonafarnib/Lambda APAs with respect to Assumed Liabilities or this Revised Lonafarnib/Lambda Sale Order, all Persons (and their respective successors and assigns), including, without limitation, all holders of claims or Interests, lenders, debt security holders, governmental, tax and regulatory authorities, parties to executory contracts and unexpired leases, creditors, contract counterparties, customers, landlords, licensors, employees and former employees, litigation claimants, pension plans, labor unions, trade creditors, and other Persons holding Interests of any kind or nature whatsoever against or in the Debtors or the Transferred Assets (whether known or unknown, legal or equitable, matured or unmatured,

contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of the Debtors' chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the operation of the Debtors' businesses prior to the Closing, the Transferred Assets, or the transfer of the Transferred Assets to the Purchaser (including, without limitation, any rights or claims based on any successor, transferee, derivative, or vicarious liabilities), shall be and hereby are forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any Interests against the Purchaser, any of its Affiliates, officers, directors, members, partners, principals, or shareholders, any of their respective representatives, successors, designees, or assigns, the property of the foregoing, and the Transferred Assets transferred to the Purchaser or interests of the Debtors in such Transferred Assets (other than the Assumed Liabilities). Following the Closing, no holder of an Interest against the Debtors shall interfere with the Purchaser's title to or use and enjoyment of the Debtors' former interests in the Transferred Assets, including, without limitation, taking any of the following actions with respect to or based on any Interest relating to the Transferred Assets or the transfer of the Transferred Assets to the Purchaser (other than Assumed Liabilities): (a) commencing or continuing in any manner any action or other proceeding against the Purchaser or its successors or assigns, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser or its successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Interest against the Purchaser, its successors or assigns, assets (including the Transferred Assets), or properties; (d) asserting any Interest as a setoff, right of subrogation, or recoupment of any kind against any obligation due Purchaser or its successors or assigns: (e) commencing or continuing any action in any manner or place that does

not comply or is inconsistent with the provisions of this Revised Lonafarnib/Lambda Sale Order or the agreements or actions contemplated or taken in respect thereof; (f) interfering with, preventing, restricting, prohibiting, or otherwise enjoining the consummation of the Sale Transactions; or (g) enforcing any provision of any Assigned Contract that prohibits, restricts or conditions, or which purports to terminate or modify, or permits a party other than the Debtors to terminate or modify, any such Assigned Contract, or any right or obligation under such Assigned Contract, because of the assumption and assignment of such Assigned Contract by the Debtors to the Purchaser. For the avoidance of doubt, and without limiting the generality of the foregoing or the operability of any other relief obtained pursuant to this Revised Lonafarnib/Lambda Sale Order, any provision in an Assigned Contract, any other document, or any applicable law that purports to prohibit, restrict, modify or otherwise impair assignment of the Assigned Contracts or the Purchaser's ability to utilize the Transferred Assets in Purchaser's business is hereby void and of no force and effect with respect to the Lonafarnib/Lambda Sale Transactions, including without limitation any provision that (a) terminates or modifies any right or obligation of the Purchaser under such Assigned Contract; (b) cross-defaults to or from any other lease or executory contract that is not an Assigned Contract; (c) contains operating covenants or "go-dark" provisions that would purport to terminate or modify any Assigned Contract before assumption and assignment to the Purchaser; (d) requires a third party's consent prior to assignment of the Assigned Contract to the Purchaser; or (e) restricts the Purchaser's use or assignment of any licenses or similar permits if transferred.

13. **General Assignment**. As of the Closing, this Revised Lonafarnib/Lambda Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Transferred Assets and/or a bill of sale or assignment

transferring indefeasible title and interest in the Transferred Assets, including the Assigned Contracts, to the Purchaser. Each and every federal, state, and local governmental agency or department is hereby authorized and directed to accept any and all documents and instruments necessary and appropriate to consummate the Lonafarnib/Lambda Sale Transactions and to reflect the effectiveness of the Lonafarnib/Lambda Sale Transactions.

14. **No Successor, Transferee, or Similar Liability**. The Purchaser, its Affiliates, and any of their respective officers, directors, members, partners, principals, employees, independent contractors, and shareholders (or equivalent) and any of their respective representatives, agents, predecessors, successors, or assigns shall not be and shall not be deemed, as a result of the consummation of the Lonafarnib/Lambda Sale Transactions or otherwise, (i) to be a successor of, successor employer of, successor entity of, to have successorship obligations relating to, or to otherwise be deemed a successor, to the Debtors or the Debtors' estates, including with respect to any labor, employment, employee, personnel, or worker related matter, law, or agreement, including any collective bargaining agreement, works council agreement, union agreement, area labor agreement, multiemployer agreement, project labor agreement, construction agreement, contractor agreement, building agreement, regional agreement, work standards agreement, or other labor Contract (collectively, a "Collective Bargaining Agreement"), any employee benefit plans, any defined benefit pension plan, or any multiemployer plans, and the Purchaser and/or its Affiliates, as applicable, shall instead be, and be deemed to be, a new employer, including with respect to, among other things, any and all federal or state unemployment laws, including the Fair Labor Standards Act, any employee wage and hour law, privacy law, worker classification law, minimum wage law, overtime law, compensation or benefit law, meal or rest break law, time keeping law, employee record or documentation law, workers compensation law, unemployment

compensation or tax law, or any other similar federal or state law (provided that the Purchaser shall pay employee-related liabilities solely to the extent expressly included in the Assumed Liabilities); (ii) to have any common law successorship liability in relation to any Collective Bargaining Agreement, union, multiemployer organization, employee benefit plan, or multiemployer plan, including with respect to withdrawal liability or contribution obligations; (iii) to have, de facto or otherwise, merged or consolidated with or into any of the Debtors or any of the Debtors' estates, (iv) to be the successor of or a successor employer (as defined under COBRA and applicable regulations thereunder, common law, or otherwise) to the Debtors; (v) to have a common identity with the Debtors; (vi) to be an alter ego, joint employer, single employer, a continuation or substantial continuation, or to be holding itself out as a mere continuation, of any of the Debtors or their respective estates, or any enterprise of any of the Debtors, (vii) to be liable for any acts or omissions of the Seller or any of the other Debtors in connection with any Collective Bargaining Agreement, personnel, worker, employee, independent contractor, the conduct of the business, or the operation, funding, or administration of the employee benefit plans or multiemployer plans or arising under or related to the Transferred Assets other than as expressly set forth in the Lonafarnib/Lambda APAs; (viii) to have any successor liability, transferee liability, derivative liability, vicarious liability, or any similar theories of any kind or character including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee or transferee liability, labor, product liability, employment, de facto merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, whether now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated; (ix) except as expressly set forth in the Lonafarnib/Lambda APAs, to have any successor liability, transferee liability, derivative, liability,

vicarious liability, for any similar theories of any kind or character including under any pending, threatened, or potential claim, litigation, arbitration, settlement, investigation, fact circumstance, or event disclosed in the Transaction Documents; in each case whether known or unknown as of the Closing Date, whether now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated, except to the extent solely and expressly provided for in the Lonafarnib/Lambda APAs. The Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their respective estates, or any of their predecessors or Affiliates. The so-called "bulk sales," "bulk transfer," or other similar laws shall be waived in all necessary jurisdictions, including those relating to Taxes. Except as expressly set forth in the Lonafarnib/Lambda APAs with respect to Assumed Liabilities, the Purchaser, its Affiliates, officers, directors, members, partners, principals, and shareholders (or equivalent) and any of their respective representatives, successors, or assigns, or the Transferred Assets shall have no liability or responsibility whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly (w) any Interest against the Debtors or against an insider of the Debtors, (x) any Interest or Excluded Liabilities, (y) the Debtors except as expressly set forth in the Lonafarnib/Lambda APAs and the Transaction Documents.

15. **Good Faith of the Purchaser**. The Lonafarnib/Lambda Sale Transactions specified in the Lonafarnib/Lambda APAs are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, neither the reversal nor modification on appeal of the authorization provided in this Revised Lonafarnib/Lambda Sale Order to consummate the sale shall affect the validity of the Lonafarnib/Lambda Sale Transactions, including, without limitation, the assumption and

assignment of the Assigned Contracts, unless such authorization and consummation of the sale are duly and properly stayed pending such appeal. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

16. **No Avoidance of the Lonafarnib/Lambda APAs**. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Lonafarnib/Lambda APAs to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Lonafarnib/Lambda APAs and the Lonafarnib/Lambda Sale Transactions shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Lonafarnib/Lambda APAs or the Lonafarnib/Lambda Sale Transactions. Specifically, the Purchaser has not acted in a collusive manner with any person or entity and the Purchase Price was not controlled by any agreement among bidders.

17. **Payment of Cure Amounts and Cure Dispute Resolution**. All defaults or other obligations of the Debtors under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) as to which no objections were interposed, or as to which an objection was interposed but which do not remain pending as of the date of this Revised Lonafarnib/Lambda Sale Order, are deemed satisfied by the payment of the proposed amount necessary, if any, to cure all monetary defaults, if any, under such Assigned Contract in those amounts set forth in the Assignment Notice, and which were satisfied, or shall be satisfied as soon as practicable. For all Assigned Contracts listed on the Assignment Notice for which the Cure Notice or Amended Cure Notice was served, the Purchaser is authorized and directed to pay all

Purchaser Cure Amounts, and the Seller is authorized and directed to pay all Seller Cure Amounts, as soon as practicable after the Closing. Any non-Debtor counterparty to an Assigned Contract that has not filed an objection on or before the deadline as set forth in the relevant Cure Notice or Amended Cure Notice, or received an informal extension by the Debtors, shall be barred from objecting or asserting monetary or non-monetary defaults with respect to any such Assigned Contract other than the applicable amount set forth in the Assignment Notice, and such Assigned Contract shall be deemed assumed by the Debtors and assigned to the Purchaser on the Closing Date.

18. With respect to the Assigned Contracts, subject to the terms of the Lonafarnib/Lambda APAs, and subject to the entry of this Revised Lonafarnib/Lambda Sale Order, Purchaser shall make provision for the payment of the Purchaser Cure Amounts, and Seller shall make provision for the payment of the Seller Cure Amounts, in cash at Closing. The Purchaser's promise to perform the obligations under the Assigned Contracts arising after their assumption and assignment to the Purchaser shall constitute adequate assurance of future performance within the meaning of sections 365(b) and 365(f)(2) of the Bankruptcy Code. On the Closing Date, subject in all respects to the terms of this Revised Lonafarnib/Lambda Sale Order, the Purchaser shall be deemed to be substituted for the Seller (and/or any other Debtor, to the extent any of them hold any rights, title, or interests in any of the Assigned Contracts) as a party to the applicable Assigned Contracts.

19. In the event of an objection by a Contract counterparty to the Cure Amount with regard to any Contract (such contract, a "Disputed Contract"), such Disputed Contract may be conditionally assumed and assigned, with the consent of the Purchaser, pending the entry of a Disputed Contract Order (as defined below). In the event a Disputed Contract remains unresolved

as of the Closing Date, Seller shall either settle the objection of such party or shall litigate such objection under procedures as established by the Bankruptcy Court. In no event shall the Seller settle a Cure Amount objection with regard to any potential Assigned Contract without the express written consent (such consent not to be unreasonably withheld) of Purchaser (with an email consent being sufficient). Upon entry of an Order of the Bankruptcy Court (if necessary) determining any Cure Amount and authorizing the assumption and assignment to Purchaser of such Disputed Contract after the Closing, which order shall be in form and substance acceptable to Purchaser (a "Disputed Contract Order"), Purchaser shall have the option to designate the Disputed Contract as an Assigned Contract or an Excluded Contract (regardless of whether such contract was identified on the Contracts List). If Purchaser elects to designate the Disputed Contract as an Excluded Contract, (a) such Disputed Contract shall automatically be deemed to be an Excluded Contract for all purposes under the Revised Lonafarnib/Lambda Sale Order and the Lonafarnib/Lambda APAs, and (b) Purchaser shall not be obligated to pay any Cure Amount or liabilities associated with such Disputed Contract. If Purchaser elects to designate the Disputed Contract as an Assigned Contract, such Disputed Contract shall be deemed an Assigned Contract for all purposes hereunder and, for the avoidance of doubt, Purchaser shall assume the Disputed Contract and shall be responsible for paying the associated Purchaser Cure Amount (if any) with respect to such Disputed Contract and (if applicable) Seller shall be responsible for paying all related Seller Cure Amounts, which such Cure Amount shall be made as soon as practicable after the Purchaser elects to assume the Disputed Contract. If Purchaser does not designate such Disputed Contract as either an Excluded Contract or an Assigned Contract within five (5) Business Days after the date of the Disputed Contract Order (or such later date as agreed by the Seller and Purchaser), (a) such Disputed Contract shall automatically be deemed to be an Excluded Contract

for all purposes under this Revised Lonafarnib/Lambda Sale Order and the Lonafarnib/Lambda APAs, and (b) Purchaser shall not be obligated to pay any Cure Amount or liabilities associated with such Disputed Contract.

20. **Determination of Cure Amounts**. Unless a counterparty to any Assigned Contract has filed a timely Cure Objection which remains subject to an unresolved Cure Dispute as of the entry of this Revised Lonafarnib/Lambda Sale Order, the Cure Amounts set forth on the Assignment Notice shall constitute findings of this Court and shall be final and binding on the counterparties to the Assigned Contracts and their successors and designees upon the Closing and shall not be subject to further dispute or audit based on performance prior to the time of assumption and assignment, irrespective of the terms and conditions of such Assigned Contracts. Each counterparty to an Assigned Contract (other than a counterparty who filed a timely Cure Objection) shall be forever barred, estopped, and permanently enjoined from (i) asserting against the Purchaser or its property (including, without limitation, the Transferred Assets), any default arising prior to or existing as of the Closing, or any counterclaim, defense, recoupment, setoff, or any other Interest asserted or assertable against the Debtors (except as otherwise provided herein), and (ii) imposing or charging against the Purchaser or its Affiliates, any accelerations, assignment fees, increases, or any other fees or charges as a result of the Debtors' assumption and assignment to the Purchaser of the Assigned Contracts in connection with the Lonafarnib/Lambda Sale Transactions approved by this Revised Lonafarnib/Lambda Sale Order. To the extent a counterparty to any of the Assigned Contracts received notice of the Debtors' proposed Cure Amount and fails to file a Cure Objection by the applicable deadline, such party shall be deemed to have (a) consented to the assumption and assignment of the applicable Assigned Contract and the payment of the Cure Amount provided in the Assignment Notices and (b) waived any right to

assert or collect any other cure amount or enforce any default that may arise or have arisen prior to or as of the Closing.

21. **Cross-Over Contracts**. From the Agreement Date until the Plan Consummation Date, the Debtors shall not, and shall cause its Affiliates not, to reject, amend, modify, sell, assign, license, transfer, convey, deliver or otherwise divest its interests in the Cross-Over Contracts in a manner that adversely affects, or would reasonably be expected to adversely affect, Purchaser's rights or obligations under the Lonafarnib APA, or Purchaser's ability to Develop or Commercialize any Lonafarnib Antiviral Products.

22. Except for those Cross-Over Contracts rejected, transferred, assigned or terminated by the Debtors without violating Paragraph 21 of this Revised Lonafarnib/Lambda Sale Order, the Debtors shall, upon Purchaser's written request, transfer and assign, and hereby transfers and assigns, automatically and without further notice, to the Purchaser, each other Cross-Over Contract, effective on the date that is the earliest to occur of (a) the date that each and every Cross-Over Contract Benefited Party of such Cross-Over Contract obtains (i) a new agreement with the applicable counterparty of such Cross-Over Contract for substantially the same services as those then being provided to Seller by such counterparty under such Cross-Over Contract, or (ii) an agreement with a Third Party such that such services then being provided under such Cross-Over Contract to such Cross-Over Benefited Party are no longer needed by such Cross-Over Benefited Party, (b) the date Purchaser and all Cross-Over Contract Benefited Parties of such Cross-Over Contract agree to such transfer and assignment of such Cross-Over Contract, and (c) the date all Cross-Over Benefited Parties are no longer receiving any services under such Cross-Over Contract; and upon such transfer and assignment, such Cross-Over Contract shall be deemed an Assigned Contract for all purposes under the Lonafarnib APA. Purchaser shall be responsible for

paying the associated Purchaser Cure Amount (if any) with respect to such Cross-Over Contract, and (if applicable) Seller shall be responsible for paying all associated Seller Cure Amounts.

23. Notwithstanding the foregoing Paragraphs 21 and 22, (x) the IQVIA Contracts shall be Assigned Contracts upon the occurrence of the Satisfactory IQVIA Cure Resolution, and (y) the Cross-Over Contracts that are not IQVIA Contracts (the "Other Cross-Over Contracts") shall be Assigned Contracts upon the occurrence of the Satisfactory Other Cure Resolution, provided that if the Satisfactory IQVIA Cure Resolution does not occur by the Plan Consummation Date, the IQVIA Contracts shall be Excluded Contracts, and if the Satisfactory Other Cure Resolution does not occur by the Plan Consummation Date, the Other Cross-Over Contracts shall be Excluded Contracts. In the event that a Cross-Over Contract becomes an Excluded Contract, Seller shall use commercially reasonable efforts to preserve the Transferred Data, including the Global Safety Databases, and fully transfer and transition the Transferred Data and Transferred Regulatory Information to Purchaser, and shall not instruct the counterparties to the IQVIA Contracts to delete or remove the Transferred Data from the Global Safety Databases.

24. **Previously Unknown Contracts**. If at any time, prior to the earlier of confirmation of a plan in the Chapter 11 Cases or entry of an order dismissing the Chapter 11 Cases, it is discovered that a Contract material to the operation of the Business should have been identified on the Assumption Notice but was not so listed (any such Contract, a "Previously Unknown Contract"), Seller shall, promptly following the discovery thereof (but in no event later than five (5) Business Days following the discovery thereof), notify Purchaser in writing of such Previously Unknown Contract and provide Purchaser with a copy of such Previously Unknown Contract and the Cure Amount (if any) in respect thereof. Purchaser shall thereafter deliver written notice to Seller (email being sufficient), no later than ten (10) Business Days following such notice of such

Previously Unknown Contract from Seller, if Purchaser elects for such Previously Unknown Contract to be an Assigned Contract. If Purchaser elects for a Previously Unknown Contract to be an Assigned Contract in accordance with this Paragraph 24, then to the extent not previously filed and served, Seller shall file and serve an assignment and assumption notice on the Contract counterparty to such Previously Unknown Contract (a "Supplemental Assignment Notice") notifying such Contract counterparty of Seller's intention to assume and assign to Purchaser such Previously Unknown Contract, including the proposed Cure Amount (if any). Such notice shall state that such Contract counterparty shall have fourteen (14) days to object to the assumption and assignment of the Contract to Purchaser (the "Supplemental Assignment Notice Objection Deadline"). Following expiration of the Supplemental Assignment Notice Objection Deadline and, if no objections are received, Seller shall submit a proposed order (in form and substance reasonably acceptable to Purchaser) to the Bankruptcy Court under certification of counsel authorizing the assumption and assignment of such Contract to Purchaser and, upon the entry of such an order, such Contract shall be deemed an Assigned Contract for all purposes under the Lonafarnib/Lambda APAs and this Revised Lonafarnib/Lambda Sale Order. If such Contract counterparty objects to the proposed assumption and assignment, the Contract at issue shall be deemed a Disputed Contract for all purposes under the Lonafarnib/Lambda APAs.

25. **Previously Excluded Contract**. At any time prior to the earlier of confirmation of a plan in the Chapter 11 Cases or entry of an order dismissing the Chapter 11 Cases, Purchaser may elect to take an assignment of any Excluded Contract that has not yet been assumed and assigned pursuant to an order of the Bankruptcy Court (a "Previously Excluded Contract") by sending a written notice to Seller (email being sufficient) of such election. If Purchaser elects for a Previously Excluded Contract to be an Assigned Contract in accordance with this Paragraph 25,

then to the extent not previously filed and served, Seller shall file and serve a Supplemental Assignment Notice on the Contract counterparty to such Previously Excluded Contract. Such Supplemental Assignment Notice Objection Deadline shall state that such Contract counterparty shall have fourteen (14) days to object to the assumption and assignment of the Contract to Purchaser. Following expiration of the Supplemental Assignment Notice Objection Deadline and if no objections are received, Seller shall submit a proposed order (in form and substance reasonably acceptable to Purchaser) to the Bankruptcy Court under certification of counsel authorizing the assumption and assignment of such Contract to Purchaser and, upon the entry of such an order, such Contract shall be deemed an Assigned Contract for all purposes under the Lonafarnib/Lambda APAs and this Revised Lonafarnib/Lambda Sale Order, and, subject to paragraphs 21-23 of this Revised Lonafarnib/Lambda Sale Order and Section 7.15 of the Lonafarnib APA with respect to Cross-Over Contracts, the Purchaser shall be responsible for satisfying or paying any Cure Amounts or other Liabilities with respect to such Contract, whether or not such Cure Amounts or other Liabilities exceed the Purchaser Cure Amounts. For the avoidance of doubt, the Cross-Over Contracts are not Previously Excluded Contracts. If such Contract counterparty objects to the proposed assumption and assignment, the Contract at issue shall be deemed a Disputed Contract for all purposes under the Lonafarnib/Lambda APAs.

26. **Bristol-Myers Squibb ("BMS") License Agreement**. From and after the closing in connection with the Lambda APA, BMS shall be deemed to have consented to the assumption and assignment of the BMS License Agreement (as defined in the Lambda APA) to the Purchaser, and the BMS License Agreement shall be deemed assumed and assigned to Purchaser, with Purchaser being substituted for Debtor Eiger BioPharmaceuticals, Inc. under such BMS License

Agreement for all purposes thereunder. Notwithstanding anything to the contrary set forth in this Revised Lonafarnib/Lambda Sale Order or the Lambda APA:

i. The assumption and assignment of the BMS License Agreement to Purchaser pursuant to the Lambda APA shall not constitute any Sublicense (as defined in the BMS License Agreement) or assignment of rights to the BMS Patents, the Licensed Compounds and/or Licensed Products (each, as defined in the BMS License Agreement) under Section 8.3 of the BMS License Agreement, and shall not require Debtor Eiger BioPharmaceuticals, Inc. or Purchaser to pay or owe BMS any share of Sublicense Revenues (as defined in the BMS License Agreement) received by Debtor Eiger BioPharmaceuticals, Inc. in connection with such assumption and assignment;

ii. except as provided in clause i. above, neither the Revised Lonafarnib/Lambda Sale Order nor the Lambda APA shall be deemed to modify any rights, intellectual property licenses, benefits or other obligations (including but not limited to any royalty, revenue sharing, milestone payment obligations, or indemnification obligations) owed to Bristol-Myers Squibb Company ("BMS") under the BMS License Agreement; and

iii. except as provided in clause i. above, from and after the closing in connection with the Lambda APA, Purchaser and BMS shall each be (a) obligated to continue to perform as set forth in and pursuant to the terms of the BMS License Agreement, and (b) bound by the terms of the BMS License Agreement; provided, however, that from and after the closing with respect to the Lambda APA, the Purchaser and BMS may consensually enter into a side-letter or other agreement (a "Modification Agreement") modifying any provisions, rights, benefits, obligations and/or requirements under the terms of the BMS License Agreement, but unless and until such Modification Agreement shall have been mutually executed by Purchaser and BMS, all provisions, rights, benefits, obligations and requirements related to the BMS License Agreement shall remain in full force and effect.

27. **Purchaser Protections.** The Purchaser shall be entitled to the Purchaser Protections under the Lambda APA and the Lonafarnib APA, as applicable.

28. **Ipso Facto Clauses Ineffective**. Upon the Debtors' assumption and assignment of the Assigned Contracts to the Purchaser pursuant to this Revised Lonafarnib/Lambda Sale Order and the payment of the Cure Amounts in accordance with this Revised Lonafarnib/Lambda Sale

Order and the Lonafarnib/Lambda APAs, no default shall exist under any Assigned Contract and no counterparty to any such Assigned Contract shall be permitted to declare or enforce a default by the Debtors or the Purchaser thereunder or otherwise take action against the Purchaser as a result of any Debtor's financial condition, change in control, bankruptcy, or failure to perform any of its obligations under the applicable Assigned Contract. For the avoidance of doubt, and without limiting the generality of the foregoing or the operability of any other relief obtained pursuant to this Revised Lonafarnib/Lambda Sale Order, any provision in a Assigned Contract that prohibits or conditions, whether directly or indirectly, the assignment of such Assigned Contract (including, without limitation, the granting of an Interest therein) or allows the counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment shall be deemed an unenforceable anti-assignment provision that is void and of no force and effect with respect to the Lonafarnib/Lambda Sale Transactions as approved by this Revised Lonafarnib/Lambda Sale Order. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions or of the Debtors' or the Purchaser's right, as applicable, to enforce every term and condition of such Assigned Contract.

29. **Binding Effect**. This Revised Lonafarnib/Lambda Sale Order and the Lonafarnib/Lambda APAs shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or

insure any title or state of title in or to any of the Transferred Assets. The terms and provisions of the Lonafarnib/Lambda APAs, the Transaction Documents, and this Revised Lonafarnib/Lambda Sale Order shall be binding in all respects upon the Debtors and their respective Affiliates and subsidiaries and such parties' successors and assigns, the Debtors' estates, all creditors thereof (whether known or unknown), all holders of equity interests in any Debtor, holders of Interests in, against, or on all or any portion of the Transferred Assets, all non-Debtor parties to the Assigned Contracts, the Purchaser and its respective successors and assigns, and any and all third parties, notwithstanding any subsequent appointment of any trustee, examiners, "responsible persons" or other fiduciaries (collectively, the "Trustee") of the Debtors under any chapter of the Bankruptcy Code, as to which Trustee such terms and provisions likewise shall be binding, and the Lonafarnib/Lambda APAs (including the Assigned Contracts) shall not be subject to rejection or avoidance under any circumstances.

30. **Merck License Agreement**. Other than as expressly set forth in any agreement entered into or to be entered into by the Purchaser with Merck contemplated by the Lonafarnib APA, nothing herein or in any other Transaction Document shall constitute a determination or modification of or alter, impair or otherwise affect the rights, title, and interest, whether legal, equitable or contractual, of Merck in, to, and under the Merck License Agreement (as defined in the Lonafarnib/Lambda APAs), including Merck's rights with respect to any payments made or to be made to Merck under the Merck License Agreement or pursuant to any agreement entered into or to be entered into by the Purchaser with Merck contemplated by the Lonafarnib APA. Payments made to Merck in connection with the Lonafarnib/Lambda Sale Transactions shall not be subject to surcharge, reduction, set-off, claw-back, disgorgement or avoidance for any reason. Nothing contained in any Chapter 11 plan confirmed by the Debtors or in any subsequent order of this

Court, including any order confirming any plan, any order authorizing the sale of assets of the Debtors pursuant to any section of the Bankruptcy Code or any order approving wind-down or dismissal of any Debtor's Chapter 11 case or any subsequent Chapter 7 case shall change, supersede, abrogate, nullify, restrict or conflict with or in any way prevent or interfere with the consummation or performance of any agreement entered into or to be entered into by the Purchaser with Merck contemplated by the Lonafarnib APA.

31. **Release, Discharge, and Termination of Interests**. This Revised Lonafarnib/Lambda Sale Order shall be effective as a determination that, on the Closing, all Interests of any kind or nature whatsoever existing prior to the Closing have been unconditionally released, discharged, and terminated solely as to the Transferred Assets (other than the Assumed Liabilities), and that the conveyances described herein have been effected.

32. **No Material Modifications**. The Lonafarnib/Lambda APAs and the Transaction Documents may be modified, amended, or supplemented by the Debtors and the Purchaser, in a writing signed by such parties, and in accordance with the terms thereof, without further order of this Court; *provided*, that (i) any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates or its creditors, and (ii) has been agreed to between the Seller and the Purchaser (with respect to the Seller, such consent not to be unreasonably withheld) and approved by the Prepetition Term Loan Administrative Agent. Any material modification, amendment, or supplement to the Lonafarnib/Lambda APAs and the Transaction Documents adversely affecting the Debtors' estates must be filed on the docket and served on all interested parties. Interested parties shall have five business days to file an objection to any such material modification, amendment, or supplement. If no objections are received within five

business days or the Court overrules such filed objections, the modified Lonafarnib/Lambda APAs and Transaction Documents shall be effective.

33. **Subsequent Orders and Plan Provisions**. Nothing contained in any chapter 11 plan confirmed in the Debtors' chapter 11 cases or any subsequent order of this Court, including, without limitation, any order confirming any such chapter 11 plan, any order authorizing the sale of assets of the Debtors pursuant to any section of the Bankruptcy Code, and any order approving wind-down or dismissal of any Debtor's chapter 11 case or any subsequent chapter 7 case shall change, supersede, abrogate, nullify, restrict, or conflict with the provisions of the Lonafarnib/Lambda APAs, the Transaction Documents, or this Revised Lonafarnib/Lambda Sale Order, or in any way prevent or interfere with the consummation or performance of the Lonafarnib/Lambda Sale Transactions.

34. **Failure to Specify Provisions**. The failure to specify or include any particular provisions of the Lonafarnib/Lambda APAs or the Transaction Documents in this Revised Lonafarnib/Lambda Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Lonafarnib/Lambda APAs, the Transaction Documents, and the Lonafarnib/Lambda Sale Transactions be authorized and approved in their entirety.

35. **Automatic Stay**. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted solely to the extent necessary to (i) allow the Purchaser to deliver any notice provided for in the Lonafarnib/Lambda APAs and the Transaction Documents, and (ii) allow the Purchaser to take any and all actions permitted under the Lonafarnib/Lambda APAs and the Transaction Documents in accordance with the terms and conditions thereof. The automatic stay imposed by section 362 of the Bankruptcy Code shall be modified solely to the

extent necessary to implement the preceding sentence, and this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

36. **Bankruptcy Rules Satisfied or Waived**. The requirements set forth in Bankruptcy Rules 6004 and 6006 have been satisfied or are otherwise deemed to be waived. As provided by Bankruptcy Rule 9014, the terms of this Revised Lonafarnib/Lambda Sale Order shall be effective and enforceable immediately upon entry and shall not be subject to stay provisions contained in Bankruptcy Rules 6004(h) and 6004(d). Time is of the essence in closing the Lonafarnib/Lambda Sale Transactions and the Debtors and the Purchaser intend to close the sale as soon as possible.

37. **Conflicts Between the Revised Lonafarnib/Lambda Sale Order and Lonafarnib/Lambda APAs**. To the extent anything contained in this Revised Lonafarnib/Lambda Sale Order conflicts with a provision in the Lonafarnib/Lambda APAs or Transaction Documents, this Revised Lonafarnib/Lambda Sale Order shall govern and control. Notwithstanding the foregoing, nothing in this Revised Lonafarnib/Lambda Sale Order shall modify or waive any closing conditions or termination rights in the Lonafarnib/Lambda APAs, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

38. **Provisions Nonseverable and Mutually Dependent**. The provisions of this Revised Lonafarnib/Lambda Sale Order, the Lonafarnib/Lambda APAs, and the Transaction Documents are non-severable and mutually dependent.

39. **Retention of Jurisdiction**. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of the Lonafarnib/Lambda APAs, the Transaction Documents, and this Revised Lonafarnib/Lambda Sale Order, and each of

the agreements executed in connection therewith to which the Debtors are a party or which has been assigned to the Purchaser by the Debtors, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Lonafarnib/Lambda Sale Transactions. This Court retains jurisdiction to compel delivery of the Transferred Assets, to protect the Purchaser and its assets, including the Transferred Assets, against any Interests or successor or transferee liability and to enter orders, as appropriate, pursuant to sections 105(a), 363, or 365 (or other applicable sections) of the Bankruptcy Code necessary to transfer the Transferred Assets and the Assigned Contracts to the Purchaser. In the event this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter referenced in this paragraph or is without jurisdiction, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

40. The Purchaser has standing to seek to enforce any terms of this Revised Lonafarnib/Lambda Sale Order, the Lonafarnib/Lambda APAs, and the Transaction Documents in this Court or any other court with competent jurisdiction.

41. All time periods set forth in this Revised Lonafarnib/Lambda Sale Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

Submitted By:

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EXHIBIT 6

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

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

NOTICE OF CLOSING OF LONAFARNIB/LAMBDA SALE TRANSACTIONS

On April 5, 2024, the Court entered the *Order (I)(A) Approving the Bid Procedures; (B) Authorizing the Debtors to Select Sentynl Therapeutics, Inc. as the Zokinvy Stalking Horse Purchaser & Approving Bid Protections; (C) Approving the Bid Protections Relating to the Remaining Assets Stalking Horse Purchaser(s), if any; (D) Establishing Bid Deadlines, Auction(s), and Sale Hearing(s); (E) Approving the Form and Manner of Sale Notice; (F) Approving Assignment and Assumption Procedures; (G) Approving the Form and Manner of Potential Assumption and Assignment Notice; (II)(A) Authorizing the Sale of the Assets Free and Clear; and (B) Approving the Assumption and Assignment of Designated Contracts; And (III) Granting Related Relief* [Docket No. 94] (the "Bid Procedures Order"), which, among other things, establishes key dates and deadlines related to the Auction for, and the Sale of, the Assets.[2]

[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] Capitalized terms used but not defined herein shall have the meanings given to them in the Bid Procedures Motion, Bid Procedures Order, Revised Bid Procedures, Revised Lonafarnib/Lambda Sale Order, and Lonafarnib/Lambda APAs.

On April 8, 2024, and June 3, 2024, the Debtors served the *Notice of Sale, Bid Procedures, Auction, and Sale Hearing* on all known parties in interest. *See* Docket Nos. 128, 320.

On April 15, 2024, the Debtors filed the *Notice of Filing of Revised Bidding Procedures* [Docket No. 119], which included the revised Bid Procedures (the "Bid Procedures") attached thereto as Exhibit A.

On June 12, 2024, the Debtors filed and served the *Revised Notice of Sale, Bid Procedures, Auction, and Sale Hearing* [Docket No. 331] on all known parties in interest. *See* Docket Nos. 374, 431.

On July 13, 2024, Debtors filed the *Further Revised Notice of Bid Deadlines* [Docket No. 422], which included revised dates and deadlines related to the Bid Deadline for the Lonafarnib sale transaction (the "Lonafarnib Sale Transaction") and the Lambda sale transaction (the "Lambda Sale Transaction").

On August 2, 2024, Debtors filed the *Notice of Cancellation of Auction(s), Designation of Winning Bid for the Lonafarnib Sale Transaction, and Transition To Private Sale Process for Lonafarnib/Lambda Sale Transactions* [Docket No. 489] (the "Lonafarnib/Lambda Sale Notice") selecting the Purchaser as the highest and best bidder for the Lonafarnib/Lambda Assets, and served the Lonafarnib Assigned Contracts and Cure Amounts [Lonafarnib/Lambda Sale Notice, Ex. A] and the Lambda Assigned Contracts and Cure Amounts [Lonafarnib/Lambda Sale Notice, Ex. B] (the "Assignment Notice").

On August 5, 2024, Debtors filed the *Debtors' Emergency Motion for the Entry of an Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection With the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 490] (the "Motion"), which included as Exhibit A the proposed order for the sale of the Lonafarnib/Lambda Assets, and asset purchase agreements for the sale of the Lonafarnib/Lambda Assets (the "Lonafarnib/Lambda APAs") attached as Exhibit 1 and Exhibit 2 to the proposed sale order.

On August 19, 2024, the Debtors filed the *Notice of Revised Proposed Form of Lonafarnib/Lambda Sale Order* [Docket No. 540], which included as Exhibit A the proposed revised order for the sale of the Lonafarnib/Lambda Assets.

On August 21, 2024, the Court entered an order [Docket No. 558] (the "Revised Lonafarnib/Lambda Sale Order") authorizing and approving entry into the Lonafarnib/Lambda APAs and the Lonafarnib/Lambda Sale Transactions contemplated thereunder.

On September 3, 2024, the Closing occurred in accordance with the Lonafarnib/Lambda APAs and the Revised Lonafarnib/Lambda Sale Order. Attached as **Exhibit A** and **Exhibit B** are the final lists of Assigned Contracts pursuant to the Lonafarnib/Lambda APAs.

Copies of the Lonafarnib/Lambda APAs, as well as all related filings and exhibits, are available by: (i) visiting the website of the Debtors' claims, noticing, and solicitation agent,

Kurtzman Carson Consultants LLC dba Verita Global ("Verita") at https://www.veritaglobal.net/Eiger, (ii) (888)733-1544 (Toll-Free) or (310 751-2638 (International), and/or (iii) emailing https://www.veritaglobal.net/Eiger/inquiry or (iv) for a fee via PACER at https://ecf.txnb.uscourts.gov/.

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Dated: September 4, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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Attorneys for the Debtors and Debtors in Possession

Certificate of Service

I certify that on September 4, 2024, 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.

/s/ *Thomas R. Califano*
Thomas R. Califano

Exhibit A

Final Lonafarnib Assigned Contracts List

Lonafarnib Assigned Contracts[1]

Asset	Counterparty	Description of Contract
Lonafarnib	LONZA BEND, INC. (f.k.a. Bend Research, Inc.)	LNF/RTV FDC Tablet Dev. Change Order #7 to E141-8598, dated January 23, 2018
Lonafarnib	LONZA BEND, INC. (f.k.a. Bend Research, Inc.)	Amendment No. 2 to the Master Services and Clinical Manufacture Agreement, dated May 29, 2019
Lonafarnib	LONZA BEND, INC. (f.k.a. Bend Research, Inc.)	Master Services and Clinical Manufacture Agreement, dated May 16, 2016
Lonafarnib	BIORASI, LLC	Master Services Agreement, dated June 23, 2020
Lonafarnib	BIORASI, LLC	Statement of Work #157-1, dated July 10, 2020, as governed by Master Services Agreement, dated June 23, 2020
Lonafarnib	BIORASI, LLC	Change Order 1 to Statement of Work #157-1, dated July 23, 2021
Lonafarnib	BIORASI, LLC	Change Order 2 to Statement of Work #157-1, dated December 21, 2021
Lonafarnib	BIORASI, LLC	Change Order 3 to Statement of Work #157-1, dated January 30, 2023
Lonafarnib	BIORASI, LLC	Change Order 4 to Statement of Work #157-1, dated August 25, 2023
Lonafarnib	Corden Pharma Colorado	Change Order #6 to Statement of Work # 2, dated May 19, 2021
Lonafarnib	Corden Pharma Colorado	Statement of Work 6, dated April 17, 2023
Lonafarnib	Corden Pharma Colorado; Corden Pharma International GmbH	Change Order 1 to the Statement of Work 6, dated April 26, 2023
Lonafarnib	Cyprotex US, LLC	Proposal for Analysis of Active Metabolites of Lonafarnib (LNF): MH17 and HM21, dated May 6, 2019
Lonafarnib	Fisher Clinical Services GmbH	Quote 214873 Order 8 Version 3 20220225, dated February 25, 2022
Lonafarnib	Fisher Clinical Services, Inc.	Quote PSG-A-1051277.v3 20220225, dated February 25, 2022

[1] Existing Manufacturing Contracts, if any, are identified by the * symbol.

Asset	Counterparty	Description of Contract
Lonafarnib	Fisher Clinical Services U.K. Limited	LNF/RTV with and w/o Alfa Labeling Kits Quote PSG-A-1007765.v1 20190514, dated May 14, 2019
Lonafarnib	INTRINSIK CORP	Statement of Work #8, dated July 9, 2022, as governed by Master Services Agreement, dated March 6, 2020
Lonafarnib	LONZA BEND, INC.	Amendment No. 1 to the Commercial Supply Agreement, dated March 9, 2023
Lonafarnib	LONZA BEND, INC.	Amendment No. 2 to the Commercial Supply Agreement, dated January 1, 2024
Lonafarnib	LONZA BEND, INC.	Change Order 8 to Statement of Work E141-8598, dated November 12, 2018
Lonafarnib	LONZA BEND, INC.	Statement of Work PN-166560, dated April 10, 2023
Lonafarnib	Lonza Bend; Patheon Canada	Total Transportation Management ("TTM") Freight Quote, dated August 16, 2021
Lonafarnib	Lonza Pharma & BioTech	Validation Proposal, dated 6 April 2020
Lonafarnib	[2]Patheon, Inc.	Solely to the extent related to the 25mg strength, XRPD Change of Scope COS-55-R0 to Proposal No. P-TRP-114750-R2, dated May 15, 2023
Lonafarnib	Patheon, Inc.	Project Proposal # C-TRC-270507-R4, dated September 27, 2021
Lonafarnib	Patheon, Inc.	Change of Scope # C-TRC-270507-R4-COS-01-R0, dated January 30, 2023
Lonafarnib	Patheon, Part of Thermo Fischer Scientific; Element Toronto	Element Quote 20-012-162900 Revision 1, dated April 20, 2020
Lonafarnib	PharmaDirections, Inc	WKO-EIG-879 Ad hoc Consulting, dated October 29, 2014
Lonafarnib	PharmaDirections, Inc	Amendment # 1 to WKO-EIG-879, dated June 10, 2015

[2] Any Contracts with TFS Entities (as defined in Schedule 3.3) shall be on this Schedule 2.1(a) solely to the extent related to the 25mg strength (but not for 50mg strength, 75mg strength or an AVX injection), and all other Contracts with TFS Entities shall be removed and shall not be deemed on this Schedule 2.1(a).

Asset	Counterparty	Description of Contract
Lonafarnib	PharmaDirections, Inc	Amendment # 2 to WKO-EIG-879, dated January 1, 2019
Lonafarnib	Q SQUARED SOLUTIONS HOLDINGS, LLC	Work Order, dated October 20, 2023, under that certain Master Laboratory Services Agreement, dated May 3, 2019
Lonafarnib	Trialog Clinical Trials Ltd	Study Protocol No.: EIG-LNF-011, dated July 18, 2019
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2019120, dated August 14, 2019
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #201989, dated December 3, 2019
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2020017, dated January 27, 2020
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2020082, dated March 30, 2020
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2020191, dated July 28, 2020
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2020201, dated August 9, 2020
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2020348, dated December 31, 2020
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2021-028, dated January 25, 2021
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #2021-210, dated June 8, 2021
Lonafarnib	Trialog Clinical Trials Ltd	Study Protocol No.: SCRC20042, dated June 7, 2021
Lonafarnib	Trialog Clinical Trials Ltd	Price Quote #20221259, dated July 20, 2022
Lonafarnib	Patheon, Inc.	Master Manufacturing Services Agreement, dated January 9, 2020*
Lonafarnib	Patheon, Inc.	Quality Agreement, dated January 31, 2020*
Lonafarnib	LONZA BEND, INC. (f.k.a. Bend Research, Inc.)	Commercial Manufacturing Services and Supply Agreement, dated October 9, 2019*

Asset	Counterparty	Description of Contract
Lonafarnib	LONZA BEND, INC. (f.k.a. Bend Research, Inc.)	Commercial Quality Agreement, dated October 17, 2019, as amended by Amendment No. 1 to Quality Agreement, dated February 15, 2023*
Lonafarnib	LONZA BEND, INC. (f.k.a. Bend Research, Inc.)	Quality Agreement for Commercial Manufacture of Product, dated November 1, 2023*
Lonafarnib	CordenPharma	Master Services Agreement, dated March 22, 2016*
Lonafarnib	CordenPharma	Commercial Quality Agreement, dated February 19, 2020*
Lonafarnib	Fisher Clinical Services, Inc.	Master Services Agreement, dated May 6, 2016*
Lonafarnib	Fisher Clinical Services, Inc.	First Amendment and Restated Quality Agreement, dated February 23, 2021*
Lonafarnib	General Synco, Inc.	Quotation GLS q-Eiger-JJ-20220622-300kg, dated June 15, 2022*
Lonafarnib	GLSynthesis Inc.	Quotation, dated August 16, 2018*
Lonafarnib	GLSynthesis Inc.	Quotation, dated November 14, 2018*
Lonafarnib	INSERM U1110, Université de Strasbourg, France	Project Proposal 1
Lonafarnib	U1111, Centre International de Recherche en Infectiologie, Lyon, France, team HepVir	Project Proposal V-2023-03-16, dated March 16, 2023
N/A	Eiger Group International, Inc.	Asset Purchase Agreement, dated December 8, 2010
Lonafarnib	EZUS LYON (Subsidiary of the Universite Claude Bernard Lyon 1), Subsidiary of the Universite Claude Bernard Lyon 1, Centre National de la	Research Agreement, dated February 15, 2024.

Asset	Counterparty	Description of Contract
	Recherche Scientifique, Ecole Nomale Superieure de Lyon, and Inserm Transfert SA	
Lonafarnib	SATT Conectus Alsace, University of Strasbourg, French National Institute of Health and Medical Research, and Institute for Viral and Liver Diseases	Sponsored Research Agreement, dated January 12, 2024.

Schedule 7.15
Cross-Over Contracts[3] [4]

Asset	Counterparty	Description of Contract
Lonafarnib	IQVIA RDS INC.	Work Order #KZA43736, dated May 8, 2019
Lonafarnib	IQVIA RDS INC.	Change Order 1 to WO #KZA43736, dated March 26, 2020
Lonafarnib	IQVIA RDS INC.	General Services Agreement for Emerging Biotech Clients, dated October 15, 2018
Lonafarnib	IQVIA RDS INC.	Change Order 3 to MZA58497
Lonafarnib	IQVIA RDS INC.	Change Order 5 to MZA58497
Lonafarnib	IQVIA Biotech LLC	Change Proposal No. 1
Lonafarnib	IQVIA Biotech LLC	Change Notification No. 1
Lonafarnib	IQVIA Biotech LLC	Change Notification No. 2
Lonafarnib	IQVIA Biotech LLC	Change Notification No. 3
Lonafarnib	IQVIA Biotech LLC	Change Notification No. 4
Lonafarnib	IQVIA Biotech LLC	Change Proposal No. 15
Lonafarnib	Novella Clinical LLC	Master Services Agreement, dated January 15, 2016
Lonafarnib	Novella Clinical LLC	Statement of Work, dated April 8, 2016
Lonafarnib	Novella Clinical LLC	Statement of Work, dated July 19, 2016
Lonafarnib	Novella Clinical LLC	Change Proposal 1
Lonafarnib	Novella Clinical LLC	Change Proposal 2
Lonafarnib	Novella Clinical LLC	Change Proposal 3
Lonafarnib	Novella Clinical LLC	Change Proposal 4

[3] Contracts with IQVIA RDS INC., IQVIA Biotech LLC and Novella Clinical LLC are Global Safety Database Contracts.

[4] Notwithstanding anything to the contrary set forth in the Agreement, the Contracts with Accenture, LLP (a) may be assumed by Purchaser only pursuant to Section 7.15(b) of the Agreement once all conditions are met and Purchaser makes a request, and (b) may not be assumed by Purchaser pursuant to 7.15(c) of the Agreement under any circumstances.

Lonafarnib	Novella Clinical LLC	Change Proposal 5
Lonafarnib	Novella Clinical LLC	Change Proposal 6
Lonafarnib	Novella Clinical LLC	Change Proposal 7
Lonafarnib	Novella Clinical LLC	Change Proposal 8
Lonafarnib	Accenture, LLP	Amendment One to the Master Services Agreement, dated May 25, 2018
Lonafarnib	Accenture, LLP	Change Order 3 to SOW 3, dated June 15, 2022
Lonafarnib	Accenture, LLP	Change Order Form No. 9 to SOW 5, dated December 13, 2021
Lonafarnib	Accenture, LLP	Scope of Work 4, dated March 2, 2016
Lonafarnib	Accenture, LLP	Scope of Work 5, dated November 7, 2017
Lonafarnib	Accenture, LLP	Master Services Agreement, dated March 2, 2016

Exhibit B

Final Lambda Assigned Contracts List

Lambda Assigned Contracts[1]

Asset	Counterparty	Description of Contract
Lambda	BECTON, DICKINSON AND COMPANY	Quote #20200427 re: Pharmaceutical Products, dated April 27, 2020
Lambda	BECTON, DICKINSON AND COMPANY	Quote #20200513, dated May 13, 2020
Lambda	BECTON, DICKINSON AND COMPANY	Quote PS-CPQ-636, dated July 7, 2021
Lambda	BECTON, DICKINSON AND COMPANY	Quote #20220224 re: Pharmaceutical Products, dated February 24, 2022
Lambda	BIORASI, LLC	Statement of Work #157-2, dated April 16, 2021, as governed by Master Services Agreement, dated June 23, 2020
Lambda	BIORASI, LLC	Change Order 1 to Statement of Work #157-2, dated December 29, 2021
Lambda	BIORASI, LLC	Change Order 2 to Statement of Work #157-2, dated December 20, 2021
Lambda	BIORASI, LLC	Statement of Work #157-3, dated January 21, 2021, as governed by Master Services Agreement, dated June 23, 2020
Lambda	BRISTOL-MYERS SQUIBB COMPANY	Assignment and Assumption Agreement, dated May 25, 2016
Lambda	BRISTOL-MYERS SQUIBB COMPANY	Common Stock Purchase Agreement, dated April 20, 2016
Lambda	BRISTOL-MYERS SQUIBB COMPANY	License Agreement, dated April 20, 2016
Lambda	Eurofins Biopharma Product Testing	Quotation # HEY2PH220237-01 re: Establishment of a Method for Free PEG by HPLC-CAD, dated May 26, 2022
Lambda	Eurofins Biopharma Product Testing	Quotation # HEY2PH220237-02 re: Establishment of a Method for Free PEG by HPLC-CAD, dated November 9, 2022
Lambda	Eurofins BioPharma Product Testing	Quotation # VFK8PH210375-01 re: FBS Qualification for for Lambda-1 (Python), dated September 14, 2021

[1] Existing Manufacturing Contracts, if any, are identified by the * symbol.

Asset	Counterparty	Description of Contract
Lambda	Eurofins Lancaster Laboratories (Lancaster PA)	Quotation #W9MYPH200689-02, dated December 4, 2020
Lambda	Eurofins Lancaster Laboratories (Lancaster PA)	Quotation #W9MYPH200689-05, dated April 18, 2022
Lambda	Eurofins Lancaster Laboratories (Lancaster PA)	Quotation #NQ-0143063, dated December 5, 2016
Lambda	Eurofins Lancaster Laboratories (Lancaster PA)	Quotation #NQ-0148470, dated March 15, 2017
Lambda	FISHER BIOSERVICES, INC.	Statement of Work # OPP-009068, dated May 23, 2016
Lambda	FISHER BIOSERVICES, INC.	Amendment #1 to SOW # OPP-009068, dated June 27, 2016
Lambda	FISHER BIOSERVICES, INC.	Amendment #2-R6 to SOW # OPP-009068, dated February 3, 2017
Lambda	Fisher Clinical Services Inc.	CO 1 to PSG-A-1073971 (PSG-A-1076893) 20230524
Lambda	Fisher Clinical Services Inc.	Quote 20160517
Lambda	Fisher Clinical Services Inc.	Quote PSG-A- 1043137.v1 20210812
Lambda	Fisher Clinical Services Inc.	Quote 20160927
Lambda	Fisher Clinical Services Inc.	Quote FCS 55799 20170221
Lambda	Fisher Clinical Services Inc.	Quote FCS 55799 Change Order 1 20161116
Lambda	Fisher Clinical Services Inc.	Quote FCS 55799 Order 7 20170629
Lambda	Fisher Clinical Services Inc.	Quote FCS 55799 Order 8 20180918
Lambda	Fisher Clinical Services Inc.	Quote FCS 58040 20161206
Lambda	Fisher Clinical Services Inc.	Quote FCS 62278 20180309
Lambda	Fisher Clinical Services Inc.	Quote FCS 68128 Order 1 Version 1 20190720

Asset	Counterparty	Description of Contract
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1007253 V2 20190508
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1009306.V1 20190619
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1037571.v1 20210414
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1037572.v1_20210420
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1037587.v1 20210420
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1038183.v1 20210422
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1040820.V3 20210713
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1041275.v4 20210819
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1044658.v1 20210902
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1045926.v1 20210927
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1053812.v2 20220323
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1056697.v1 20221205
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1060127.v1 20221205
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1072645 v1 20230420
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1073971 20230429
Lambda	Fisher Clinical Services Inc.	Quote PSG-A-1086699.v1 20231128
Lambda	Fisher Clinical Services Inc.	Quote re: Protocol No. EIG-LMD-001
Lambda	Fisher Clinical Services Inc.	Quote-PSG-A-1037570.v2 20210423
Lambda	Fisher Clinical Services Inc.	Quote-PSG-A-1045938.v1 20210927
Lambda	Fisher Clinical Services Inc.	Quote-PSG-A-1069905.v1 20230204

Asset	Counterparty	Description of Contract
Lambda	Fujifilm Diosynth	Stability Studies Termination, Accountability and Reconciliation Memo, dated December 13, 2023
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Scope of Work #9 , dated November 15, 2020
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Change Order 1 to SOW9, dated February 11, 2021
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Master Bioprocessing Services Agreement, dated September 22, 2016
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Change Order 5 re: MCB and WCB Bioassay Characterization, dated April 4, 2017
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Change Order 6 re: Establishment of Degraded SEC and Degraded Issi-Asp, CEX & RP Purity Assay Controls, dated July 31, 2017
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Change Order 6 re: Positional Isomer Feasibility, dated February 2, 2021
Lambda	FUJIFILM DIOSYNTH BIOCTECHNOLOGIES USA, INC.	Scope of Work 23, dated March 8, 2023
Lambda	Curia New Jersey, LLC	Laboratory Service Fee Quotation Q-87184-20220825-1431, dated September 22, 2022
Lambda	INTRINSIK CORP	Statement of Work 9, dated October 12, 2022, as governed by Master Services Agreement, dated March 6, 2020
Lambda	Intrinsik Health Sciences Inc.	Proposal Re: Canadian Regulatory Services for Phase II Study for PEG-Interferon Lambda, dated March 4, 2016
Lambda	KRYOCAL, LLC DBA KYROSPHERE	Statement of Understanding, dated February 28, 2018
Lambda	Patheon Manufacturing Services LLC	Project Proposal (P-MNC-101564-R3), effective July 29, 2016

Asset	Counterparty	Description of Contract
Lambda	Patheon UK Limited	Change of Scope COS-17-R0 to P-MNC- 101564-R3_20220324
Lambda	Patheon UK Limited	Change of Scope COS-P-MNC-101564-R3- COS-08-R3_20210309
Lambda	Patheon UK Limited	Change of Scope: P-MNC-101564-R4-COS-19-R0, dated October 21, 2022
Lambda	Patheon UK Limited; Fisher Clinical Services	Change of Scope Patheon UK_COS 20 P-MNC-101564-R4_20220722
Lambda	Patheon UK Limited; Fisher Clinical Services	Change of Scope Patheon UK_COS 24 P-MNC-101564-R4_20230209
Lambda	Patheon UK Limited; Fisher Clinical Services	Change of Scope Patheon UK_COS 29-R0 to P-MNC-101564-R4_20240213
Lambda	Patheon UK Limited; Fisher Clinical Services	Change of Scope: Prefilled Syringes Patheon UK_P-MNC-101564-R4-COS-23-R0_20220922
Lambda	Thermo Fisher Scientific; Patheon UK Limited, Part of Thermo Fisher Scientific	Quotation #220328-01-SF, dated March 28, 2022
Lambda	Total Transport Management	Netherlands Hub Freight Quote, dated March 15, 2022
Lambda	Trialog Clinical Trials Ltd	Study Protocol No.: SCRC20006 Agreement, dated April 14, 2020
Lambda	Trialog Clinical Trials Ltd	Price Quotation for EIG-LMD-002, REF #20221093, dated March 3, 2022
Lambda	Trialog Clinical Trials Ltd	Price Quotation for EIG-LMD-002, REF #20221258, dated July 20, 2022
Lambda	Trialog Clinical Trials Ltd	Price Quotation for EIG-LMD-002, REF #20221259, dated July 20, 2022
Lambda	Trialog Clinical Trials Ltd	Price Quotation for EIG-LMD-002, REF #20221437, dated December 7, 2022
Lambda	Trialog Clinical Trials Ltd	Price Quotation for EIG-LMD-002, REF #20231153, dated February 21, 2023

EXHIBIT 7

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Counsel for Sentynl Therapeutics, Inc.

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

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

MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM OF SENTYNL THERAPEUTICS, INC.

Sentynl Therapeutics, Inc. ("Sentynl"), submits its *Motion for Allowance of Administrative Expense Claim* (the "Motion"), and in support thereof would respectfully show the Court as follows:

[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.

PRELIMINARY STATEMENT

1. On April 24, 2024, this Court approved Sentynl's purchase of Zokinvy – the only known life extending treatment for progeria, a rare and fatal genetic condition – for $45,200,000.[2] As a condition to closing of the Zokinvy Asset Purchase Agreement,[3] the parties executed and delivered the Sublicense Agreement.[4] Debtor Eiger Biopharmaceuticals, Inc. ("Eiger Bio"), is in the process of breaching the Sublicense Agreement and effectively preventing Sentynl from manufacturing the drug and fulfilling its regulatory obligations, which could lead to Sentynl's inability to deliver Zokinvy to patients who depend on it to extend their lives. To make matters worse, the breach is for the apparent benefit of non-debtor Eiger InnoTherapeutics, Inc. ("Eiger Inno"), the purchaser of the estate's remaining Lonafarnib Assets and Lambda Assets and an entity being run by one of Eiger Bio's former founding members.[5]

2. As a result of Eiger Bio's post-petition breach, Sentynl is entitled to an allowed administrative expense up to the amount of the Zokinvy Purchase Price.[6]

---

[2] *See Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] ("Zokinvy Sale Order").

[3] That certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order ("Zokinvy Asset Purchase Agreement").

[4] That certain *Sublicense Agreement, dated as of the Closing Date, by and among Purchaser and the Seller*, substantially in the form attached to the Zokinvy Asset Purchase Agreement as Exhibit E [filed under seal pursuant to order at Docket No. 188].

[5] The manufacturing and regulatory issues described below arose shortly after Eiger Inno's acquisition closed on September 3, 2024 but several months after Sentynl's acquisition closed on May 3, 2024 and Sentynl initiated discussions with Lonza and IQVIA. *See Notice of Closing of Lonafarnib/Lamba Sale Transaction* [Docket No. 616]; *Notice of Closing of Zokinvy Sale Transaction* [Docket No. 214].

[6] Separately, the Liquidating Trust has acknowledged and recognized the estate's commitment to satisfy up to an amount of $3,161,245 in connection with the payment of a rebate claim owing to the French government. Such acknowledgment and agreement obviates the need for Sentynl to include such amount in the calculation of its administrative expense claim requested herein.

JURISDICTION

3. 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 and the order of referral of the United States District Court for the Northern District of Texas. This matter is a core proceeding pursuant to 28 U.S.C. §157, and this Court may enter a final order consistent with Article II of the United States Constitution.

BACKGROUND[7]

A. Lonza Bend MSA

4. Bend Research, Inc., a Lonza Company ("Lonza Bend"), provides spray dried dispersion services that are critical to the manufacturing process for the Zokinvy product. The services occur in the middle of the manufacturing process and supply chain for the Zokinvy product and are thus critical to supply of the product. Sentynl does not have any previously existing relationship with Lonza Bend, nor has Sentynl identified an alternative service provider for such services.

5. During the negotiation of the acquisition of the Zokinvy Assets, Sentynl requested Eiger Bio to assign to Sentynl certain key manufacturing and supply agreements, such as the *Commercial Manufacturing Services and Supply Agreement with Lonza Bend, dated October 9, 2019* (the "Lonza Bend MSA"). Eiger Bio informed Sentynl on multiple occasions that Eiger Bio could not assign the Lonza Bend MSA and certain other contracts to Sentynl because Eiger Bio needed to retain them to be able to facilitate a sale of the remaining Lonafarnib Assets.

[7] The Motion was intentionally expedited by agreement with the Liquidating Trustee. Copies of the underlying documentation and communications are available to interested parties. In advance of any hearing on the Motion, Sentynl will supplement the record with all evidentiary documentation of the facts referenced herein.

6. Under the Sublicense Agreement, Eiger Bio agreed that certain agreements, including the Lonza Bend MSA were, "Retained Agreements," which are subject to special treatment. Importantly, Eiger Bio is obligated to use reasonable efforts not to assign the Lonza Bend Agreement in a manner that adversely affects Sentynl's rights under the Sublicense Agreement or ability to "Commercialize" Zokinvy.[8] Additionally, Eiger Bio has represented and warranted to Sentynl that the Lonza Bend MSA, as one of the "Retained Agreements," was one of the agreements necessary for the manufacture and commercialization of Zokinvy.[9]

7. In connection with Eiger Bio's proposed sale of the remaining Lonafarnib Assets to Eiger Inno, Sentynl learned that Eiger Bio agreed to assign many contracts to Eiger Inno that Eiger Bio had told Sentynl were not assignable or would not be assigned. One of those contracts was the Lonza Bend MSA. Sentynl informed Eiger Bio that it wanted those agreements assigned to Sentynl, given the prior communications from Eiger Bio that those agreements were not assignable or were not going to be assigned and given their critical importance to Sentynl's ability to manufacture and commercialize Zokinvy, but Eiger Bio and Eiger Inno refused that request.

8. Sentynl has sought to negotiate a new contract with Lonza Bend, using its best reasonable efforts, as contemplated by the Zokinvy Asset Purchase Agreement. Despite initial engagement and exchange of draft agreements, Lonza Bend has delayed negotiations, which Sentynl is informed and believes is likely the result of an intervention by or on behalf of Eiger Inno.

9. Importantly, the Lonza Bend MSA is scheduled to be formally assigned to Eiger Inno in early November 2024 (on the six month anniversary of the closing of the Zokinvy Asset

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[8] *See* Section 3.7 of the Sublicense Agreement.

[9] *See* Sections 11.2(j) and 11.2(w) of the Sublicense Agreement.

Purchase Agreement). The Lonza Bend MSA contains an exclusivity clause in Section 2.8 that provides Lonza Bend will not manufacture or supply the product to or for any other person other than Customer (soon to be Eiger Inno). If the Lonza Bend MSA is assigned to Eiger Inno, Sentynl is informed and believes that Eiger Inno may attempt to enforce that exclusivity clause to the detriment of Sentynl and those impacted with progeria who rely on a continuous supply of therapy.

10. If Eiger Bio proceeds with assigning the Lonza Bend MSA to Eiger Inno with the exclusivity provision in place or with any other provisions that are adverse to Sentynl, then Eiger Bio will be in breach of its covenants and obligations to Sentynl under the Zokinvy Asset Purchase Agreement.

B. Regulatory Obligations

11. Zokinvy's status as a commercial progeria therapeutic, approved by the FDA, MHRA, EMA, Japan, and Israel, places significant and important regulatory filing obligations on Sentynl, including the operation and maintenance of the global safety database, and periodic reporting obligations under such as Development Safety Update Reports ("DSUR"), the next of which is due to regulatory authorities on November 29, 2024.

12. Pursuant to the Zokinvy Asset Purchase Agreement and the Sublicense Agreement, Sentynl has acquired and/or licensed from Eiger Bio all data and "Regulatory Information" necessary for Sentynl to commercialize Zokinvy.

13. To aid in the process of transferring from Eiger Bio to Sentynl the data from the global safety database and ensure that the upcoming DSUR filing is timely made, the Liquidating Trustee engaged Rich Franco as a consultant to coordinate among Eiger Bio, Eiger Inno and Sentynl for the preparation of the upcoming DSUR filing and other related coordination efforts. Eiger Bio, Eiger Inno, and Sentynl met on October 15, 2024 to allocate responsibilities for certain

safety data elements of the DSUR to representatives of the three companies. Mr. Franco agreed to receive and compile data elements from each group for the next DSUR.

14. The next morning, Mr. Franco communicated to Sentynl that he was unable to fulfill those responsibilities because Leen Kawas, Managing General Partner of an investor in Eiger Inno, complained to the Liquidating Trustee and demanded that Eiger Inno be in charge of pharmacovigilance matters, such as the DSUR, because Eiger Inno had assumed contracts with IQVIA, which is a third party that has provided services related to the maintenance and use of the global safety database for Zokinvy. This demand was made even though the marketing authorization of Zokinvy from the European Union had not formally transferred yet from Eiger Bio to Sentynl, and so Eiger Bio was technically responsible for the filing at the time. The marketing authorization of Zokinvy has since transferred to Sentynl and as a result Sentynl is now the official holder of marketing authorization of Zokinvy from the European Union and has the corresponding regulatory obligations. However, due to what Sentynl is informed and believes to be Eiger Inno's problematic engagement to date, Sentynl will not be able to meet its upcoming regulatory obligations unless Eiger Inno cooperates with Sentynl and Eiger Bio as previously proposed and Eiger Inno does not attempt to prevent IQVIA from transferring the applicable data from the global safety database to Sentynl. As discussed above, Sentynl acquired rights to that data and "Regulatory Information," and it should be transferred to Sentynl under the terms of the Zokinvy Asset Purchase Agreement.

15. Additionally, Eiger Bio has failed to fulfill obligations under the transaction documents in regard to safety databases and pharmacovigilance. For example, Eiger Bio is obligated to transfer to Sentynl all relevant information sufficient for Sentynl to comply with its obligations to regulatory authorities and investigators regarding adverse events that have been

observed during any clinical trials conducted with the Licensed Progeria Product or Licensed Product prior to the Effective Date. The agreements also invest Sentynl with the responsibility for maintaining a safety database for the Licensed Progeria Product.[10] The parties are also obligated to enter into a separate written pharmacovigilance agreement with respect to the Licensed Progeria Products and other Licensed Products to enable the parties to fulfill their respective regulatory reporting obligations. Finally, Eiger Bio is obligated to perform specific transition activity services related to pharmacovigilance scheduled for the benefit of Sentynl.

BASIS FOR RELIEF

16. Section 503(b)(1)(A) of the Bankruptcy Code provides, in relevant part, that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under Section 502(f) of this title, including . . . the actual, necessary costs and expenses of preserving the estate . . . ." The claimant seeking administrative expenses bears the burden of proof. *Toma Steel Supply, Inc. v. TransAmerican Nat. Gas Corp. (In re TransAmerican Nat. Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir. 1992).

17. "[T]o qualify as an 'actual and necessary cost' under section 503(b)(1)(A), a claim against the estate must have arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate." *Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432, 441 (5th Cir. 2019) (quoting *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001)). The benefit does not, however, "have to be substantial" to qualify. *See In re Women First Healthcare, Inc*., 332 B.R. 115, 121 (Bankr. D. Del. 2005).

[10] *See* Section 5.3(c) and Schedule 5.3(c) of the Sublicense Agreement.

18. Breach of a post-petition agreement may give rise to an administrative expense claim. *See In re Finevest Foods, Inc*., 159 B.R. 972, 981 (Bankr. M.D. Fla. 1993) ("The Court finds that debtor breached the warranty contained in § 4.1.7(a) of the asset purchase agreement and that claimant is entitled to an administrative expense claim in the amount of $306,223.00."); *In re Wildwood Villages, LLC*, 2022 Bankr. LEXIS 1466 (Bankr. M.D. Fla. Jan. 21, 2022) (debtor developer's post-petition breach of a covenant to provide recreational facilities gave rise to an administrative claim).

19. "The claimant bears the burden of proving by a preponderance of the evidence that its claim qualifies as an administrative expense." *In re Krisu Hosp., LLC*, No. 19-20347-rlj11, 2021 Bankr. LEXIS 788, at *10 (Bankr. N.D. Tex. Mar. 26, 2021) (quoting *In re Acis Cap. Mgmt., L.P.*, 604 B.R. 484, 517 (N.D. Tex. 2019)).

20. Here, there can be no credible argument that Eiger Bio's (1) forthcoming assignment of the Lonza Bend MSA to Eiger Inno and (2) acquiescence to Eiger Inno's control of regulatory matters, do not adversely and materially affect Sentynl's rights under the Sublicense Agreement and its ability to commercialize Zokinvy and fulfill its regulatory obligations. Such actions constitute material breaches of the Zokinvy Asset Purchase Agreement and Sublicence Agreement by Eiger Bio and are compensable as an administrative expense. Because these breaches frustrate the entire purpose of the Zokinvy Asset Purchase Agreement and Sublicense Agreement and continued production and therefore commercialization of Zokinvy, the most important goal of this entire bankruptcy case to ensure patients with progeria can continue to receive treatment, Sentynl should be allowed an administrative expense in an amount up to the Zokinvy Purchase Price.

RESERVATION OF RIGHTS

21. In filing this Motion, Sentynl does not waive any claims it may have against Eiger Inno.

CONCLUSION

WHEREFORE, Sentynl respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, allowing Sentynl an administrative expense claim against the Debtors' respective estates for in the amount up to the full $45,200,000 paid under the Zokinvy Asset Purchase Agreement and such other and further relief as is just and necessary.

Dated: November 1, 2024

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

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Counsel for Sentynl Therapeutics, Inc.

Certificate of Service

I certify that on November 1, 2024, 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.

/s/ L. James Dickinson
L. James Dickinson

EXHIBIT A

Proposed Order

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

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

ORDER GRANTING MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM OF SENTYNL THERAPEUTICS, INC.

Upon consideration of the *Motion for Allowance and Payment of Administrative Expense Claim of Sentynl Therapeutics, Inc.* (the "Motion") and after due deliberation and sufficient cause appearing therefor, it is hereby:

[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.

ORDERED that Sentynl is hereby allowed a chapter 11 administrative expense claim pursuant to 11 U.S.C. § 503 for material breaches of the Zokinvy Asset Purchase Agreement and Sublicence Agreement in the total amount of $45,200,000; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

END OF ORDER

EXHIBIT 8

Filed Under Seal
unredacted copies will be emailed to the
parties listed on the certificate of service,
and available at the hearing

EXHIBIT 9

Filed Under Seal
unredacted copies will be emailed to the
parties listed on the certificate of service,
and available at the hearing

EXHIBIT 10

Filed Under Seal
unredacted copies will be emailed to the parties listed on the certificate of service, and available at the hearing

EXHIBIT 11

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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)
	(Jointly Administered)
Debtors.	

SENTYNL THERAPEUTICS, INC.'S MOTION
(I) TO ENFORCE THE ZOKINVY SALE ORDER AND
(II) FOR CONTEMPT AGAINST EIGER INNOTHERAPEUTICS, INC.

[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.

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TABLE OF AUTHORITIES

Cases

Statutes and Codes

Rules and Regulations

TO THE HONORABLE STACEY G. C. JERNIGAN, CHIEF JUDGE OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS:

Sentynl Therapeutics, Inc. ("Sentynl"), submits this *Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* (the "Motion"), and respectfully requests entry of an order enforcing the Zokinvy Sale Order[2] by:

(i) enjoining non-debtor Eiger InnoTherapeutics, Inc. (n/k/a EIT Pharma, Inc.) ("Eiger Inno"), from enforcing the exclusivity provision in the Lonza Bend MSA[3] against third-party Lonza[4] (or any affiliate) or taking any other actions that would prevent Lonza (or any applicable affiliate) from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy;

(ii) authorizing and directing third-party Lonza to immediately provide Sentynl data and information, on an ongoing basis, associated with existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA;[5]

(iii) enjoining Eiger Inno from pursuing or entering any agreement or taking any other actions that would prevent third-party Corden Pharma Colorado ("Corden") (or any affiliate) from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy;

(iv) authorizing and directing third-party Corden to immediately provide Sentynl data and information, on an ongoing basis, associated with existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA;

(v) enjoining Eiger Inno from challenging Sentynl's rights to the existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA in any manner whatsoever, which continue until all ongoing regulatory requirements with respect to these inventories have been satisfied;

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2 *Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] ("Zokinvy Sale Order").

3 That certain *Commercial Manufacturing Services and Supply Agreement, by and between Eiger BioPharmaceuticals Inc. and Bend Research, Inc., dated October 9, 2019* (the "Lonza Bend MSA").

4 Bend Research, Inc. ("Lonza").

5 That certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order ("Zokinvy APA").

(vi) 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; and

(vii) awarding monetary sanctions against Eiger Inno to compensate Sentynl for prosecuting Eiger Inno's contemptible conduct.

In support, Sentynl submits the *Declaration of Michael G. Hercz, Esq. in Support of Sentynl Therapeutics, Inc.'s Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* (the "Hercz Decl."), which is attached as **Exhibit 1** to the Appendix accompanying this Motion and which is incorporated by reference herein, and respectfully represents as follows:

INTRODUCTION

1. Almost a year ago, the Debtors petitioned this Court for relief "for two primary reasons: (1) to ensure stability and continuity in the provision of life-saving drugs for patients, including children, worldwide and (2) to institute a sale process designed to maximize the value of all the Debtors' assets for the benefit of all the Debtors' stakeholders."[6] The events that immediately followed were, by all accounts, of tremendous benefit to those patients and stakeholders. Sentynl purchased the Zokinvy Assets,[7] which fulfilled those goals by providing stability and continuity for progeria patients and $45.2 million to the Debtors' estate. Positive developments for the estate's stakeholders continued when Amylyx Pharmaceuticals, Inc. purchased the Avexitide Assets.[8]

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6 *Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 19 ¶ 7].

7 As defined in the Zokinvy Sale Order [Docket No. 162 ¶ 9].

8 *See Order (I) Approving the Sale of the Debtors' Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376].

2. Then, with the benefit of knowing exactly what the Debtors already sold and the rights that Sentynl obtained, Dr. Jeffrey Glenn, a former founder and insider of Debtor Eiger BioPharmaceuticals, Inc. ("Eiger Bio"),[9] formed an entity that was confusingly named Eiger InnoTherapeutics, Inc. (as defined above, "Eiger Inno"),[10] to purchase the Debtor's remaining Lonafarnib Assets.[11] Following entry of the Lonafarnib Sale Order, as previously raised before the Court,[12] non-debtor Eiger Inno proceeded to interfere with Sentynl's rights and disrupt the stability and continuity of Zokinvy.

3. Although the issues in the Sentynl Admin Claim that relate to IQVIA have been resolved generally, the Lonza exclusivity issue remains, new issues relating to materials and services provided by Corden have emerged recently, and efforts to obtain a consensual resolution out-of-court have run their course. Consequently, Sentynl must now turn to the Court as a last resort for relief to prevent Eiger Inno from continuing to deprive Sentynl of its rights, interfere

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[9] Jeffrey S. Glenn, MD, PhD, served as a member of privately-held Eiger BioPharmaceuticals, Inc.'s ("Private Eiger") Board of Directors since his appointment in 2008 until the completion of the Private Eiger's business combination with Celladon Corporation in March 2016, with the surviving entity changing its name to Eiger BioPharmaceuticals, Inc. (the "Merger"). Dr. Glenn, a Professor of Medicine at Stanford University School of Medicine, served on the Board through his resignation on April 1, 2024.

Declaration of Michael Shanahan in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 609 ¶ 19.a] (footnote citations omitted).

[10] Eiger Inno was not formed under the *Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and Its Debtor Affiliates*, but the startup appears to be something of a successor to Eiger Bio, benefiting from the goodwill of the Debtors' name, without compensation to the estate. Eiger Inno was formed under Delaware law on or about April 9, 2024. Eiger Inno has since changed its name to EIT Pharma, Inc. Its principal address is 11620 Wilshire Blvd, Ste 350, Los Angeles, CA 90025, the same address as Propel Bio Management LLC, and two of three of Eiger Inno's board members are managing partners at Propel Bio. *See* https://eitpharma.com/; https://www.propelbio.com/propel-team/.

[11] *See Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 558] (the "Lonafarnib Sale Order").

[12] *See Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 729] (the "Sentynl Admin Claim").

with third party relationships necessary to manufacture and commercialize Zokinvy, interfere with Sentynl's ability to meet its regulatory obligations with respect to Zokinvy, and jeopardize the stability and continuity of Sentynl's supply of Zokinvy to progeria patients who depend on it to extend their lives.

BACKGROUND

A. Sentynl's Acquisition of Zokinvy

4. On April 24, 2024, this Court entered the Zokinvy Sale Order finding (i) Sentynl "is a 'good faith purchaser' . . . within the meaning of section 363(m) of the Bankruptcy Code . . . and, as such, is entitled to all the protections afforded thereby;"[13] and (ii) the transaction should be consummated in a manner that will "avoid any disruption to the patients who depend on Zokinvy to treat progeria, a rare and fatal genetic condition that may result from continued uncertainty about the future of the Transferred Assets."[14]

5. The FDA-approved and commercialized Zokinvy product, and the unapproved and pre-commercialization Lonafarnib for Hepatitis Delta Virus ("HDV") product, both use the same the active pharmaceutical ingredient ("API") and Drug Product Intermediate, also referred to as Spray Dried Dispersion ("SDD"), and thus depend upon the same limited set of suppliers for the API and SDD.[15] This supply chain limitation was not an issue for the Debtors, who owned both products, to allocate materials and services.

6. As a condition to closing of the Zokinvy APA, Sentynl and Eiger Bio entered into the Sublicense Agreement.[16] Under the Sublicense Agreement, certain agreements were

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[13] *See* Zokinvy Sale Order ¶ R.

[14] *See* Zokinvy Sale Order ¶ K.

[15] Hercz Decl. ¶ 4.

[16] That certain *Sublicense Agreement, dated as of the Closing Date, by and among Purchaser and the Seller*, substantially in the form attached to the Zokinvy APA as Exhibit E [filed under seal pursuant to the order at Docket No. 188] (the "Sublicense Agreement").

designated as "Retained Agreements" and made subject to special treatment in order to, on the one hand, facilitate the subsequent sale of the Debtors' remaining Lonafarnib Assets, while, on the other hand, protecting Sentynl's ability to manufacture, supply, and "Commercialize"[17] Zokinvy as contemplated in the Zokinvy APA.[18]

7. This delicate balance was struck to allow the Debtors to monetize residual assets for the benefit of their estates, while providing protection to Sentynl against subsequent harm by prohibiting Eiger Bio from assigning the Retained Agreements in a manner that would or reasonably could adversely affect Sentynl's ability to Commercialize Zokinvy and supply patients who depend on it to extend their lives.[19] This balance was necessary because, *inter alia*, Sentynl was informed by Eiger Inno of potential purchasers of the Lonafarnib Assets.[20] Sentynl was specifically advised by Eiger Bio's general counsel of the potential for a third party purchaser to improperly 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."[21] Sentynl even considered bidding on and purchasing the Lonafarnib Assets to eliminate this risk, but at the time Sentynl was satisfied that the Zokinvy Sale Order (and the agreements approved thereunder) provided sufficient protections necessary to prevent such interference.[22] Importantly, despite the fact Sentynl could have acquired the Lonafarnib Assets, Sentynl did not want to acquire the Lonafarnib Assets and then "shelve" the related HDV program, because Sentynl did not think that

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[17] *See* Section 1.6 of the Sublicense Agreement ("'Commercialization' means, with respect to Licensed Product, any and all activities directed to the marketing, promotion, distribution, offering for sale and selling such product, importing and exporting such product for sale, and interacting with Regulatory Authorities regarding the foregoing. Commercialization shall also include Commercialization Studies. 'Commercialize' has a correlative meaning.").

[18] *See* Section 3.7 of the Sublicense Agreement.

[19] Hercz Decl. ¶ 5; Section 3.7 of the Sublicense Agreement.

[20] Hercz Decl. ¶ 6.

[21] Hercz Decl. ¶ 7.

[22] Hercz Decl. ¶ 8.

was fair to HDV patients that could potentially benefit from such a program in the future even if the likelihood of FDA approval is uncertain at this stage.[23] This decision was based on the apparently false assumption that a subsequent purchaser would not violate this Court's orders.[24]

B. Eiger Inno's Interference with Sentynl's Manufacturing of Zokinvy

8. One of the Retained Agreements described above is the Lonza Bend MSA pursuant to which Zokinvy SDD is manufactured.[25] Debtor Eiger Bio represented and warranted to Sentynl that the Lonza Bend MSA is necessary for the manufacture, supply, and Commercialization of Zokinvy,[26] as the services rendered thereunder are not currently available through any other supplier.[27] Importantly, Sentynl cannot transfer SDD manufacturing to another entity without major risk of a supply outage, which would jeopardize progeria patients, and without incurring significant cost.[28] 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.[29] Sentynl cannot both transfer the technology and manufacture for patients in the near term.[30] Moreover, certain data relating to existing inventory of Zokinvy that Sentynl purchased from Eiger Bio under the Zokinvy APA is required to be obtained by Sentynl from Lonza for Sentynl to deliver such medication to patients under applicable regulations.[31] Critical to the relief

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23 Hercz Decl. ¶ 9.

24 Hercz Decl. ¶ 10.

25 Hercz Decl. ¶ 11.

26 *See* Sections 11.2(j) and 11.2(w) of the Sublicense Agreement.

27 Hercz Decl. ¶ 12.

28 Hercz Decl. ¶ 13.

29 Hercz Decl. ¶ 14.

30 Hercz Decl. ¶ 15.

31 Hercz Decl. ¶ 16.

requested herein, the terms of the Sublicense Agreement ***preclude*** assignment of the Lonza Bend MSA in a manner that adversely affects Sentynl's ability to Commercialize Zokinvy.[32]

9. Eiger Inno caused a dispute to arise, which delayed the assignment of the Lonza Bend MSA in connection with the sale of Lonafarnib Assets to Eiger Inno, because the Lonza Bend MSA contains an exclusivity clause in Section 2.8 that provides Lonza will not manufacture or supply the product to or for any person other than "Customer," which is now Eiger Inno.[33] Sentynl attempted, over numerous months, to negotiate an arrangement permitting a direct relationship between Sentynl and Lonza with respect to services and materials required to Commercialize Zokinvy, however, Eiger Inno refused to allow such direct relationship and failed to articulate a justifiable reason for doing so.[34] Unsurprisingly, Lonza is now unwilling to negotiate a direct agreement with Sentynl, although Sentynl believes Lonza would promptly do so to ensure the quality, safety, and continuity of the long term supply of Zokinvy to progeria patients if Lonza had certainty it would not have any liability for breaching the Lonza Bend MSA by engaging with Sentynl.[35]

10. The Lonza Bend MSA was ultimately assigned to Eiger Inno, over Sentynl's strong and consistent protest, pursuant to a surprise settlement agreement between the Liquidating Trustee and Eiger Inno effective December 18, 2024 (the "Settlement Agreement"),[36] attached to the

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[32] *See* Section 3.7 of the Sublicense Agreement ("Eiger will use reasonable efforts to not, and to ensure that its Affiliates do not (i) sell, assign, transfer, convey, deliver or otherwise divest its interests in any of the Retained Agreements to a Third Party in a manner that adversely affects, or would reasonably be expected to adversely affect, Sublicensee's rights or obligations under this Agreement or Sublicensee's ability to Commercialize the Licensed Progeria Product.").

[33] Hercz Decl. ¶ 17.

[34] Hercz Decl. ¶ 18. Contrary to the Liquidating Trustee's assertion [Docket No. 777 ¶ 13], Sentynl understood the importance of Lonza in the manufacturing of Zokinvy and began negotiating an MSA with Lonza in the third quarter of 2024. *See* **Exhibits 2 and 3** to the Appendix.

[35] Hercz Decl. ¶ 19.

[36] Hercz Decl. ¶ 20.

Appendix as **Exhibit 4**. Sentynl was blindsided by the Settlement Agreement, which was signed the same week that Co-Counsel to the Official Committee of Equity Security Holders of Eiger BioPharmaceuticals, Inc., *et al*. advised Sentynl that assignment was not imminent.[37]

11. Sentynl is not a party to the Settlement Agreement, nor is Sentynl a third-party beneficiary under the Settlement Agreement. Eiger Inno understands Sentynl does not agree to its terms.[38] The Settlement Agreement purports to resolve Sentynl's concerns regarding the exclusivity clause by requiring Eiger Inno (not Lonza directly) to supply Sentynl with the materials necessary to manufacture and supply Zokinvy.[39] However, by preventing Lonza from directly supplying Sentynl, this arrangement positions Eiger Inno as an unnecessary intermediary, with ample opportunity to exert leverage over Sentynl, which materially and adversely impacts Sentynl's ability to Commercialize Zokinvy.[40] Lonza refuses to transfer any materials, data, information, or know-how to Sentynl, or to enter into any direct contract with Sentynl, without an agreement with all parties.[41] Additionally, Eiger Inno does not have the capability to act as an intermediary in the manufacturing process because it does not meet the regulatory requirements necessary for it to do so.[42]

12. Notwithstanding the assignment of the Lonza Bend MSA to Eiger Inno, Sentynl owns or has rights to Required Data and Information in Lonza' possession,[43] which Sentynl

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37 Hercz Decl. ¶ 21. An email from counsel for the Liquidating Trustee confirms that Sentynl was indeed blindsided by the Settlement Agreement. *See* **Exhibit 5** to the Appendix.

38 Hercz Decl. ¶ 22.

39 Hercz Decl. ¶ 23.

40 Hercz Decl. ¶ 24.

41 Hercz Decl. ¶ 25.

42 Hercz Decl. ¶ 26.

43 Lonza and Corden each possess some or all of the following data and information related to Zokinvy: (i) executed batch records from all lots that are not expired; (ii) stability data (protocols, reports, raw lab data); (iii) product specific quality events (deviations, change controls, out-of-specifications, corrective and preventive actions); (iv) process validation protocols and reports; (v) method validation protocols and reports; (vi) control strategy

(. . . footnote continued on following page . . .)

acquired under the Zokinvy APA.[44] Sentynl must receive the Required Data and Information from Lonza in order to Commercialize Zokinvy, meet its regulatory obligations, and ensure that there are no product quality issues that could affect patients.[45] In order for Sentynl to meet its regulatory obligations with respect to materials that were manufactured or processed by Lonza, Sentynl also needs to enter into a customary quality agreement with Lonza.[46] Attached to the Appendix as **Exhibit 6** is a list of the various documents that comprise Required Data and Information, with details regarding the category of information, the type of document, an explanation as to why it is required and an explanation as to when it is required, in each case with respect to Sentynl's ability to manufacture and Commercialize Zokinvy and to meet its regulatory obligations with respect to Zokinvy.

C. Eiger Inno's Interference with Sentynl's Regulatory Obligations

13. Corden is a contract development and manufacturing organization that has historically manufactured the API used in Zokinvy.[47] Eiger Bio contracted with Corden for such manufacturing services related to Zokinvy.[48] 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

(critical process parameters and critical quality attributes development); (vii) method development protocols and reports; (viii) process development protocols and reports; and (ix) annual product reports (collectively, the "Required Data and Information").

44 *See, e.g.*, Sublicense Agreement Sections 2.1 (License Grant), 3.2 (Transition Activities), 3.5 (Transfer of Regulatory Information), 5.1 (Regulatory Filings Transfer), 7.2 (Transfer of Manufacturing Technology), and 15.12 (Further Actions).

45 Hercz Decl. ¶ 27.

46 Hercz Decl. ¶ 28.

47 Hercz Decl. ¶ 29.

48 Hercz Decl. ¶ 30.

to progeria patients.[49] Instead, like the Lonza Bend MSA, Corden agreements were assigned to Eiger Inno.[50] As with the Lonza Bend MSA, the Corden agreements were classified as "Retained Agreements" under the Zokinvy APA, which as noted above are contracts that were not to be assigned if such assignment is or reasonably could be adverse to Sentynl's ability to manufacture and Commercialize Zokinvy.[51] Notwithstanding the assignment of the Corden agreements to Eiger Inno, Sentynl owns or has rights to Required Data and Information in Corden's possession, which Sentynl acquired under the Zokinvy APA.[52] Sentynl must receive the Required Data and Information from Corden to Commercialize Zokinvy and meet its regulatory obligations.[53] In order for Sentynl to meet its regulatory obligations with respect to materials that were manufactured or processed by Corden, Sentynl also needs to enter into a customary quality agreement with Corden to obtain Lonafarnib-specific audit rights necessary to ensure the products manufactured in compliance with Good Manufacturing Practices (GMP) requirements.[54] The various documents that comprise Required Data and Information that Sentynl believes are or should be in Corden's possession are included in the list attached to the Appendix as **Exhibit 6**.

14. In mid-December 2024, Sentynl's Director of Technical Operations requested batch records from Corden to meet regulatory requirements and other commercial purposes.[55] On December 23, 2024, Corden's Sr. Director, Sales & Key Account Management, in response to

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[49] Hercz Decl. ¶ 31. As with Lonza, Sentynl immediately understood the importance of Corden in the manufacturing of Zokinvy and began negotiating an MSA with Corden in the third quarter of 2024. The first version of the draft Commercial Manufacturing and Supply Services Agreement between Sentynl and Corden was dated September 18, 2024, though the draft is not attached due to Corden's "confidential" designation.

[50] Hercz Decl. ¶ 32.

[51] Hercz Decl. ¶ 33.

[52] *See, e.g.*, Sublicense Agreement Sections 2.1 (License Grant), 3.2 (Transition Activities), 3.5 (Transfer of Regulatory Information), 5.1 (Regulatory Filings Transfer), 7.2 (Transfer of Manufacturing Technology), and 15.12 (Further Actions).

[53] Hercz Decl. ¶ 34.

[54] Hercz Decl. ¶ 35.

[55] Hercz Decl. ¶ 36.

such request, directed the Sentynl representative to "speak first with Eiger InnoTherapeutics," even though Sentynl owns or has rights to that data held by Corden.[56] That same day Sentynl's General Counsel responded and noted that Corden and Sentynl have been working together since at least October 2024 on a master services agreement to cover services rendered by Corden on behalf of Sentynl.[57] Sentynl also noted that the batch records requested are for drug substance lots previously manufactured and actively being used in clinical and commercial Zokinvy finished drug product batches, which were purchased pursuant to the Zokinvy APA.[58] Corden replied that "it has become known to Corden that the Master Services Agreement from Eiger had been assigned to Eiger InnoTherapeutics. Calls with respective counsel may be required to sort out a contractual path forward but in meantime talking to [Eiger Inno] should be your starting point."[59] Corden later emphasized its position, more forcefully, that it would not directly engage with Sentynl, not even to enter a confidential disclosure agreement that would allow Sentynl to share the documents necessary to prove Sentynl's rights to the data.[60] Further, Corden refuses to release any of Sentynl's Transferred Inventory until evidence is shown to them that conclusively proves Sentynl's ownership.[61]

15. The Corden MSA assigned to Eiger Inno does not contain an exclusivity provision that would prevent Corden from having direct discussions with Sentynl and ultimately having a direct contractual relationship with Sentynl.[62] To Sentynl's knowledge, Corden has not entered a

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56 Hercz Decl. ¶ 37.

57 Hercz Decl. ¶ 38.

58 Hercz Decl. ¶ 39.

59 *See* **Exhibit 7** to the Appendix.

60 *See* **Exhibit 8** to the Appendix.

61 *See* **Exhibit 8** to the Appendix.

62 That certain Master Services Agreement between Eiger BioPharmaceuticals, Merck Sharpe & Dohme Corporation, and CordenPhama Colorado. Corden's organizational name on file with the Delaware Secretary of State has a space between "Corden" and "Pharma," however it is the same entity that entered the foregoing Master Services Agreement.

new Corden MSA with Eiger Inno containing an exclusivity provision.[63] However, Corden stopped negotiating a direct master services agreement with Sentynl to manufacture the API required to Commercialize Zokinvy.[64] In other words, no manufacturing of the API for the Zokinvy product is currently underway to replenish the existing inventory of API that is currently being consumed, which places the continuous supply of product to progeria patients at risk.[65]

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.[66] Despite some effort by the Liquidating Trustee, little to no progress has been made.[67] Corden still refuses to negotiate directly with Sentynl with respect to a master services agreement with Sentynl, presumably at the request or instruction of Eiger Inno.[68] This obstruction has serious consequences, including preventing Sentynl from meeting regulatory requirements, ensuring product quality, maintaining an uninterrupted supply of drug product, and ultimately safeguarding progeria patients.[69]

D. Potential Double-Sale of Existing Inventory of Raw Materials

17. Complicating matters further, the Lonafarnib APA purports to retain quantities of certain "Reference Material" that were previously purchased by Sentynl under the Zokinvy APA. Reference material is a manufacturing term of art.[70] Reference material is used to test against new

63 Hercz Decl. ¶ 40.
64 Hercz Decl. ¶ 41.
65 Hercz Decl. ¶ 42.
66 Hercz Decl. ¶ 43.
67 Hercz Decl. ¶ 44.
68 Hercz Decl. ¶ 45.
69 Hercz Decl. ¶ 46.
70 Hercz Decl. ¶ 47.

materials to ensure that a manufacturing process produced the desired properties in new materials.[71] Testing against new materials is required for API and SDD to satisfy certain regulatory requirements, and to safeguard product quality and patient safety.[72]

18. The Lonafarnib Sale Order states that the Lonafarnib APA is attached as Exhibit A, but it is not. The Lonafarnib APA filed at Docket No. 490-1 includes certain Inventory (as defined therein) among the Transferred Assets (as defined therein) transferred from Eiger Bio to Eiger Inno under the Lonafarnib APA. The Inventory includes certain Raw Materials and Inventory listed in Schedule 2.1(h) of the Lonafarnib APA. Schedule 2.1(h) was not filed on the docket and is attached to the Appendix as **Exhibit 9**. The two rightmost columns under Raw Materials in Schedule 2.1(h) are labeled "Retained by Eiger (Grams) as reference materials" and "Transferred to Zokinvy Buyer (Grams)." Rows 3-12 under Raw Materials in Schedule 2.1(h) specify Reference Material in the possession of Corden. Rows 13-14 under Raw Materials in Schedule 2.1(h) specify Reference Material in the possession of Lonza.

19. The Zokinvy Sale Order defines Transferred Inventory by reference to the Sublicense Agreement.[73] Schedule 3.3(a) of the Sublicense Agreement, attached to the Appendix as **Exhibit 10**, list Transferred Inventory in two categories: Finished Goods and Raw Materials. Under the Raw Materials category, there is no reference to any retained materials, and the amounts of Raw Materials specified in Schedule 3.3(a) to the Sublicense Agreement under the Zokinvy APA are equal to the sum of the two rightmost columns under Raw Materials specified in Schedule 2.1(h) to the Lonafarnib APA . In other words, the Reference Materials purported to be transferred

[71] Hercz Decl. ¶ 48.

[72] Hercz Decl. ¶ 49.

[73] Docket No. 162 at 68 of 112.

to Eiger Inno are inaccurate and purport to transfer materials to Eiger Inno that were already sold to Sentynl "free and clear."[74]

20. For avoidance of doubt, Sentynl does not seek to hinder Eiger Inno in its efforts to attempt to develop and commercialize its pre-commercialization Lonafarnib for the Hepatitis Delta Virus (HDV) product and is willing to work with Eiger Inno in order to provide small quantities of Reference Materials to Eiger Inno.[75] However, Eiger Inno cannot, now or in the future, use any claimed but inaccurate rights to the Reference Material, which was acquired by Sentynl "free and clear," as a basis to interfere with Sentynl's rights to Commercialize Zokinvy.

RELIEF REQUESTED

21. Eiger Inno has already demonstrated a willingness to withhold critical pharmacovigilance data reporting and database access in violation of Sentynl's rights under the Sublicense Agreement.[76] In doing so, Eiger Inno, knowingly endangered the safety of progeria patients and prevented ongoing patient side effects from being reported.[77] Worse still, one of the managing partners of Eiger Inno, Leen Kawas, during two separate phone calls with Sentynl, tacitly threatened to withhold pharmacovigilance data for the specific purpose of exerting leverage in negotiations.[78] These actions cast an unwelcome shadow over the "Bambi" image this Court envisioned at the first day hearing.[79] Although – after countless hours of wholly unnecessary

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74 Hercz Decl. ¶ 50.

75 Hercz Decl. ¶ 51.

76 *See Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 729] at paragraphs 11-15.

77 Hercz Decl. ¶ 52.

78 Hercz Decl. ¶ 53

79 Has there ever been more of a Bambi in Chapter 11? And I don't mean to be . . . flippant, but let me be honest. We used to have a judge in this District, God rest his soul, he's been gone, and he used to be very suspicious of every debtor and ask a lot of tough questions. And another judge said to him once, you're always suspicious. But sometimes the debtor is Bambi. And, you know, I would say very rarely do we have a Chapter 11 debtor who's Bambi. But this may be it.

Transcript of April 3, 2024 Hearing on First Day Motions at 144:20-145:5 [Docket No. 108].

negotiation – this pharmacovigilance data issue appears to have been resolved, the Lonza exclusivity issue, the Corden Transferred Inventory issue, and the Corden and Lonza data and future manufacturing issues have not.[80]

22. Given Eiger Inno's conduct to date, the Court should foreclose any possibility of Eiger Inno undermining or circumventing the Zokinvy Sale Order by ultimately controlling the output of Zokinvy though its intermediary positions with Lonza and Corden or by preventing Sentynl from fulfilling the regulatory obligations necessary to safely deliver existing batches of Zokinvy to progeria patients. Accordingly, Sentynl respectfully requests a "comfort order" for Lonza and Corden, substantially in the form attached hereto as **Exhibit A**, prohibiting Eiger Inno from challenging rights to the Transferred Inventory purchased by Sentynl "free and clear" under the Zokinvy APA; enabling a direct supplier relationship between Sentynl and Lonza; enabling a direct supplier relationship between Sentynl and Corden; permitting Corden and Lonza each to manage Sentynl's Transferred Inventory at Sentynl's sole direction; permitting Corden and Lonza each to transfer the Required Data and Information to Sentynl free from interference by Eiger Inno; permitting Corden and Lonza each to enter into any customary commercial agreements necessary for Sentynl to meet its regulatory obligations with respect to Zokinvy (such as a quality agreement); permitting Corden and Lonza each to freely negotiate an MSA with Sentynl regardless of any MSA with Eiger Inno; and safeguarding both the short term and long term stability of the supply of Zokinvy.

23. Sentynl also requests the Court to order Eiger Inno to show cause why its actions do not violate the Zokinvy Sale order, and in the absence of such showing, award compensatory monetary sanctions against Eiger Inno.

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[80] Hercz Decl. ¶ 54.

JURISDICTION

24. The Court has inherent jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and retained jurisdiction under the Zokinvy Sale Order.[81]

BASIS FOR RELIEF

A. This Court's Authority to Enforce the Zokinvy Sale Order Is Without Question

25. Section 105(a) of the Bankruptcy Code provides in relevant part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Fifth Circuit interprets section 105(a) liberally. *See Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995) (citing *Momentum Mfg. Corp. v. Emp. Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir.1994)).

26. There is abundant authority supporting the proposition that a bankruptcy court has inherent core authority under section 105(a) to enforce its own orders, including confirmation orders and sale orders.[82]

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[81] This Court retained jurisdiction to enforce and Sentynl has standing to seek to enforce the terms of the Zokinvy Sale Order, Zokinvy APA, and Transaction Documents. *See* Zokinvy Sale Order ¶¶ 33-34.

[82] *See, e.g., Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.)*, 419 F.3d83, 97 (2d Cir. 2005) ("Bankruptcy courts retain jurisdiction to enforce and interpret their own orders") (citing *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230(2d Cir. 2002)); *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) ("In our view, [sections 524(a) and 105] authorize a court to impose civil contempt sanctions when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order."); *Rosellini v. U.S. Bankruptcy Court (In re Sanchez)*, 941 F.3d 625, 628 (2d Cir. 2019) ("We therefore hold that bankruptcy courts, like Article III courts, possess inherent sanctioning powers."); *In re Cano*, 410 B.R. 506 (Bankr. S.D. Tex. 2009) ("Courts have used § 105 to remedy violations of confirmed plans. A bankruptcy court's authority under § 105 to enforce its own orders cannot be reasonably questioned."); *In re Palmaz Scientific Inc*., 562 B.R. 331 (Bankr. W.D. Tex. 2016) ("This Court has subject matter jurisdiction to interpret the Plan and determine whether continuation of the Respondent's litigation would violate the Plan, Confirmation Order, and permanent injunction provided therein . . . Further, the Court always has jurisdiction to clarify and enforce its own orders."); *In re Johns Manville Corp*., 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989) (holding that a "bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders in aid of their proper execution"); *In re Cont'l Airlines, Inc*., 236 B.R. 318, 325 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, inter alia, to enforce its confirmation order."); *In re Allegheny Health Educ. & Rsch. Found.*, 383 F.3d 169, 176 (3d Cir. 2004) ("we hold that the bankruptcy court correctly determined that the suit was a core proceeding because it required the court to interpret and give effect to its previous sale orders"); *Travelers Indem. Co. v.*

(. . . footnote continued on following page . . .)

B. The Settlement Agreement Constitutes a Collateral Attack on the Zokinvy Sale Order

27. Parties that did not object to or appeal the Zokinvy Sale Order are not permitted to challenge its terms. *See In re Vista Marketing Grp. Ltd.*, 2014 WL 1330112, at *5 (Bankr. N.D. Ill. Mar. 28, 2014) ("Sale orders, such as this Sale Order, are final, appealable orders, and once the time for appeal has expired, a party to the sale proceeding cannot collaterally attack it.") (citing *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 543 (7th Cir. 2003)); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) (foreclosing the possibility of an after-the-fact attack on a confirmed plan by a party that never objected or appealed).

28. Eiger Inno has participated in and benefited from the proceedings in these bankruptcy cases but did not object to or appeal the Zokinvy Sale Order. Thus, it cannot challenge the terms of the Sublicense Agreement that preclude assignment of the Lonza Bend MSA or the Corden MSA in a manner that adversely affects Sentynl's ability to Commercialize Zokinvy, which it has now done by taking assignment of both and hindering business with each service provider, transactions Sentynl expressly opposed as adverse to is ability to Commercialize Zokinvy.

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"

Bailey, 557 U.S. 137, 151 (2009) ("Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders").

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.

C. <u>The Settlement Agreement Imposes Problematic Obligations on Eiger Inno</u>

30. It does not take an industry expert to recognize the shortcomings of the existing arrangement.

> Inno hereby agrees that, for so long as Inno and/or its affiliates are party to the Lonza (Bend) Contract and Section 2.8 thereof is effective and in force, at Sentynl's request, Inno shall supply Sentynl with bulk finished drug product intermediate containing the Molecule that Lonza (Bend) manufactures for Inno under the Lonza (Bend) Contract (the "Material") solely for use with Zokinvy for the treatment of Progeria, which shall continue to be manufactured in accordance with the terms of the Lonza (Bend) Contract, at Inno's cost of manufacturing the Material plus a reasonable markup to compensate Inno for related overhead (such markup to be consistent with arms-length, market rate markups in the industry for similar supply arrangements), such that Sentynl is in substantially no worse position in obtaining its requirements of the Material for use with Zokinvy for the treatment of Progeria had Sentynl been able to contract directly with Lonza (Bend).

Settlement Agreement at 2.

31. *First*, the Settlement Agreement imposes an obligation on Eiger Inno to supply materials to Sentynl, but only for use with Zokinvy, apparently entitling Eiger Inno to audit the use of materials it supplies to Sentynl. *Second*, to determine the price of the materials sold to Sentynl, Eiger Inno is obligated to conduct an overhead cost analysis and an industry market rate

markup analysis – on a one-of-a-kind material – to tack on to its own costs. *Third*, Eiger Inno is obligated to *somehow* undertake a hypothetical analysis to determine whether Sentynl would be in a substantially worse position than it would be if it could contract directly with Lonza but prescribes no manner for doing so. The Settlement Agreement does not prescribe the manner in which any of these analyses are to be conducted, does not specify who bears the cost for this exercise or how much markup leaves Sentynl in a *substantially* worse position, and does not provide for any involvement from Sentynl in the analysis process. *Fourth*, the Food and Drug Administration (FDA) expects Sentynl, as sponsor of approved and commercialized products, to enter into direct agreements with its contract manufacturing organizations so that it can provide critical oversight and control over production to ensure product quality, efficacy and patient safety. There is no industry-recognized role for a "contract manufacturing organization intermediary," and, moreover, Eiger Inno does not have the quality systems, qualified personnel or infrastructure required to meet Good Manufacturing Practices (GMP) standards for overseeing the manufacture of Lonafarnib API or SDD for commercial use. Thus, Sentynl could not rely on Eiger Inno to conduct all of the necessary regulatory product quality, safety, and efficacy oversight measures, including, but not limited to, oversight of quality control release and stability testing, quality assurance batch record review and batch release, investigation of product quality issues and potential recalls, and regular audits of vendors in the supply chain. What could possibly go wrong?

32. Eiger Inno, were it acting in a commercially reasonable manner, would welcome being relieved of this headache. The simple fact that Eiger Inno would readily agree to accept such obligations immediately and before it has any infrastructure or quality systems whatsoever – instead of simply allowing Sentynl to contract directly with Lonza – should be enough for the Court to infer Eiger Inno's *actual* intent for maintaining its intermediary position.

D. Sentynl Should Be Permitted to Contract Directly with Corden and Lonza

33. Sentynl does not request the Court to nullify the Settlement Agreement, nor does it seek consent rights to any assignment of the Lonza Bend MSA through a modification of the Zokinvy Sale Agreement.[83] The simplest solution to resolve this matter is a narrow injunction prohibiting Eiger Inno from (i) enforcing the exclusivity clause in the Lonza Bend MSA against Lonza and (ii) pursuing or obtaining any agreement that would prevent Corden or Lonza from providing manufacturing services and materials to Sentynl, thus facilitating the ability for direct relationships between Sentynl and Lonza and between Sentynl and Corden to be negotiated among the respective parties and short-circuit this untenable situation.

34. Bankruptcy courts may enter injunctions as may be necessary or appropriate to effectuate or prevent the frustration of orders that it has previously issued, including sale orders.[84] The Court should do so here and prevent Eiger Inno's desire to hamstring Sentynl and frustrate the purpose of this Court's orders and the primary goal of this bankruptcy case, *i.e.*, to protect the quality, safety, and continuity of the long term supply of Zokinvy to progeria patients.

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[83] Under FED. R. CIV. P. 60(b)(6) and FED. R. BANKR. P. 9024, a bankruptcy court may modify its sale order to prevent manifest injustice. *See In re Strudel Holdings LLC*, 656 B.R. 404 (Bankr. S.D. Tex. 2024).

[84] *See, e.g., In re Chiron Equities, LLC*, 552 B.R. 674, 696-97 (Bankr. S.D. Tex. 2016) (enjoining a non-debtor shareholder of chapter 7 debtor limited liability company from prosecuting estate claims that had been sold pursuant to a sale order); *Matter of PFO Glob., Inc*., 26 F.4th 245, 253 (5th Cir. 2022) (bankruptcy court had jurisdiction to pause state court litigation controlled by a prior order); *In re E. Orange Gen. Hosp., Inc*., 587 B.R. 53, 75 (D.N.J. 2018) (affirming bankruptcy court's barring claims against purchaser on motion to enforce sale order); *In re CTE 1 LLC*, No. 19-30256 (VFP), 2024 WL 2349620, at *10 (Bankr. D.N.J. May 21, 2024) (granting motion to enforce sale order and precluding discovery against purchaser on successor liability claims); *In re Old Carco LLC*, 593 B.R. 182, 189 (Bankr. S.D.N.Y. 2018) (barring claims, in part, on grounds that they are enjoined under terms of the sale order); *Cent. W. Virginia Energy Co. v. Wheeling-Pittsburgh Steel Corp.*, 245 Fed. Appx. 415, 426 (6th Cir. 2007) (affirming bankruptcy court enjoinment of creditor from reducing the amount of coal it suppled under assignments).

E. Corden and Lonza Should Turnover the Required Data and Information on an Ongoing Basis Without Any Involvement from Eiger Inno

35. Eiger Inno cannot credibly argue that Sentynl did not acquire the rights to the Required Data and Information under the Zokinvy Sale Order, which provides that "[a]ll Persons that are presently or on the Closing Date may be in possession of some or all of the Transferred Assets are directed to surrender possession of such Transferred Assets to the Purchaser as of the Closing Date."[85] Additionally, the "terms and provisions of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, the Bid Procedures Order, and this Zokinvy Sale Order shall be binding in all respects . . . upon any and all third parties . . . ."[86] Thus, regardless of the assignment of the Corden or Lonza agreements to Eiger Inno, Corden and Lonza are each obligated to deliver the property to which Sentynl is entitled. This obligation is ongoing because new data is generated every time the stability of product already on the market is tested, which continues for years after the product is released for sale. If, at any point, stability fails, Sentynl must investigate and determine the implications to patient safety and, if the product is determined unsafe, issue a recall.

36. Sentynl seeks an order compelling Corden and Lonza to turnover the Required Data and Information – property that it acquired and is entitled to under the Zokinvy APA – without any further interference from Eiger Inno. Ordering the turnover of property acquired pursuant to a bankruptcy court's sale order is an appropriate enforcement mechanism. *See Matter of RE Palm Springs II, L.L.C.,* 106 F.4th 406, 413 (5th Cir. 2024) (affirming bankruptcy court's interpretation and enforcement of sale order through an order for construction company to turnover materials and equipment related to partially completed hotel project). The Court should do so here and

[85] Zokinvy Sale Order ¶ 11.

[86] Zokinvy Sale Order ¶ 22.

prevent Eiger Inno from needlessly jeopardizing the quality and safety of existing batches of API for Zokinvy.

F. Eiger Inno Should Be Ordered to Show Cause Why Its Actions Are Not Violations of the Zokinvy Sale Order

37. Section 105(a) expressly authorizes bankruptcy courts to "issue any order . . . necessary or appropriate to carry out the provisions" of Title 11 or to take any action or make any "determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a); *see also Placid Refining Co. v. Terrebonne Fuel and Lube, Inc.* (*In re Terrebonne Fuel & Lube, Inc.*), 108 F.3d 609, 613 (5th Cir. 1997) (holding that a bankruptcy court has the power under section 105 to issue sanctions, including civil contempt proceedings, in order to carry out the provisions of the Bankruptcy Code). Notably, a finding of bad faith is not required pursuant to 11 U.S.C. § 105, only a finding of violation of a court order.

38. "*Taggart* applies broadly to orders entered in Chapter 11 proceedings . . . ." *In re Fieldwood Energy LLC*, No. 20-33948, 2024 WL 4173048, at *16 (Bankr. S.D. Tex. Sept. 12, 2024) "Under *Taggart*, three elements must be proven for a court to hold a party in contempt: '(1) the party violated a definite and specific order of the court requiring him to . . . refrain from performing . . . particular . . . acts; (2) the party did so with knowledge of the court's order; and (3) there is no fair ground of doubt as to whether the order barred the party's conduct.'" *In re McKinney*, No. 21-50046-RLJ11, 2022 WL 1632156, at *2 (Bankr. N.D. Tex. Apr. 28, 2022) (citing *In re City of Detroit, Mich*., 614 B.R. 255, 265 (Bankr. E.D. Mich. 2020)). "But 'a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable.'" *Id.* at *3 (citing *Taggart v. Lorenzen*, 587

U.S. 554, 561 (2019)). This standard is easily met here for Eiger Inno's violations of the Zokinvy Sale Order.

39. Eiger Inno violated Section 3.7 of the Sublicense Agreement (and therefore violated the Zokinvy Sale Order) by taking assignment of the Lonza MSA. To provide cover, and without any disclosure to Sentynl until the ink was dry, Eiger Inno entered the Settlement Agreement, but the Settlement Agreement is no remedy for this violation of a Court order. Sentynl never consented to and actively opposed any intermediary position for Eiger Inno. Sentynl was deliberately excluded from its negotiation and is not a party to or third-party beneficiary under the Settlement Agreement. There was no principled reason to exclude Sentynl and contrive this indirect contractual arrangement. Rather, the Settlement Agreement confirms Eiger Inno's knowledge of the Zokinvy Sale Order's prohibition and leaves no fair ground of doubt as to whether the Zokinvy Sale Order barred the assignment. The same is true for the assignment of the Corden MSA and whatever actions Eiger Inno has taken to cause Corden to believe that it cannot contract with Sentynl or transfer data directly to Sentynl without Eiger Inno's approval. Accordingly, Eiger Inno should be ordered to show cause why it should not be found in contempt.

G. Sentynl Requests Attorneys' Fees and Costs for Prosecuting Eiger Inno's Violations of the Zokinvy Sale Order

40. If Eiger Inno fails to show that it has not violated this Court's orders, Sentynl is entitled to monetary compensatory sanctions for Eiger Inno's violations of the Zokinvy Sale Order.

> [C]ivil contempt sanctions may not have the primary purpose of punishing the contemnor or vindicating the authority of the court. Rather, they must be remedial, and for the benefit of the complainant.
>
> That means civil contempt sanctions must be calculated either to (1) coerce the contemnor into compliance with a court order or (2) compensate another party for the contemnors violations. . . . . Contempt sanctions imposed for compensatory purposes are civil only if they are based upon evidence of complainants actual loss.

Matter of Highland Capital Mgmt., L.P., 98 F.4th 170, 174–75 (5th Cir. 2024) (citations and quotations omitted, alterations adopted).

41. Here, civil contempt sanctions in the form of attorney's fees and costs for Sentynl are appropriate remedial sanctions against Eiger Inno for months of interference with the manufacture and supply of Zokinvy and rights Sentynl acquired under the Zokinvy Sale Order.

42. Following the resolution of any contempt proceeding, Sentynl is prepared to submit a motion for attorneys' fees and costs to enable the Court to conduct a lodestar analysis or otherwise apply the *Johnson* factors. *See In re Pilgrim's Pride Corp.*, 690 F.3d 650, 656 (5th Cir. 2012) ("[A]fter calculating the lodestar, bankruptcy courts retain[ ] the discretion to adjust the lodestar upwards or downwards to reflect their consideration of the Johnson factors."); *In re Cahill*, 428 F.3d 536, 539 (5th Cir. 2005) ("the bankruptcy court did not abuse its discretion by using the precalculated lodestar amount . . . because it properly applied the . . . Johnson factors to the specific facts of the case, setting forth a reasoned analysis and providing reasons why the lodestar amount did not need to be adjusted"); *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974) ("the novelty and difficulty of the questions" involved in the case is a factor in the determination of a reasonable fee).

RESERVATION OF RIGHTS

43. In filing this Motion, Sentynl does not waive any claims it may have against Eiger Inno or the claim it has asserted against the Debtor's estate in Sentynl's Admin Claim. Sentynl further reserves all rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Motion.

WHEREFORE, Sentynl respectfully requests that this Court grant the relief requested herein and such other and further relief as is just and necessary. A proposed form of order is attached as **Exhibit A** for the Court's use and consideration.

Dated: March 7, 2025

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: */s/ L. James Dickinson*

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Counsel for Sentynl Therapeutics, Inc.

CERTIFICATE OF CONFERENCE

Pursuant to L.B.R. 7007-1(b), I certify that I conferred with David Chen, counsel for Eiger Inno, by telephone on March 7, 2025 regarding the Motion. Eiger Inno disagrees that its actions violated the Zokinvy Sale Order and is opposed to the relief sought in the Motion.

/s/ Joshua D. Morse
Joshua D. Morse

CERTIFICATE OF SERVICE

I certify that, on March 7, 2025, I caused a copy of the foregoing Motion to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas and to be emailed to the following parties.

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/s/ James Dickinson
L. James Dickinson

EXHIBIT A

Proposed Order

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

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

ORDER GRANTING SENTYNL THERAPEUTICS, INC.'S MOTION TO ENFORCE THE ZOKINVY SALE ORDER AND SETTING SHOW CAUSE HEARING

Upon consideration of *Sentynl Therapeutics, Inc.'s Motion (I) to the Enforce Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* (the "Motion"),[2] all objections thereto, all proceedings before the Court, and after due deliberation and sufficient cause appearing therefor, it is hereby:

[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] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

ORDERED that Eiger Inno is prohibited and enjoined from enforcing the Section 2.8 of the Lonza Bend MSA against Lonza or its affiliates or taking any other action that would prevent Lonza or any applicable affiliate from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy; and it is further

ORDERED that Eiger Inno is prohibited and enjoined from pursuing or entering any agreement or taking any other actions that would prevent Corden or any affiliate from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy; and it is further

ORDERED that Eiger Inno is prohibited and enjoined from challenging Sentynl's rights to the existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA in any manner whatsoever, and those rights shall continue until all ongoing regulatory requirements with respect to these inventories have been satisfied; and it is further

ORDERED that Lonza and Corden are each authorized and directed to immediately provide Sentynl data, information, and know-how associated with existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA on an ongoing basis; and it is further

ORDERED that Eiger Inno is prohibited and enjoined from interfering with the turnover of Required Data and Information from Lonza and Corden to Sentynl in any manner whatsoever; and it is further

ORDERED that Eiger Inno shall 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 at a hearing to be held at _____ (CT) on _____, 2025; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

END OF ORDER

EXHIBIT 12

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

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

NOTICE OF HEARING FOR APRIL 15, 2025 SETTING

PLEASE TAKE NOTICE that a hearing has been scheduled for **April 15, 2025 at 9:30 a.m. (prevailing Central Time)** before the Honorable Stacey G. C. Jernigan to consider the following matters:

1. *Liquidating Trustee's and Plan Administrator's Objection to Claims Nos. 83 and 43 Filed by Merck Sharp and Dohme LLC* [Docket No. 771 (redacted); Docket No. 774 (sealed)].

[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); EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Ave., Dallas, Texas 75201.

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2. *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 (redacted); Docket No. 784 (sealed)].

3. *Sentynl Therapeutics, Inc.'s Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* [Docket Nos. 779/781].

PLEASE TAKE FURTHER NOTICE that parties may participate in the hearing either in person or by an audio and video connection.

PLEASE TAKE FURTHER NOTICE that, parties who wish to appear and participate in the Hearing by videoconference may do so via WebEx at the following link:

LINK: https://us-courts.webex.com/meet/jerniga

Desktop or Mobile Application: Meeting Number 2304-154-2638

PLEASE TAKE FURTHER NOTICE that, the WebEx hearing Instructions may be obtained from Judge Jernigan's hearing/calendar site: https://www.txnb.uscourts.gov/judges-info/hearing-dates/chief-judge-jernigans-hearing-dates.

Parties should review the Webex instructions prior to the hearing.

- **Dial-In:** 650.479.3207
- **Access Code:** 2304-154-2638

PLEASE TAKE FURTHER NOTICE that, hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jernigan's homepage: https://www.txnb.uscourts.gov/content/chiefjudge-stacey-g-c-jernigan. Select the case name, complete the required fields and click "Submit" to complete your appearance.

PLEASE TAKE FURTHER NOTICE that, copies of the foregoing pleadings may be obtained (i) at the website established by the Debtors' notice and claims agent, Verita Global f/k/a Kurtzman Carson Consultants LLC, at www.veritaglobal.net/Eiger, (ii) from the Court's website

http://www.txnb.uscourts.gov via ECF/Pacer, or (iii) upon request to the undersigned.

Dated: March 21, 2025

Respectfully submitted,

/s/ S. Margie Venus

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 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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EXHIBIT 13

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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)

EIT PHARMA, INC., FORMERLY KNOWN AS EIGER INNOTHERAPEUTICS, INC.'S EMERGENCY MOTION TO CONFIRM TERMS OF LONAFARNIB/LAMBDA SALE ORDER

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 9:30 AM ON MARCH 31, 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 2155 Park Boulevard, Palo Alto, California 94306.

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EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc., ("EIT"), for its motion (the "Motion")[2] to clarify the terms of the *Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to A Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) and Granting Related Relief* [Docket No. 558] (the "Lonafarnib/Lambda Sale Order"), respectfully represents as follows:

Preliminary Statement

1. This Court's Lonafarnib/Lambda Sale Order approved the sale of the Lonafarnib and Lambda assets free and clear of liens, claims, encumbrances, and other interests to EIT pursuant to the terms of that certain *Asset Purchase Agreement by and Between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024* [Docket No. 490-1] (the "Lonafarnib APA"). The Lonafarnib/Lambda Sale Order also approved the terms of the Lonafarnib APA. As part of the sale, the Debtors assumed and assigned their contracts with third-party vendor Corden Pharma International ("Corden") and other Corden-affiliated entities for, among other things, the provision of certain raw materials, supplies, reference standards, and other components[3] used in the manufacture of Lonafarnib antiviral

[2] Capitalized terms not defined herein have the meaning as defined later in this Motion or in the Lonafarnib APA, as applicable.

[3] While the term "materials" is a pharmaceutical industry-specific term, that term is used herein generally in its ordinary usage to refer to the raw materials, information, data, services, standards, components, supplies, and other matter that EIT purchased under the Lonafarnib APA and which are subject to the terms of the Corden Contracts assigned to EIT. When the industry term of art is used, it will be placed in quotes.

products (the "Corden Contracts")[4] used specifically for the treatment of hepatitis delta virus ("HDV").

2. HDV is a virus that progresses rapidly to cause liver failure and potentially death if the condition is left untreated. Worldwide, 15–20 million people suffer from HDV. EIT is the leading manufacturer of Lonfarnib which, as stated above, is a treatment for HDV. EIT's development of Lonafarnib is currently on track for accelerated approval: EIT plans to submit a new drug application to the FDA and is targeting Lonafarnib's commercial launch in 2026. Lonafarnib would be the first oral and accessible drug for the treatment of millions of HDV patients globally. Because Lonafarnib is the first oral drug with meaningful outcomes for patients with HDV, it is critical that it's approval and launch in 2026 remain on track.

3. As explained further below, EIT clearly purchased the Corden "Inventory" (as such term is defined in section 2.1(h) the Lonafarnib APA and reproduced below). Although the Corden Contracts were assumed and assigned to EIT, Corden has refused to provide EIT the relevant materials critical to its manufacture of Lonfarnib for the treatment of HDV, citing an alleged concern as to whether EIT or Sentynl Therapeutics, Inc. ("Sentynl") are entitled to such materials. Corden's refusal to provide these relevant materials has caused delay in the accelerated timeline for EIT's commercial launch of Lonafarnib.

4. Corden's concern apparently arose due to a recent question as to ownership of 50 grams of certain Corden materials (referred to as "reference materials"), which appear to have been sold twice: first to Sentynl under the Zokinvy APA, and later to EIT. EIT is not requesting any relief related to these 50 grams of "reference materials" as part of this Motion. Rather, EIT does not dispute that the same were in fact sold to Sentynl.

[4] Such Corden affiliated entities include Corden Pharma Colorado and Corden Pharma International GmbH.

5. Instead, this Motion pertains to the remainder of the Inventory sold to EIT as set forth in section 2.1(h) of the Lonafarnib APA. EIT became aware of the double sale on March 7, 2024. As a result, Corden has now stated it will not provide any further materials to EIT, despite the express terms of the Lonafarnib APA, until it obtains an order from this Court that EIT is indeed the party that purchased such Corden materials.

6. Corden's refusal to provide the relevant materials to EIT has delayed EIT's ability to manufacture its life-saving drug for the treatment of HDV which will have a negative impact on patients who currently have no treatment options. The delay is also creating significant commercial damage to EIT.

7. Accordingly, EIT seeks emergency relief from this Court, in the form of an order confirming that the Lonafarnib APA and Lonafarnib/Lambda Sale Order sold and transferred to EIT all of the relevant Inventory held by Corden and assigned the Corden Contracts to EIT.

Jurisdiction

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This Motion presents a core proceeding pursuant to 28 U.S.C. § 157(b).

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

10. The basis for the relief requested herein is section 105(a) of the title 11 of the United States Code (the "Bankruptcy Code"). Further, this Court has jurisdiction to interpret, clarify, and enforce the Lonafarnib/Lambda Sale Order pursuant to its own inherent authority, as well as paragraphs 39 and 40 of the Lonafarnib/Lambda Sale Order.

Background

11. On April 1, 2024, the Debtors filed voluntary chapter 11 cases. The chapter 11 cases are being jointly administered.

12. Through the two separate asset sales, Eiger BioPharmaceuticals, Inc. sold its two indications for a single molecule: (i) the Zokinvy assets—for treatment of Progeria—were sold to

Sentynl, which closed on May 4, 2024; and (ii) certain of the remaining Lonafarnib assets related to the treatment of HDV and the remaining indications were sold to EIT (the "Inno Sale").

13. On April 24, 2024 the Court entered its *Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] (the "Zokinvy Sale Order"), which, among other things, also approved that certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024* (annexed as Exhibit 1 to the Zokinvy Sale Order, as may be amended from time to time in accordance with the Zokinvy Sale Order or further order of the Court, including by the First Amendment to the Zokinvy APA attached to the Zokinvy Sale Order, the "Zokinvy APA").

14. On August 2, 2024, the Debtors filed a *Notice of Cancellation of Auction(s), Designation of Winning Bid for the Lonafarnib Sale Transaction, and Transition to Private Sale Process for Lonafarnib/Lambda Sale Transactions* [Docket No. 489] (the "Lonafarnib/Lambda Sale Notice"), selecting EIT as the highest and best bidder for the Lonafarnib/Lambda Assets. The Lonafarnib Assigned Contracts and Cure Amounts, attached to the Lonfarnib/Lambada Sale Notice as Exhibit A, specifically listed the contracts to be assumed and assigned as part of the Inno Sale (collectively, the "Assigned Contracts"), including the following:

a. The Master Services Agreement dated March 22, 2016 with CordenPharma; and

b. The Commercial Quality Agreement, dated February 19, 2020 with CordenPharma.

Each of the above contracts is referred to as a "Corden Contract" and collectively, referred to as the "Corden Contracts."

15. On August 5, 2024, the Debtors filed their *Emergency Motion for the Entry of an Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens,*

Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief [Docket No. 490] (the "Sale Motion") seeking, among other things, approval of (i) the Inno Sale, (ii) the Lonafarnib APA, and (iii) assumption and assignment of the Assigned Contracts, including the Corden Contracts.

16. On August 21, 2024, the Court entered the Lonafarnib/Lambda Sale Order. Therein, among other things, the Court approved the Inno Sale and the Lonafarnib APA, and enjoined all persons from taking any action that adversely interferes with the sale and transfer of the various assets under the Lonafarnib APA. *See* Lonafarnib/Lambda Sale Order ¶¶ Z, 4, 6, 12, respectively.

17. On September 3, 2024, the Inno Sale closed. *See Notice of Closing of Lonafarnib/Lambda Sale Transactions* [Docket No. 616] (the "Notice of Closing"). The Corden Contracts are specifically listed in the Final Lonafarnib Assigned Contracts List, attached as Exhibit A to the Notice of Closing. The Corden Contracts are marked by an asterisk, designating them as "Existing Manufacturing Contracts."

18. As Existing Manufacturing Contracts, the Lonafarnib APA expressly provides that the Corden Contracts were automatically assigned and transferred to EIT on the "Existing Manufacturing Contract Transfer Date" as follows:

- Section 2.1(a) of the Lonafarnib APA transfers to EIT "all of the rights, title and interests in, to and under" … "the Existing Manufacturing Contracts" which shall occur "… on the applicable Existing Manufacturing Contract Transfer Date automatically..."

- Section 1.1 of the Lonafarnib APA provides that the "Existing Manufacturing Contract Transfer Date" means, with respect to an Existing Manufacturing Contract, "the date that is the ***earlier to occur*** of (a) **November 3, 2024**, (b) the date that [Sentynl] obtains a new

> agreement for substantially the same services as those provided to Seller by the counterparty under such Existing Manufacturing Contract prior to May 3, 2024, and (c) the date Purchaser and [Sentynl] agree to arrangements for the supply of Licensed Progeria Product under the Existing Manufacturing Contracts following the assignment thereof to Purchaser." (emphasis added).

19. The Existing Manufacturing Contract Transfer Date occurred on November 3, 2024 and, thus, the Corden Contracts automatically transferred to EIT on that date.

20. Additionally, Section 2.1(h) of the Lonafarnib APA, which lists the assets to be transferred to EIT (defined as the "Transferred Assets" in section 2.1 of the Lonafarnib APA) specifically and expressly lists the following as "Transferred Assets":

> all right, title and interest in and to (i) any raw materials (including work in process, buffer stock held by vendors, dies and active pharmaceutical ingredients inventory, reference standards and materials, and all components and materials used in the Manufacture of any Lonafarnib Antiviral Product), finished goods and other inventory of all Lonafarnib Antiviral Products in the possession or control of, otherwise held by or on behalf of (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level), or owned by the Seller Group; and (ii) all good and marketable unbroken lots of packaged finished goods inventory of all Lonafarnib Antiviral Product in the possession or control of, or otherwise held by or on behalf of (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level), the Seller Group as of Closing, regardless of where located, and all rights to receive refunds, rebates or credits in connection therewith (for the avoidance of doubt, the Transferred Assets also include all manufactured product, packaging material, compounds and any other similar assets relating to any Lonafarnib Antiviral Product, and any assets that are under manufacture); in each case including the raw materials, reference standards and materials, and inventory listed in Schedule 2.1(h), as may be amended or supplemented at the request of Purchaser at any time prior to the Closing (collectively, "**Inventory**")[.]

Argument

21. The four corners of the Lonafarnib/Lambda Sale Order, the Lonafarnib APA, and the Notice of Closing are clear that the Assigned Contracts—including the Corden Contracts—were assigned to EIT, and that the Corden Inventory was sold to EIT. However, given the double-

sale of the "reference materials" referred to above, Corden has expressed concern about "what was sold to whom" in this case. As result, the Court should make clear to all parties and for all time, that the language in the Lonafarnib/Lambda Sale Order and the Lonafanib APA is clear, and that the assets and contracts listed therein and subject thereto were sold, transferred and assigned to EIT.

22. "It is axiomatic that a court possesses the inherent authority to enforce its own orders." *In re Protarga, Inc.*, 329 B.R. 451, 479 (Bankr. D. Del. 2005) (citing *In re Cont'l Airlines, Inc.*, 236 B.R. 318, 325-26 (Bankr. D. Del. 1999)). Indeed, the bankruptcy court "plainly ha[s] jurisdiction to interpret and enforce its own prior orders." *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009); *see also, e.g., Rodriguez v. EMC Mortg. Corp. (In re Rodriguez)*, No. 00-50657, 2001 WL 360713, at *2 (5th Cir. Mar. 15, 2001) ("When an estate is in administration, a bankruptcy court retains jurisdiction to interpret and enforce its own orders to ensure their proper execution"); *Galaz v. Katona*, No. 5:14-CV-967, 2015 WL 5565266, at *4 (W.D. Tex. Sept. 21, 2015) ("[I]t is well established that a bankruptcy court has jurisdiction to interpret and enforce its own prior orders"); *In re Motors Liquidation Co.*, 513 B.R. 467, 477 (Bankr. S.D.N.Y. 2014) ("And it need hardly be said that I have jurisdiction to interpret and enforce my own orders, just as I've previously done, repeatedly, with respect to the very [s]ale [o]rder here.") (internal citations omitted). Additionally, section 105(a) also provides that a bankruptcy court is authorized to issue any order, process or judgment necessary to carry out the provisions of the Bankruptcy Code, and "gives the bankruptcy court the power and the jurisdiction to enforce its valid orders." *In re Protarga, Inc.*, 329 B.R. at 479 (citations omitted); *see also* 11 U.S.C. § 105(a).

23. Further, even if there were a question about this Court's jurisdiction to entertain the Motion (and there is not), it is a long-standing jurisprudential principle that a federal court does not need an independent basis of jurisdiction to construe or enforce its own prior orders. *See Local*

Loan Co. v. Hunt, 292 U.S. 234, 239 (1934) ("That a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein, is well settled . . . . And this, irrespective of whether the court would have jurisdiction if the proceeding were an original one.") (citations omitted); *see also Baker v. Baker (In re Baker)*, 593 F. App'x 416, 417 (5th Cir. 2015) (citations omitted).

24. Here, the Court is well within its power and jurisdiction to enter an order clarifying and enforcing the Lonafarnib/Lambda Sale Order and the Lonafarnib APA. As set forth above, there is no dispute that pursuant to the terms of the Lonafarnib APA, as approved by the Lonafarnib/Lambda Sale Order, EIT purchased the Inventory, including the Corden Inventory subject to the Corden Contracts. Specifically, EIT purchased and is entitled to all Inventory under the Corden Contracts, including "all right, title and interest in and to (i) any raw materials (including work in process, buffer stock held by vendors, dies and active pharmaceutical ingredients inventory, reference standards and materials, and all components and materials used in the Manufacture of any Lonafarnib Antiviral Product), finished goods and other inventory of all Lonafarnib Antiviral Products in the possession or control of, otherwise held by or on behalf of" the Debtors, as set forth fully in section 2.1(h) of the Lonafarnib APA, but not including those "reference materials" that were previously sold to Sentynl.[5] Other than this 50 grams of "reference materials," the documents are clear that all other pharmaceutical material and inventory, reference standards, and other components used in the manufacture of Lonafarnib Antiviral Product (as fully set forth in Section 2.1(h) of the Lonafarnib APA) were sold, transferred and assigned to EIT.

25. Moreover, there is no dispute that the Corden Contracts were Assigned Contracts which were assumed and assigned to EIT pursuant to the Lonafarnib/Lambda Sale Order.

[5] As set forth previously, EIT disclaims any right to the 50 grams of "reference materials" in light of the prior sale to Sentynl.

Similarly, there can be no dispute that the Corden Contracts, as Existing Manufacturing Contracts, automatically transferred to EIT on November 3, 2024.

WHEREFORE, Inno respectfully requests that the Court enter an order, substantially in the form attached hereto, (i) clarifying the terms of the Lonafarnib/Lambda Sale Order approving the Lonafarnib APA; and (ii) granting such other and further relief as may be just and proper.

Respectfully submitted this 24th day of March, 2025.

GRAY REED

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Certificate of Service

The undersigned hereby certifies that on the 24th day of March, 2025, he caused a true and correct copy of the foregoing document to be served via the Court's CM/ECF system and on the following party via email.

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/s/ Jason S. Brookner
Jason S. Brookner

Exhibit A

Proposed Order

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)

ORDER GRANTING
EIT PHARMA, INC., FORMERLY KNOWN AS
EIGER INNOTHERAPEUTICS, INC.'S EMERGENCY MOTION
TO CONFIRM TERMS OF LONAFARNIB/LAMBDA SALE ORDER

Upon the motion (the "Motion")[2] of EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc. ("EIT"), for entry of an order, (a) confirming the terms of the

[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 2155 Park Boulevard, Palo Alto, California 94306.

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

Lonafarnib/Lambda Sale Order, and (b) granting related relief, all 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 Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that notice of the Motion was appropriate under the circumstances and no other notice need be provided; 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 the terms of the Lonafarnib/Lambda Sale Order and the Lonafarnib APA, EIT purchased all Inventory, as defined in section 2.1(h) of the Lonafarnib APA, which, for clarity and the avoidance of doubt, includes any such inventory in the possession of CordenPharma International that was not previously purchased by Sentynl.

3. The Corden Contracts were assumed, assigned and transferred to EIT pursuant to the Lonafarnib APA and this Court's Lonafarnib/Lambda Sale Order.

4. EIT is authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

5. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order, the Lonafarnib/Lambda Order and the Lonafarnib APA.

END OF ORDER # #

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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)

SENTYNL THERAPEUTICS, INC.'S (I) RESPONSE TO EIT PHARMA, INC., FORMERLY KNOWN AS EIGER INNOTHERAPEUTICS, INC.'S EMERGENCY MOTION TO CONFIRM TERMS OF LONAFARNIB/LAMBDA SALE ORDER AND (II) REQUEST FOR STATUS CONFERENCE PURSUANT TO 11 U.S.C. § 105(d)

[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.

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Sentynl Therapeutics, Inc. ("Sentynl"), objects to the emergency Motion,[2] which is grossly deficient, and should be denied for several reasons. Instead of granting EIT's improper request for declaratory judgment, Sentynl requests a status conference under 11 U.S.C. § 105(d) to avoid unfair advantage or prejudice and provide guidance on scheduling of multiple interrelated, previously-filed motions, namely:

(i) The *Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* ("Admin Claim"),[3] attached as **Exhibit A**;

(ii) *Sentynl Therapeutics, Inc.'s (I) Motion to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* ("Motion to Enforce"),[4] attached as **Exhibit B**; and

(iii) the present Motion.

In support thereof, Sentynl respectfully states as follows:

EMERGENCY CONSIDERATION IS INAPPROPRIATE

1. There was no effort to confer before filing the Motion[5] and no evidentiary basis exists for emergency consideration.[6] The key premises of the Motion are untrue:

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2 *EIT Pharma, Inc., Formerly Known as Eiger InnoTherapeutics, Inc.'s Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order* (the "Motion"). Docket No. 787.

3 Docket No. 729.

4 Docket Nos. 779, 781. Docket Nos. 779 and 781 are identical. However, motions to enforce and motions for contempt must be filed as separate docket entries under ECF requirements.

5 EIT made no attempt to confer on the Motion in violation of the Procedures for Complex Cases in the Northern District of Texas and Local Bankruptcy Rules. Instead, counsel for EIT emailed a statement that "shortly, EIT will be filing a motion to confirm the terms of the sale order and APA as it relates to Corden inventory purchased by EIT." That is not a good faith attempt to confer.

6 The Motion attaches no competent declaration or other evidence and Sentynl objects to evidence when is has not been afforded the opportunity for discovery, as discussed later.

(i) EIT or Eiger Inno[7] is not a "leading manufacturer of Lonafarnib;"[8]

(ii) Lonafarnib is not an FDA-approved "treatment of HDV;"[9]

(iii) Lonafarnib is not a "life-saving drug for the treatment of HDV;"[10]

(iv) Lonafarnib is not the only treatment available to HDV patients, or even an approved treatment;[11] and

(v) EIT confirmed to Sentynl as early as April 2024, that Sentynl acquired all the existing lonafarnib raw materials located with Corden (and Lonza).

2. Unlike EIT, Sentynl requires lonafarnib raw materials to manufacture and sell Zokinvy®, a life-extending drug used to treat patients with Progeria, a pediatric, fatal rare disease, a drug that requires the subject precursors and reference materials soon (lest real world supply chains be disrupted). To procure the required precursors and reference materials, Sentynl filed its Motion to Enforce and began conferring on expedited discovery. Without any attempt to confer, the Motion was filed to undermine *that* contested matter (as well as Sentynl's efforts to collect from the Debtors on account of various breaches of the Zokinvy APA through prosecution of the Admin Claim). Because Sentynl cannot obtain the precursors for Zokinvy® with EIT seeking to frustrate the supply chain (as discussed in the Motion to Enforce and Admin Claim), Sentynl asks

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7 EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc. ("EIT" or "Eiger Inno").

8 Motion ¶ 2. EIT has not manufactured Lonafarnib. EIT has merely acquired contracts from Debtor Eiger BioPharmaceuticals, Inc. ("Eiger Bio").

9 Motion ¶ 2. Lonafarnib is not a treatment for HDV, let alone "a life-saving treatment."[9] Lonafarnib it is not approved by the FDA to treat HDV. It is not the standard of care for treatment of HDV. Sentynl is not aware of any human patient currently being treated with Lonafarnib for HDV. Lonafarnib for HDV will have to clear a "high bar" before it is approved to treat HDV. https://pharmaphorum.com/news/eiger-wields-axe-fda-sets-high-bar-hepatitis-drug.

10 Motion ¶ 6. Lonafarnib is not a life-saving drug for the treatment of HDV. It has not saved any lives. At most, it has the ***potential*** to be a ***treatment*** for HDV if it is ever approved for that purpose

11 Motion ¶ 6.

for a status conference and expedited discovery, lest its real-world human patients be deprived of an FDA-approved life-extending drug.

EVEN IF AN EMERGENCY EXISTED, AN ATTEMPT TO CONFER WOULD LIKELY HAVE RESOLVED THE DOUBLE-SALE ISSUE

3. The Motion is a tactical move to avoid first addressing the pending Motion to Enforce and Admin Claim, by misrepresenting EIT's motives while presenting an ersatz dispute. The "double-sold" reference samples were technically never sold to EIT, because the Debtor could not sell again what it had previously sold to Sentynl. That is apparently conceded by the Motion and was acknowledged long ago in prior negotiations. The entire Motion could stop there. But it does not. Why?

4. As background, Schedule 2.1(h) to the Lonafarnib APA contains two (2) tables, an ***Inventory*** table and a ***Reference Material*** table confirming that the vast majority (if not all) inventory and reference samples were previously sold to Sentynl (the "Zokinvy Buyer" referenced in the column labeled "Transferred to Zokinvy Buyer (Grams)").[12] As explained in paragraphs 17-20 of the Motion to Enforce, the Lonafarnib APA only purports to retain for EIT 50 grams from each of the raw material lots listed in rows 3-12 under the ***Reference Material*** section of Schedule 2.1(h) to the Lonafarnib APA to the extent not previously sold. Turning Schedule 2.1(h) on its head, EIT alleges in the Motion that the only "reference materials" conveyed to Sentynl were "50 grams of 'reference materials,'"[13] which is refuted by the plain language used in Schedule 2.1(h) that the vast majority (if not all) ***Reference Material*** was "**Transferred to Zokinvy Buyer**":

[12] A copy of Schedule 2.1(h) to the Lonafarnib APA is attached hereto as **Exhibit C**.

[13] *See* Motion ¶ 24.

Reference Material

	Raw Material Lot	Current On-hand in kilos	Gram Conversion	Retained by Eiger (Grams) as reference materials	Transferred to Zokinvy Buyer (Grams)
1	LONAFARNIB SDD 29.1 Kg 00-0120 Retest Patheon US Only	29.1	29,100	50	29,050
2	LONAFARNIB SDD 54.9 Kg 00-0332 Retest Patheon Global	54.9	54,900	50	54,850
3	YGK BP1515-LT 91.6 Kg 203002 Retest Corden US Only	91.6	91,600	50	91,550
4	YGK BP1515-LT 120.0 Kg 203003 Retest Corden US Only	120	120,000	50	119,950
5	YGK BP1515-LT 84.3 Kg 222004 Retest Corden Global	84.3	84,300	50	84,250
6	YGK BP1515-LT 118.8 Kg 228005 Retest Corden Global	118.8	118,800	50	118,750
7	GLS BP1515-JJ 18.8 Kg 11693 Retest Corden Global	18.8	18,800	50	18,750
8	GLS BP1515-JJ 9.9 Kg GLS-J-20210201 Retest Corden Global	9.9	9,900	50	9,850
9	GLS BP1515-JJ 59.9 Kg GLS-J-20210201 Retest Corden Global	59.9	59,900	50	59,850
10	GLS BP1515-JJ 300 Kg GLS-J-20221201 10/27/2024 Corden Global	300	300,000	50	299,950
11	BP1515-WA Stage 1 0.6 Kg BO2210B22B Retest Corden Global	0.6	600	50	550
12	BP1515-Y Stage 2 46.6 Kg BO2210B023 Retest Corden Global	46.6	46,600	50	46,550
13	Lonafarnib API 17.9 Kg BO2011B901 Retest Lonza Bend US Only	17.9	17,900	50	17,850

5. Further making mountains of molehills, EIT concedes that the sale order could not sell what had already been sold to Sentynl,[14] as shown in Schedule 3.3(a) to the Zokinvy APA, attached as **Exhibit D**. Likewise, there should be no dispute regarding the ***Inventory*** also in Schedule 2.1(h) to the Lonafarnib APA because those products are in the possession of Patheon, not Corden, as shown in the seventh column under the ***Inventory*** section. Sentynl does not claim to own any other reference material or inventory in Corden's possession other than the materials and inventory specifically acquired pursuant to the Zokinvy APA. The present Motion thus appears to be pretext – generating a non-dispute as a tactical move to secure a seemingly innocuous trojan horse ruling from this Court, which would then be used offensively by EIT in connection with the Motion to Enforce.

THE REQUESTED DECLARATORY RELIEF WOULD CREATE MORE PROBLEMS THAN IT WOULD RESOLVE

6. EIT's request for the Court to "make *clear* to all parties and for all time, that the language in the Lonafarnib/Lambda Sale Order and the Lonafa[r]nib APA is *clear*, and that the assets and contracts listed therein, and subject thereto were sold, transferred and assigned to EIT"[15] is unnecessary, impermissible, and prejudicial. Is this an advisory opinion? A declaratory judgment? An effort to get the Court to read its misleading statement of facts before the Motion to Enforce is filed? What, exactly, would the Court issue to "grant" this relief?

7. The Motion appears to request an advisory opinion if the Court is opining on "making something clear" about what happens if a third party does not deliver on a disputed

[14] *See* Proposed Order Granting Motion ¶ 2 ("Pursuant to the terms of the Lonafarnib/Lambda Sale Order and the Lonafarnib APA, EIT purchased all Inventory, as defined in section 2.1(h) of the Lonafarnib APA, which, for clarity and the avoidance of doubt, includes any such inventory in the possession of CordenPharma International ***that was not previously purchased by Sentynl***.") (emphasis added).

[15] Motion ¶ 21 (emphasis added).

contractual obligation. The Motion appears to request an impermissible declaratory judgment[16] to resolve a declaration of the rights of the parties but not actually enforce an order. The Motion premises these requests on inaccurate facts (*e.g.*, despite what the Motion suggests, lonafarnib is not an approved treatment for HDV). The Lonafarnib APA states it does not convey material already sold to Sentynl, as discussed in Sentynl's Motion to Enforce. EIT appears to concede it does not own the material previously sold. Yet, the existing Motion to Enforce and Admin Claim ***did*** join the critical issues between the parties – frustration of the Zokinvy® supply chain. Accordingly, this Court should deny the request but hold a status hearing on the supply chain motion – the Motion to Enforce.

REQUEST FOR STATUS CONFERENCE

8. In contrast to the Motion, Sentynl and EIT have made repeated efforts to confer on discovery, on timing, and the relevant disputes under the Motion to Enforce. The parties seek a timeline for discovery deadlines, conferences, and an evidentiary hearing on the Sentynl's Motion to Enforce (and even a mediation). The parties made progress on a timeline, and the Court "shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case." 11 U.S.C. § 105(d).

9. As the Motion requests relief before 9:30 a.m. on March 31, 2025, and given the interrelatedness of the Admin Claim and Motion to Enforce (which could reduce the amounts claimed by Sentynl under the Admin Claim), and the present Motion, a status conference should be held in lieu of, or at least before, any hearing on the Motion. At the status conference, the parties must confer at least one day ***before*** that conference and submit an agreed plan. At the status conference, the Court can then provide guidance on this dispute.

[16] A declaratory judgment requires an adversary proceeding, if the Court has jurisdiction and does not abstain. FED. R. BANKR. P. 7001(9).

RESERVATION OF RIGHTS

10. Because this was filed suddenly and without conferring Sentynl must reserve claims and rights against any person and the right to supplement or correct this Response.

Dated: March 25, 2025

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

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CERTIFICATE OF SERVICE

I certify that, on March 25, 2025, I caused a copy of the foregoing Motion to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas and to be emailed to the following parties.

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

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

MOTION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM OF SENTYNL THERAPEUTICS, INC.

Sentynl Therapeutics, Inc. ("Sentynl"), submits its *Motion for Allowance of Administrative Expense Claim* (the "Motion"), and in support thereof would respectfully show the Court as follows:

[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.

PRELIMINARY STATEMENT

1. On April 24, 2024, this Court approved Sentynl's purchase of Zokinvy – the only known life extending treatment for progeria, a rare and fatal genetic condition – for $45,200,000.[2] As a condition to closing of the Zokinvy Asset Purchase Agreement,[3] the parties executed and delivered the Sublicense Agreement.[4] Debtor Eiger Biopharmaceuticals, Inc. ("Eiger Bio"), is in the process of breaching the Sublicense Agreement and effectively preventing Sentynl from manufacturing the drug and fulfilling its regulatory obligations, which could lead to Sentynl's inability to deliver Zokinvy to patients who depend on it to extend their lives. To make matters worse, the breach is for the apparent benefit of non-debtor Eiger InnoTherapeutics, Inc. ("Eiger Inno"), the purchaser of the estate's remaining Lonafarnib Assets and Lambda Assets and an entity being run by one of Eiger Bio's former founding members.[5]

2. As a result of Eiger Bio's post-petition breach, Sentynl is entitled to an allowed administrative expense up to the amount of the Zokinvy Purchase Price.[6]

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[2] *See Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] ("Zokinvy Sale Order").

[3] That certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order ("Zokinvy Asset Purchase Agreement").

[4] That certain *Sublicense Agreement, dated as of the Closing Date, by and among Purchaser and the Seller*, substantially in the form attached to the Zokinvy Asset Purchase Agreement as Exhibit E [filed under seal pursuant to order at Docket No. 188].

[5] The manufacturing and regulatory issues described below arose shortly after Eiger Inno's acquisition closed on September 3, 2024 but several months after Sentynl's acquisition closed on May 3, 2024 and Sentynl initiated discussions with Lonza and IQVIA. *See Notice of Closing of Lonafarnib/Lamba Sale Transaction* [Docket No. 616]; *Notice of Closing of Zokinvy Sale Transaction* [Docket No. 214].

[6] Separately, the Liquidating Trust has acknowledged and recognized the estate's commitment to satisfy up to an amount of $3,161,245 in connection with the payment of a rebate claim owing to the French government. Such acknowledgment and agreement obviates the need for Sentynl to include such amount in the calculation of its administrative expense claim requested herein.

JURISDICTION

3. 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 and the order of referral of the United States District Court for the Northern District of Texas. This matter is a core proceeding pursuant to 28 U.S.C. §157, and this Court may enter a final order consistent with Article II of the United States Constitution.

BACKGROUND[7]

A. Lonza Bend MSA

4. Bend Research, Inc., a Lonza Company ("Lonza Bend"), provides spray dried dispersion services that are critical to the manufacturing process for the Zokinvy product. The services occur in the middle of the manufacturing process and supply chain for the Zokinvy product and are thus critical to supply of the product. Sentynl does not have any previously existing relationship with Lonza Bend, nor has Sentynl identified an alternative service provider for such services.

5. During the negotiation of the acquisition of the Zokinvy Assets, Sentynl requested Eiger Bio to assign to Sentynl certain key manufacturing and supply agreements, such as the *Commercial Manufacturing Services and Supply Agreement with Lonza Bend, dated October 9, 2019* (the "Lonza Bend MSA"). Eiger Bio informed Sentynl on multiple occasions that Eiger Bio could not assign the Lonza Bend MSA and certain other contracts to Sentynl because Eiger Bio needed to retain them to be able to facilitate a sale of the remaining Lonafarnib Assets.

[7] The Motion was intentionally expedited by agreement with the Liquidating Trustee. Copies of the underlying documentation and communications are available to interested parties. In advance of any hearing on the Motion, Sentynl will supplement the record with all evidentiary documentation of the facts referenced herein.

6. Under the Sublicense Agreement, Eiger Bio agreed that certain agreements, including the Lonza Bend MSA were, "Retained Agreements," which are subject to special treatment. Importantly, Eiger Bio is obligated to use reasonable efforts not to assign the Lonza Bend Agreement in a manner that adversely affects Sentynl's rights under the Sublicense Agreement or ability to "Commercialize" Zokinvy.[8] Additionally, Eiger Bio has represented and warranted to Sentynl that the Lonza Bend MSA, as one of the "Retained Agreements," was one of the agreements necessary for the manufacture and commercialization of Zokinvy.[9]

7. In connection with Eiger Bio's proposed sale of the remaining Lonafarnib Assets to Eiger Inno, Sentynl learned that Eiger Bio agreed to assign many contracts to Eiger Inno that Eiger Bio had told Sentynl were not assignable or would not be assigned. One of those contracts was the Lonza Bend MSA. Sentynl informed Eiger Bio that it wanted those agreements assigned to Sentynl, given the prior communications from Eiger Bio that those agreements were not assignable or were not going to be assigned and given their critical importance to Sentynl's ability to manufacture and commercialize Zokinvy, but Eiger Bio and Eiger Inno refused that request.

8. Sentynl has sought to negotiate a new contract with Lonza Bend, using its best reasonable efforts, as contemplated by the Zokinvy Asset Purchase Agreement. Despite initial engagement and exchange of draft agreements, Lonza Bend has delayed negotiations, which Sentynl is informed and believes is likely the result of an intervention by or on behalf of Eiger Inno.

9. Importantly, the Lonza Bend MSA is scheduled to be formally assigned to Eiger Inno in early November 2024 (on the six month anniversary of the closing of the Zokinvy Asset

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[8] *See* Section 3.7 of the Sublicense Agreement.

[9] *See* Sections 11.2(j) and 11.2(w) of the Sublicense Agreement.

Purchase Agreement). The Lonza Bend MSA contains an exclusivity clause in Section 2.8 that provides Lonza Bend will not manufacture or supply the product to or for any other person other than Customer (soon to be Eiger Inno). If the Lonza Bend MSA is assigned to Eiger Inno, Sentynl is informed and believes that Eiger Inno may attempt to enforce that exclusivity clause to the detriment of Sentynl and those impacted with progeria who rely on a continuous supply of therapy.

10. If Eiger Bio proceeds with assigning the Lonza Bend MSA to Eiger Inno with the exclusivity provision in place or with any other provisions that are adverse to Sentynl, then Eiger Bio will be in breach of its covenants and obligations to Sentynl under the Zokinvy Asset Purchase Agreement.

B. Regulatory Obligations

11. Zokinvy's status as a commercial progeria therapeutic, approved by the FDA, MHRA, EMA, Japan, and Israel, places significant and important regulatory filing obligations on Sentynl, including the operation and maintenance of the global safety database, and periodic reporting obligations under such as Development Safety Update Reports ("DSUR"), the next of which is due to regulatory authorities on November 29, 2024.

12. Pursuant to the Zokinvy Asset Purchase Agreement and the Sublicense Agreement, Sentynl has acquired and/or licensed from Eiger Bio all data and "Regulatory Information" necessary for Sentynl to commercialize Zokinvy.

13. To aid in the process of transferring from Eiger Bio to Sentynl the data from the global safety database and ensure that the upcoming DSUR filing is timely made, the Liquidating Trustee engaged Rich Franco as a consultant to coordinate among Eiger Bio, Eiger Inno and Sentynl for the preparation of the upcoming DSUR filing and other related coordination efforts. Eiger Bio, Eiger Inno, and Sentynl met on October 15, 2024 to allocate responsibilities for certain

safety data elements of the DSUR to representatives of the three companies. Mr. Franco agreed to receive and compile data elements from each group for the next DSUR.

14. The next morning, Mr. Franco communicated to Sentynl that he was unable to fulfill those responsibilities because Leen Kawas, Managing General Partner of an investor in Eiger Inno, complained to the Liquidating Trustee and demanded that Eiger Inno be in charge of pharmacovigilance matters, such as the DSUR, because Eiger Inno had assumed contracts with IQVIA, which is a third party that has provided services related to the maintenance and use of the global safety database for Zokinvy. This demand was made even though the marketing authorization of Zokinvy from the European Union had not formally transferred yet from Eiger Bio to Sentynl, and so Eiger Bio was technically responsible for the filing at the time. The marketing authorization of Zokinvy has since transferred to Sentynl and as a result Sentynl is now the official holder of marketing authorization of Zokinvy from the European Union and has the corresponding regulatory obligations. However, due to what Sentynl is informed and believes to be Eiger Inno's problematic engagement to date, Sentynl will not be able to meet its upcoming regulatory obligations unless Eiger Inno cooperates with Sentynl and Eiger Bio as previously proposed and Eiger Inno does not attempt to prevent IQVIA from transferring the applicable data from the global safety database to Sentynl. As discussed above, Sentynl acquired rights to that data and "Regulatory Information," and it should be transferred to Sentynl under the terms of the Zokinvy Asset Purchase Agreement.

15. Additionally, Eiger Bio has failed to fulfill obligations under the transaction documents in regard to safety databases and pharmacovigilance. For example, Eiger Bio is obligated to transfer to Sentynl all relevant information sufficient for Sentynl to comply with its obligations to regulatory authorities and investigators regarding adverse events that have been

observed during any clinical trials conducted with the Licensed Progeria Product or Licensed Product prior to the Effective Date. The agreements also invest Sentynl with the responsibility for maintaining a safety database for the Licensed Progeria Product.[10] The parties are also obligated to enter into a separate written pharmacovigilance agreement with respect to the Licensed Progeria Products and other Licensed Products to enable the parties to fulfill their respective regulatory reporting obligations. Finally, Eiger Bio is obligated to perform specific transition activity services related to pharmacovigilance scheduled for the benefit of Sentynl.

BASIS FOR RELIEF

16. Section 503(b)(1)(A) of the Bankruptcy Code provides, in relevant part, that "[a]fter notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under Section 502(f) of this title, including . . . the actual, necessary costs and expenses of preserving the estate . . . ." The claimant seeking administrative expenses bears the burden of proof. *Toma Steel Supply, Inc. v. TransAmerican Nat. Gas Corp. (In re TransAmerican Nat. Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir. 1992).

17. "[T]o qualify as an 'actual and necessary cost' under section 503(b)(1)(A), a claim against the estate must have arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate." *Matter of Whistler Energy II, L.L.C.*, 931 F.3d 432, 441 (5th Cir. 2019) (quoting *Total Minatome Corp. v. Jack/Wade Drilling, Inc. (In re Jack/Wade Drilling, Inc.)*, 258 F.3d 385, 387 (5th Cir. 2001)). The benefit does not, however, "have to be substantial" to qualify. *See In re Women First Healthcare, Inc*., 332 B.R. 115, 121 (Bankr. D. Del. 2005).

[10] *See* Section 5.3(c) and Schedule 5.3(c) of the Sublicense Agreement.

18. Breach of a post-petition agreement may give rise to an administrative expense claim. *See In re Finevest Foods, Inc*., 159 B.R. 972, 981 (Bankr. M.D. Fla. 1993) ("The Court finds that debtor breached the warranty contained in § 4.1.7(a) of the asset purchase agreement and that claimant is entitled to an administrative expense claim in the amount of $306,223.00."); *In re Wildwood Villages, LLC*, 2022 Bankr. LEXIS 1466 (Bankr. M.D. Fla. Jan. 21, 2022) (debtor developer's post-petition breach of a covenant to provide recreational facilities gave rise to an administrative claim).

19. "The claimant bears the burden of proving by a preponderance of the evidence that its claim qualifies as an administrative expense." *In re Krisu Hosp., LLC*, No. 19-20347-rlj11, 2021 Bankr. LEXIS 788, at *10 (Bankr. N.D. Tex. Mar. 26, 2021) (quoting *In re Acis Cap. Mgmt., L.P.*, 604 B.R. 484, 517 (N.D. Tex. 2019)).

20. Here, there can be no credible argument that Eiger Bio's (1) forthcoming assignment of the Lonza Bend MSA to Eiger Inno and (2) acquiescence to Eiger Inno's control of regulatory matters, do not adversely and materially affect Sentynl's rights under the Sublicense Agreement and its ability to commercialize Zokinvy and fulfill its regulatory obligations. Such actions constitute material breaches of the Zokinvy Asset Purchase Agreement and Sublicence Agreement by Eiger Bio and are compensable as an administrative expense. Because these breaches frustrate the entire purpose of the Zokinvy Asset Purchase Agreement and Sublicense Agreement and continued production and therefore commercialization of Zokinvy, the most important goal of this entire bankruptcy case to ensure patients with progeria can continue to receive treatment, Sentynl should be allowed an administrative expense in an amount up to the Zokinvy Purchase Price.

RESERVATION OF RIGHTS

21. In filing this Motion, Sentynl does not waive any claims it may have against Eiger Inno.

CONCLUSION

WHEREFORE, Sentynl respectfully requests that this Court enter an order, substantially in the form attached hereto as **Exhibit A**, allowing Sentynl an administrative expense claim against the Debtors' respective estates for in the amount up to the full $45,200,000 paid under the Zokinvy Asset Purchase Agreement and such other and further relief as is just and necessary.

Dated: November 1, 2024

Respectfully submitted,

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Counsel for Sentynl Therapeutics, Inc.

Certificate of Service

I certify that on November 1, 2024, 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.

/s/ L. James Dickinson
L. James Dickinson

EXHIBIT B

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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)
	(Jointly Administered)
Debtors.	

SENTYNL THERAPEUTICS, INC.'S MOTION
(I) TO ENFORCE THE ZOKINVY SALE ORDER AND
(II) FOR CONTEMPT AGAINST EIGER INNOTHERAPEUTICS, INC.

[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.

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TO THE HONORABLE STACEY G. C. JERNIGAN, CHIEF JUDGE OF THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS:

Sentynl Therapeutics, Inc. ("Sentynl"), submits this *Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* (the "Motion"), and respectfully requests entry of an order enforcing the Zokinvy Sale Order[2] by:

(i) enjoining non-debtor Eiger InnoTherapeutics, Inc. (n/k/a EIT Pharma, Inc.) ("Eiger Inno"), from enforcing the exclusivity provision in the Lonza Bend MSA[3] against third-party Lonza[4] (or any affiliate) or taking any other actions that would prevent Lonza (or any applicable affiliate) from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy;

(ii) authorizing and directing third-party Lonza to immediately provide Sentynl data and information, on an ongoing basis, associated with existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA;[5]

(iii) enjoining Eiger Inno from pursuing or entering any agreement or taking any other actions that would prevent third-party Corden Pharma Colorado ("Corden") (or any affiliate) from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy;

(iv) authorizing and directing third-party Corden to immediately provide Sentynl data and information, on an ongoing basis, associated with existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA;

(v) enjoining Eiger Inno from challenging Sentynl's rights to the existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA in any manner whatsoever, which continue until all ongoing regulatory requirements with respect to these inventories have been satisfied;

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2 *Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] ("Zokinvy Sale Order").

3 That certain *Commercial Manufacturing Services and Supply Agreement, by and between Eiger BioPharmaceuticals Inc. and Bend Research, Inc., dated October 9, 2019* (the "Lonza Bend MSA").

4 Bend Research, Inc. ("Lonza").

5 That certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024*, annexed as Exhibit 1 to the Zokinvy Sale Order, and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order ("Zokinvy APA").

(vi) 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; and

(vii) awarding monetary sanctions against Eiger Inno to compensate Sentynl for prosecuting Eiger Inno's contemptible conduct.

In support, Sentynl submits the *Declaration of Michael G. Hercz, Esq. in Support of Sentynl Therapeutics, Inc.'s Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* (the "Hercz Decl."), which is attached as **Exhibit 1** to the Appendix accompanying this Motion and which is incorporated by reference herein, and respectfully represents as follows:

INTRODUCTION

1. Almost a year ago, the Debtors petitioned this Court for relief "for two primary reasons: (1) to ensure stability and continuity in the provision of life-saving drugs for patients, including children, worldwide and (2) to institute a sale process designed to maximize the value of all the Debtors' assets for the benefit of all the Debtors' stakeholders."[6] The events that immediately followed were, by all accounts, of tremendous benefit to those patients and stakeholders. Sentynl purchased the Zokinvy Assets,[7] which fulfilled those goals by providing stability and continuity for progeria patients and $45.2 million to the Debtors' estate. Positive developments for the estate's stakeholders continued when Amylyx Pharmaceuticals, Inc. purchased the Avexitide Assets.[8]

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6 *Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings* [Docket No. 19 ¶ 7].

7 As defined in the Zokinvy Sale Order [Docket No. 162 ¶ 9].

8 *See Order (I) Approving the Sale of the Debtors' Avexitide Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 376].

2. Then, with the benefit of knowing exactly what the Debtors already sold and the rights that Sentynl obtained, Dr. Jeffrey Glenn, a former founder and insider of Debtor Eiger BioPharmaceuticals, Inc. ("Eiger Bio"),[9] formed an entity that was confusingly named Eiger InnoTherapeutics, Inc. (as defined above, "Eiger Inno"),[10] to purchase the Debtor's remaining Lonafarnib Assets.[11] Following entry of the Lonafarnib Sale Order, as previously raised before the Court,[12] non-debtor Eiger Inno proceeded to interfere with Sentynl's rights and disrupt the stability and continuity of Zokinvy.

3. Although the issues in the Sentynl Admin Claim that relate to IQVIA have been resolved generally, the Lonza exclusivity issue remains, new issues relating to materials and services provided by Corden have emerged recently, and efforts to obtain a consensual resolution out-of-court have run their course. Consequently, Sentynl must now turn to the Court as a last resort for relief to prevent Eiger Inno from continuing to deprive Sentynl of its rights, interfere

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[9] Jeffrey S. Glenn, MD, PhD, served as a member of privately-held Eiger BioPharmaceuticals, Inc.'s ("Private Eiger") Board of Directors since his appointment in 2008 until the completion of the Private Eiger's business combination with Celladon Corporation in March 2016, with the surviving entity changing its name to Eiger BioPharmaceuticals, Inc. (the "Merger"). Dr. Glenn, a Professor of Medicine at Stanford University School of Medicine, served on the Board through his resignation on April 1, 2024.

Declaration of Michael Shanahan in Support of Confirmation of the Fourth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 609 ¶ 19.a] (footnote citations omitted).

[10] Eiger Inno was not formed under the *Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and Its Debtor Affiliates*, but the startup appears to be something of a successor to Eiger Bio, benefiting from the goodwill of the Debtors' name, without compensation to the estate. Eiger Inno was formed under Delaware law on or about April 9, 2024. Eiger Inno has since changed its name to EIT Pharma, Inc. Its principal address is 11620 Wilshire Blvd, Ste 350, Los Angeles, CA 90025, the same address as Propel Bio Management LLC, and two of three of Eiger Inno's board members are managing partners at Propel Bio. *See* https://eitpharma.com/; https://www.propelbio.com/propel-team/.

[11] *See Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 558] (the "Lonafarnib Sale Order").

[12] *See Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 729] (the "Sentynl Admin Claim").

with third party relationships necessary to manufacture and commercialize Zokinvy, interfere with Sentynl's ability to meet its regulatory obligations with respect to Zokinvy, and jeopardize the stability and continuity of Sentynl's supply of Zokinvy to progeria patients who depend on it to extend their lives.

BACKGROUND

A. Sentynl's Acquisition of Zokinvy

4. On April 24, 2024, this Court entered the Zokinvy Sale Order finding (i) Sentynl "is a 'good faith purchaser' . . . within the meaning of section 363(m) of the Bankruptcy Code . . . and, as such, is entitled to all the protections afforded thereby;"[13] and (ii) the transaction should be consummated in a manner that will "avoid any disruption to the patients who depend on Zokinvy to treat progeria, a rare and fatal genetic condition that may result from continued uncertainty about the future of the Transferred Assets."[14]

5. The FDA-approved and commercialized Zokinvy product, and the unapproved and pre-commercialization Lonafarnib for Hepatitis Delta Virus ("HDV") product, both use the same the active pharmaceutical ingredient ("API") and Drug Product Intermediate, also referred to as Spray Dried Dispersion ("SDD"), and thus depend upon the same limited set of suppliers for the API and SDD.[15] This supply chain limitation was not an issue for the Debtors, who owned both products, to allocate materials and services.

6. As a condition to closing of the Zokinvy APA, Sentynl and Eiger Bio entered into the Sublicense Agreement.[16] Under the Sublicense Agreement, certain agreements were

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13 *See* Zokinvy Sale Order ¶ R.

14 *See* Zokinvy Sale Order ¶ K.

15 Hercz Decl. ¶ 4.

16 That certain *Sublicense Agreement, dated as of the Closing Date, by and among Purchaser and the Seller*, substantially in the form attached to the Zokinvy APA as Exhibit E [filed under seal pursuant to the order at Docket No. 188] (the "Sublicense Agreement").

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designated as "Retained Agreements" and made subject to special treatment in order to, on the one hand, facilitate the subsequent sale of the Debtors' remaining Lonafarnib Assets, while, on the other hand, protecting Sentynl's ability to manufacture, supply, and "Commercialize"[17] Zokinvy as contemplated in the Zokinvy APA.[18]

7. This delicate balance was struck to allow the Debtors to monetize residual assets for the benefit of their estates, while providing protection to Sentynl against subsequent harm by prohibiting Eiger Bio from assigning the Retained Agreements in a manner that would or reasonably could adversely affect Sentynl's ability to Commercialize Zokinvy and supply patients who depend on it to extend their lives.[19] This balance was necessary because, *inter alia*, Sentynl was informed by Eiger Inno of potential purchasers of the Lonafarnib Assets.[20] Sentynl was specifically advised by Eiger Bio's general counsel of the potential for a third party purchaser to improperly 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."[21] Sentynl even considered bidding on and purchasing the Lonafarnib Assets to eliminate this risk, but at the time Sentynl was satisfied that the Zokinvy Sale Order (and the agreements approved thereunder) provided sufficient protections necessary to prevent such interference.[22] Importantly, despite the fact Sentynl could have acquired the Lonafarnib Assets, Sentynl did not want to acquire the Lonafarnib Assets and then "shelve" the related HDV program, because Sentynl did not think that

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[17] *See* Section 1.6 of the Sublicense Agreement ("'Commercialization' means, with respect to Licensed Product, any and all activities directed to the marketing, promotion, distribution, offering for sale and selling such product, importing and exporting such product for sale, and interacting with Regulatory Authorities regarding the foregoing. Commercialization shall also include Commercialization Studies. 'Commercialize' has a correlative meaning.").

[18] *See* Section 3.7 of the Sublicense Agreement.

[19] Hercz Decl. ¶ 5; Section 3.7 of the Sublicense Agreement.

[20] Hercz Decl. ¶ 6.

[21] Hercz Decl. ¶ 7.

[22] Hercz Decl. ¶ 8.

was fair to HDV patients that could potentially benefit from such a program in the future even if the likelihood of FDA approval is uncertain at this stage.[23] This decision was based on the apparently false assumption that a subsequent purchaser would not violate this Court's orders.[24]

B. Eiger Inno's Interference with Sentynl's Manufacturing of Zokinvy

8. One of the Retained Agreements described above is the Lonza Bend MSA pursuant to which Zokinvy SDD is manufactured.[25] Debtor Eiger Bio represented and warranted to Sentynl that the Lonza Bend MSA is necessary for the manufacture, supply, and Commercialization of Zokinvy,[26] as the services rendered thereunder are not currently available through any other supplier.[27] Importantly, Sentynl cannot transfer SDD manufacturing to another entity without major risk of a supply outage, which would jeopardize progeria patients, and without incurring significant cost.[28] 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.[29] Sentynl cannot both transfer the technology and manufacture for patients in the near term.[30] Moreover, certain data relating to existing inventory of Zokinvy that Sentynl purchased from Eiger Bio under the Zokinvy APA is required to be obtained by Sentynl from Lonza for Sentynl to deliver such medication to patients under applicable regulations.[31] Critical to the relief

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23 Hercz Decl. ¶ 9.

24 Hercz Decl. ¶ 10.

25 Hercz Decl. ¶ 11.

26 *See* Sections 11.2(j) and 11.2(w) of the Sublicense Agreement.

27 Hercz Decl. ¶ 12.

28 Hercz Decl. ¶ 13.

29 Hercz Decl. ¶ 14.

30 Hercz Decl. ¶ 15.

31 Hercz Decl. ¶ 16.

requested herein, the terms of the Sublicense Agreement ***preclude*** assignment of the Lonza Bend MSA in a manner that adversely affects Sentynl's ability to Commercialize Zokinvy.[32]

9. Eiger Inno caused a dispute to arise, which delayed the assignment of the Lonza Bend MSA in connection with the sale of Lonafarnib Assets to Eiger Inno, because the Lonza Bend MSA contains an exclusivity clause in Section 2.8 that provides Lonza will not manufacture or supply the product to or for any person other than "Customer," which is now Eiger Inno.[33] Sentynl attempted, over numerous months, to negotiate an arrangement permitting a direct relationship between Sentynl and Lonza with respect to services and materials required to Commercialize Zokinvy, however, Eiger Inno refused to allow such direct relationship and failed to articulate a justifiable reason for doing so.[34] Unsurprisingly, Lonza is now unwilling to negotiate a direct agreement with Sentynl, although Sentynl believes Lonza would promptly do so to ensure the quality, safety, and continuity of the long term supply of Zokinvy to progeria patients if Lonza had certainty it would not have any liability for breaching the Lonza Bend MSA by engaging with Sentynl.[35]

10. The Lonza Bend MSA was ultimately assigned to Eiger Inno, over Sentynl's strong and consistent protest, pursuant to a surprise settlement agreement between the Liquidating Trustee and Eiger Inno effective December 18, 2024 (the "Settlement Agreement"),[36] attached to the

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[32] *See* Section 3.7 of the Sublicense Agreement ("Eiger will use reasonable efforts to not, and to ensure that its Affiliates do not (i) sell, assign, transfer, convey, deliver or otherwise divest its interests in any of the Retained Agreements to a Third Party in a manner that adversely affects, or would reasonably be expected to adversely affect, Sublicensee's rights or obligations under this Agreement or Sublicensee's ability to Commercialize the Licensed Progeria Product.").

[33] Hercz Decl. ¶ 17.

[34] Hercz Decl. ¶ 18. Contrary to the Liquidating Trustee's assertion [Docket No. 777 ¶ 13], Sentynl understood the importance of Lonza in the manufacturing of Zokinvy and began negotiating an MSA with Lonza in the third quarter of 2024. *See* **Exhibits 2 and 3** to the Appendix.

[35] Hercz Decl. ¶ 19.

[36] Hercz Decl. ¶ 20.

Appendix as **Exhibit 4**. Sentynl was blindsided by the Settlement Agreement, which was signed the same week that Co-Counsel to the Official Committee of Equity Security Holders of Eiger BioPharmaceuticals, Inc., *et al*. advised Sentynl that assignment was not imminent.[37]

11. Sentynl is not a party to the Settlement Agreement, nor is Sentynl a third-party beneficiary under the Settlement Agreement. Eiger Inno understands Sentynl does not agree to its terms.[38] The Settlement Agreement purports to resolve Sentynl's concerns regarding the exclusivity clause by requiring Eiger Inno (not Lonza directly) to supply Sentynl with the materials necessary to manufacture and supply Zokinvy.[39] However, by preventing Lonza from directly supplying Sentynl, this arrangement positions Eiger Inno as an unnecessary intermediary, with ample opportunity to exert leverage over Sentynl, which materially and adversely impacts Sentynl's ability to Commercialize Zokinvy.[40] Lonza refuses to transfer any materials, data, information, or know-how to Sentynl, or to enter into any direct contract with Sentynl, without an agreement with all parties.[41] Additionally, Eiger Inno does not have the capability to act as an intermediary in the manufacturing process because it does not meet the regulatory requirements necessary for it to do so.[42]

12. Notwithstanding the assignment of the Lonza Bend MSA to Eiger Inno, Sentynl owns or has rights to Required Data and Information in Lonza' possession,[43] which Sentynl

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37 Hercz Decl. ¶ 21. An email from counsel for the Liquidating Trustee confirms that Sentynl was indeed blindsided by the Settlement Agreement. *See* **Exhibit 5** to the Appendix.

38 Hercz Decl. ¶ 22.

39 Hercz Decl. ¶ 23.

40 Hercz Decl. ¶ 24.

41 Hercz Decl. ¶ 25.

42 Hercz Decl. ¶ 26.

43 Lonza and Corden each possess some or all of the following data and information related to Zokinvy: (i) executed batch records from all lots that are not expired; (ii) stability data (protocols, reports, raw lab data); (iii) product specific quality events (deviations, change controls, out-of-specifications, corrective and preventive actions); (iv) process validation protocols and reports; (v) method validation protocols and reports; (vi) control strategy

(. . . footnote continued on following page . . .)

acquired under the Zokinvy APA.[44] Sentynl must receive the Required Data and Information from Lonza in order to Commercialize Zokinvy, meet its regulatory obligations, and ensure that there are no product quality issues that could affect patients.[45] In order for Sentynl to meet its regulatory obligations with respect to materials that were manufactured or processed by Lonza, Sentynl also needs to enter into a customary quality agreement with Lonza.[46] Attached to the Appendix as **Exhibit 6** is a list of the various documents that comprise Required Data and Information, with details regarding the category of information, the type of document, an explanation as to why it is required and an explanation as to when it is required, in each case with respect to Sentynl's ability to manufacture and Commercialize Zokinvy and to meet its regulatory obligations with respect to Zokinvy.

C. Eiger Inno's Interference with Sentynl's Regulatory Obligations

13. Corden is a contract development and manufacturing organization that has historically manufactured the API used in Zokinvy.[47] Eiger Bio contracted with Corden for such manufacturing services related to Zokinvy.[48] 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

(critical process parameters and critical quality attributes development); (vii) method development protocols and reports; (viii) process development protocols and reports; and (ix) annual product reports (collectively, the "Required Data and Information").

44 *See, e.g.*, Sublicense Agreement Sections 2.1 (License Grant), 3.2 (Transition Activities), 3.5 (Transfer of Regulatory Information), 5.1 (Regulatory Filings Transfer), 7.2 (Transfer of Manufacturing Technology), and 15.12 (Further Actions).

45 Hercz Decl. ¶ 27.

46 Hercz Decl. ¶ 28.

47 Hercz Decl. ¶ 29.

48 Hercz Decl. ¶ 30.

to progeria patients.[49] Instead, like the Lonza Bend MSA, Corden agreements were assigned to Eiger Inno.[50] As with the Lonza Bend MSA, the Corden agreements were classified as "Retained Agreements" under the Zokinvy APA, which as noted above are contracts that were not to be assigned if such assignment is or reasonably could be adverse to Sentynl's ability to manufacture and Commercialize Zokinvy.[51] Notwithstanding the assignment of the Corden agreements to Eiger Inno, Sentynl owns or has rights to Required Data and Information in Corden's possession, which Sentynl acquired under the Zokinvy APA.[52] Sentynl must receive the Required Data and Information from Corden to Commercialize Zokinvy and meet its regulatory obligations.[53] In order for Sentynl to meet its regulatory obligations with respect to materials that were manufactured or processed by Corden, Sentynl also needs to enter into a customary quality agreement with Corden to obtain Lonafarnib-specific audit rights necessary to ensure the products manufactured in compliance with Good Manufacturing Practices (GMP) requirements.[54] The various documents that comprise Required Data and Information that Sentynl believes are or should be in Corden's possession are included in the list attached to the Appendix as **Exhibit 6**.

14. In mid-December 2024, Sentynl's Director of Technical Operations requested batch records from Corden to meet regulatory requirements and other commercial purposes.[55] On December 23, 2024, Corden's Sr. Director, Sales & Key Account Management, in response to

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[49] Hercz Decl. ¶ 31. As with Lonza, Sentynl immediately understood the importance of Corden in the manufacturing of Zokinvy and began negotiating an MSA with Corden in the third quarter of 2024. The first version of the draft Commercial Manufacturing and Supply Services Agreement between Sentynl and Corden was dated September 18, 2024, though the draft is not attached due to Corden's "confidential" designation.

[50] Hercz Decl. ¶ 32.

[51] Hercz Decl. ¶ 33.

[52] *See, e.g.*, Sublicense Agreement Sections 2.1 (License Grant), 3.2 (Transition Activities), 3.5 (Transfer of Regulatory Information), 5.1 (Regulatory Filings Transfer), 7.2 (Transfer of Manufacturing Technology), and 15.12 (Further Actions).

[53] Hercz Decl. ¶ 34.

[54] Hercz Decl. ¶ 35.

[55] Hercz Decl. ¶ 36.

such request, directed the Sentynl representative to "speak first with Eiger InnoTherapeutics," even though Sentynl owns or has rights to that data held by Corden.[56] That same day Sentynl's General Counsel responded and noted that Corden and Sentynl have been working together since at least October 2024 on a master services agreement to cover services rendered by Corden on behalf of Sentynl.[57] Sentynl also noted that the batch records requested are for drug substance lots previously manufactured and actively being used in clinical and commercial Zokinvy finished drug product batches, which were purchased pursuant to the Zokinvy APA.[58] Corden replied that "it has become known to Corden that the Master Services Agreement from Eiger had been assigned to Eiger InnoTherapeutics. Calls with respective counsel may be required to sort out a contractual path forward but in meantime talking to [Eiger Inno] should be your starting point."[59] Corden later emphasized its position, more forcefully, that it would not directly engage with Sentynl, not even to enter a confidential disclosure agreement that would allow Sentynl to share the documents necessary to prove Sentynl's rights to the data.[60] Further, Corden refuses to release any of Sentynl's Transferred Inventory until evidence is shown to them that conclusively proves Sentynl's ownership.[61]

15. The Corden MSA assigned to Eiger Inno does not contain an exclusivity provision that would prevent Corden from having direct discussions with Sentynl and ultimately having a direct contractual relationship with Sentynl.[62] To Sentynl's knowledge, Corden has not entered a

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56 Hercz Decl. ¶ 37.

57 Hercz Decl. ¶ 38.

58 Hercz Decl. ¶ 39.

59 *See* **Exhibit 7** to the Appendix.

60 *See* **Exhibit 8** to the Appendix.

61 *See* **Exhibit 8** to the Appendix.

62 That certain Master Services Agreement between Eiger BioPharmaceuticals, Merck Sharpe & Dohme Corporation, and CordenPhama Colorado. Corden's organizational name on file with the Delaware Secretary of State has a space between "Corden" and "Pharma," however it is the same entity that entered the foregoing Master Services Agreement.

new Corden MSA with Eiger Inno containing an exclusivity provision.[63] However, Corden stopped negotiating a direct master services agreement with Sentynl to manufacture the API required to Commercialize Zokinvy.[64] In other words, no manufacturing of the API for the Zokinvy product is currently underway to replenish the existing inventory of API that is currently being consumed, which places the continuous supply of product to progeria patients at risk.[65]

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.[66] Despite some effort by the Liquidating Trustee, little to no progress has been made.[67] Corden still refuses to negotiate directly with Sentynl with respect to a master services agreement with Sentynl, presumably at the request or instruction of Eiger Inno.[68] This obstruction has serious consequences, including preventing Sentynl from meeting regulatory requirements, ensuring product quality, maintaining an uninterrupted supply of drug product, and ultimately safeguarding progeria patients.[69]

D. Potential Double-Sale of Existing Inventory of Raw Materials

17. Complicating matters further, the Lonafarnib APA purports to retain quantities of certain "Reference Material" that were previously purchased by Sentynl under the Zokinvy APA. Reference material is a manufacturing term of art.[70] Reference material is used to test against new

63 Hercz Decl. ¶ 40.
64 Hercz Decl. ¶ 41.
65 Hercz Decl. ¶ 42.
66 Hercz Decl. ¶ 43.
67 Hercz Decl. ¶ 44.
68 Hercz Decl. ¶ 45.
69 Hercz Decl. ¶ 46.
70 Hercz Decl. ¶ 47.

materials to ensure that a manufacturing process produced the desired properties in new materials.[71] Testing against new materials is required for API and SDD to satisfy certain regulatory requirements, and to safeguard product quality and patient safety.[72]

18. The Lonafarnib Sale Order states that the Lonafarnib APA is attached as Exhibit A, but it is not. The Lonafarnib APA filed at Docket No. 490-1 includes certain Inventory (as defined therein) among the Transferred Assets (as defined therein) transferred from Eiger Bio to Eiger Inno under the Lonafarnib APA. The Inventory includes certain Raw Materials and Inventory listed in Schedule 2.1(h) of the Lonafarnib APA. Schedule 2.1(h) was not filed on the docket and is attached to the Appendix as **Exhibit 9**. The two rightmost columns under Raw Materials in Schedule 2.1(h) are labeled "Retained by Eiger (Grams) as reference materials" and "Transferred to Zokinvy Buyer (Grams)." Rows 3-12 under Raw Materials in Schedule 2.1(h) specify Reference Material in the possession of Corden. Rows 13-14 under Raw Materials in Schedule 2.1(h) specify Reference Material in the possession of Lonza.

19. The Zokinvy Sale Order defines Transferred Inventory by reference to the Sublicense Agreement.[73] Schedule 3.3(a) of the Sublicense Agreement, attached to the Appendix as **Exhibit 10**, list Transferred Inventory in two categories: Finished Goods and Raw Materials. Under the Raw Materials category, there is no reference to any retained materials, and the amounts of Raw Materials specified in Schedule 3.3(a) to the Sublicense Agreement under the Zokinvy APA are equal to the sum of the two rightmost columns under Raw Materials specified in Schedule 2.1(h) to the Lonafarnib APA . In other words, the Reference Materials purported to be transferred

[71] Hercz Decl. ¶ 48.

[72] Hercz Decl. ¶ 49.

[73] Docket No. 162 at 68 of 112.

to Eiger Inno are inaccurate and purport to transfer materials to Eiger Inno that were already sold to Sentynl "free and clear."[74]

20. For avoidance of doubt, Sentynl does not seek to hinder Eiger Inno in its efforts to attempt to develop and commercialize its pre-commercialization Lonafarnib for the Hepatitis Delta Virus (HDV) product and is willing to work with Eiger Inno in order to provide small quantities of Reference Materials to Eiger Inno.[75] However, Eiger Inno cannot, now or in the future, use any claimed but inaccurate rights to the Reference Material, which was acquired by Sentynl "free and clear," as a basis to interfere with Sentynl's rights to Commercialize Zokinvy.

RELIEF REQUESTED

21. Eiger Inno has already demonstrated a willingness to withhold critical pharmacovigilance data reporting and database access in violation of Sentynl's rights under the Sublicense Agreement.[76] In doing so, Eiger Inno, knowingly endangered the safety of progeria patients and prevented ongoing patient side effects from being reported.[77] Worse still, one of the managing partners of Eiger Inno, Leen Kawas, during two separate phone calls with Sentynl, tacitly threatened to withhold pharmacovigilance data for the specific purpose of exerting leverage in negotiations.[78] These actions cast an unwelcome shadow over the "Bambi" image this Court envisioned at the first day hearing.[79] Although – after countless hours of wholly unnecessary

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74 Hercz Decl. ¶ 50.

75 Hercz Decl. ¶ 51.

76 *See Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 729] at paragraphs 11-15.

77 Hercz Decl. ¶ 52.

78 Hercz Decl. ¶ 53

79 Has there ever been more of a Bambi in Chapter 11? And I don't mean to be . . . flippant, but let me be honest. We used to have a judge in this District, God rest his soul, he's been gone, and he used to be very suspicious of every debtor and ask a lot of tough questions. And another judge said to him once, you're always suspicious. But sometimes the debtor is Bambi. And, you know, I would say very rarely do we have a Chapter 11 debtor who's Bambi. But this may be it.

Transcript of April 3, 2024 Hearing on First Day Motions at 144:20-145:5 [Docket No. 108].

negotiation – this pharmacovigilance data issue appears to have been resolved, the Lonza exclusivity issue, the Corden Transferred Inventory issue, and the Corden and Lonza data and future manufacturing issues have not.[80]

22. Given Eiger Inno's conduct to date, the Court should foreclose any possibility of Eiger Inno undermining or circumventing the Zokinvy Sale Order by ultimately controlling the output of Zokinvy though its intermediary positions with Lonza and Corden or by preventing Sentynl from fulfilling the regulatory obligations necessary to safely deliver existing batches of Zokinvy to progeria patients. Accordingly, Sentynl respectfully requests a "comfort order" for Lonza and Corden, substantially in the form attached hereto as **Exhibit A**, prohibiting Eiger Inno from challenging rights to the Transferred Inventory purchased by Sentynl "free and clear" under the Zokinvy APA; enabling a direct supplier relationship between Sentynl and Lonza; enabling a direct supplier relationship between Sentynl and Corden; permitting Corden and Lonza each to manage Sentynl's Transferred Inventory at Sentynl's sole direction; permitting Corden and Lonza each to transfer the Required Data and Information to Sentynl free from interference by Eiger Inno; permitting Corden and Lonza each to enter into any customary commercial agreements necessary for Sentynl to meet its regulatory obligations with respect to Zokinvy (such as a quality agreement); permitting Corden and Lonza each to freely negotiate an MSA with Sentynl regardless of any MSA with Eiger Inno; and safeguarding both the short term and long term stability of the supply of Zokinvy.

23. Sentynl also requests the Court to order Eiger Inno to show cause why its actions do not violate the Zokinvy Sale order, and in the absence of such showing, award compensatory monetary sanctions against Eiger Inno.

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[80] Hercz Decl. ¶ 54.

JURISDICTION

24. The Court has inherent jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and retained jurisdiction under the Zokinvy Sale Order.[81]

BASIS FOR RELIEF

A. This Court's Authority to Enforce the Zokinvy Sale Order Is Without Question

25. Section 105(a) of the Bankruptcy Code provides in relevant part that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The Fifth Circuit interprets section 105(a) liberally. *See Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746, 760 (5th Cir. 1995) (citing *Momentum Mfg. Corp. v. Emp. Creditors Comm. (In re Momentum Mfg. Corp.)*, 25 F.3d 1132, 1136 (2d Cir.1994)).

26. There is abundant authority supporting the proposition that a bankruptcy court has inherent core authority under section 105(a) to enforce its own orders, including confirmation orders and sale orders.[82]

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[81] This Court retained jurisdiction to enforce and Sentynl has standing to seek to enforce the terms of the Zokinvy Sale Order, Zokinvy APA, and Transaction Documents. *See* Zokinvy Sale Order ¶¶ 33-34.

[82] *See, e.g., Universal Oil Ltd. v. Allfirst Bank (In re Millenium Seacarriers, Inc.)*, 419 F.3d83, 97 (2d Cir. 2005) ("Bankruptcy courts retain jurisdiction to enforce and interpret their own orders") (citing *Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.)*, 304 F.3d 223, 230(2d Cir. 2002)); *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) ("In our view, [sections 524(a) and 105] authorize a court to impose civil contempt sanctions when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order."); *Rosellini v. U.S. Bankruptcy Court (In re Sanchez)*, 941 F.3d 625, 628 (2d Cir. 2019) ("We therefore hold that bankruptcy courts, like Article III courts, possess inherent sanctioning powers."); *In re Cano*, 410 B.R. 506 (Bankr. S.D. Tex. 2009) ("Courts have used § 105 to remedy violations of confirmed plans. A bankruptcy court's authority under § 105 to enforce its own orders cannot be reasonably questioned."); *In re Palmaz Scientific Inc*., 562 B.R. 331 (Bankr. W.D. Tex. 2016) ("This Court has subject matter jurisdiction to interpret the Plan and determine whether continuation of the Respondent's litigation would violate the Plan, Confirmation Order, and permanent injunction provided therein . . . Further, the Court always has jurisdiction to clarify and enforce its own orders."); *In re Johns Manville Corp*., 97 B.R. 174, 180 (Bankr. S.D.N.Y. 1989) (holding that a "bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders in aid of their proper execution"); *In re Cont'l Airlines, Inc*., 236 B.R. 318, 325 (Bankr. D. Del. 1999) ("In the bankruptcy context, courts have specifically, and consistently, held that the bankruptcy court retains jurisdiction, inter alia, to enforce its confirmation order."); *In re Allegheny Health Educ. & Rsch. Found.*, 383 F.3d 169, 176 (3d Cir. 2004) ("we hold that the bankruptcy court correctly determined that the suit was a core proceeding because it required the court to interpret and give effect to its previous sale orders"); *Travelers Indem. Co. v.*

(. . . footnote continued on following page . . .)

B. The Settlement Agreement Constitutes a Collateral Attack on the Zokinvy Sale Order

27. Parties that did not object to or appeal the Zokinvy Sale Order are not permitted to challenge its terms. *See In re Vista Marketing Grp. Ltd.*, 2014 WL 1330112, at *5 (Bankr. N.D. Ill. Mar. 28, 2014) ("Sale orders, such as this Sale Order, are final, appealable orders, and once the time for appeal has expired, a party to the sale proceeding cannot collaterally attack it.") (citing *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 543 (7th Cir. 2003)); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) (foreclosing the possibility of an after-the-fact attack on a confirmed plan by a party that never objected or appealed).

28. Eiger Inno has participated in and benefited from the proceedings in these bankruptcy cases but did not object to or appeal the Zokinvy Sale Order. Thus, it cannot challenge the terms of the Sublicense Agreement that preclude assignment of the Lonza Bend MSA or the Corden MSA in a manner that adversely affects Sentynl's ability to Commercialize Zokinvy, which it has now done by taking assignment of both and hindering business with each service provider, transactions Sentynl expressly opposed as adverse to is ability to Commercialize Zokinvy.

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"

Bailey, 557 U.S. 137, 151 (2009) ("Bankruptcy Court plainly had jurisdiction to interpret and enforce its own prior orders").

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.

C. <u>The Settlement Agreement Imposes Problematic Obligations on Eiger Inno</u>

30. It does not take an industry expert to recognize the shortcomings of the existing arrangement.

> Inno hereby agrees that, for so long as Inno and/or its affiliates are party to the Lonza (Bend) Contract and Section 2.8 thereof is effective and in force, at Sentynl's request, Inno shall supply Sentynl with bulk finished drug product intermediate containing the Molecule that Lonza (Bend) manufactures for Inno under the Lonza (Bend) Contract (the "Material") solely for use with Zokinvy for the treatment of Progeria, which shall continue to be manufactured in accordance with the terms of the Lonza (Bend) Contract, at Inno's cost of manufacturing the Material plus a reasonable markup to compensate Inno for related overhead (such markup to be consistent with arms-length, market rate markups in the industry for similar supply arrangements), such that Sentynl is in substantially no worse position in obtaining its requirements of the Material for use with Zokinvy for the treatment of Progeria had Sentynl been able to contract directly with Lonza (Bend).

Settlement Agreement at 2.

31. *First*, the Settlement Agreement imposes an obligation on Eiger Inno to supply materials to Sentynl, but only for use with Zokinvy, apparently entitling Eiger Inno to audit the use of materials it supplies to Sentynl. *Second*, to determine the price of the materials sold to Sentynl, Eiger Inno is obligated to conduct an overhead cost analysis and an industry market rate

markup analysis – on a one-of-a-kind material – to tack on to its own costs. *Third*, Eiger Inno is obligated to *somehow* undertake a hypothetical analysis to determine whether Sentynl would be in a substantially worse position than it would be if it could contract directly with Lonza but prescribes no manner for doing so. The Settlement Agreement does not prescribe the manner in which any of these analyses are to be conducted, does not specify who bears the cost for this exercise or how much markup leaves Sentynl in a *substantially* worse position, and does not provide for any involvement from Sentynl in the analysis process. *Fourth*, the Food and Drug Administration (FDA) expects Sentynl, as sponsor of approved and commercialized products, to enter into direct agreements with its contract manufacturing organizations so that it can provide critical oversight and control over production to ensure product quality, efficacy and patient safety. There is no industry-recognized role for a "contract manufacturing organization intermediary," and, moreover, Eiger Inno does not have the quality systems, qualified personnel or infrastructure required to meet Good Manufacturing Practices (GMP) standards for overseeing the manufacture of Lonafarnib API or SDD for commercial use. Thus, Sentynl could not rely on Eiger Inno to conduct all of the necessary regulatory product quality, safety, and efficacy oversight measures, including, but not limited to, oversight of quality control release and stability testing, quality assurance batch record review and batch release, investigation of product quality issues and potential recalls, and regular audits of vendors in the supply chain. What could possibly go wrong?

32. Eiger Inno, were it acting in a commercially reasonable manner, would welcome being relieved of this headache. The simple fact that Eiger Inno would readily agree to accept such obligations immediately and before it has any infrastructure or quality systems whatsoever – instead of simply allowing Sentynl to contract directly with Lonza – should be enough for the Court to infer Eiger Inno's *actual* intent for maintaining its intermediary position.

D. Sentynl Should Be Permitted to Contract Directly with Corden and Lonza

33. Sentynl does not request the Court to nullify the Settlement Agreement, nor does it seek consent rights to any assignment of the Lonza Bend MSA through a modification of the Zokinvy Sale Agreement.[83] The simplest solution to resolve this matter is a narrow injunction prohibiting Eiger Inno from (i) enforcing the exclusivity clause in the Lonza Bend MSA against Lonza and (ii) pursuing or obtaining any agreement that would prevent Corden or Lonza from providing manufacturing services and materials to Sentynl, thus facilitating the ability for direct relationships between Sentynl and Lonza and between Sentynl and Corden to be negotiated among the respective parties and short-circuit this untenable situation.

34. Bankruptcy courts may enter injunctions as may be necessary or appropriate to effectuate or prevent the frustration of orders that it has previously issued, including sale orders.[84] The Court should do so here and prevent Eiger Inno's desire to hamstring Sentynl and frustrate the purpose of this Court's orders and the primary goal of this bankruptcy case, *i.e.*, to protect the quality, safety, and continuity of the long term supply of Zokinvy to progeria patients.

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[83] Under FED. R. CIV. P. 60(b)(6) and FED. R. BANKR. P. 9024, a bankruptcy court may modify its sale order to prevent manifest injustice. *See In re Strudel Holdings LLC*, 656 B.R. 404 (Bankr. S.D. Tex. 2024).

[84] *See, e.g., In re Chiron Equities, LLC*, 552 B.R. 674, 696-97 (Bankr. S.D. Tex. 2016) (enjoining a non-debtor shareholder of chapter 7 debtor limited liability company from prosecuting estate claims that had been sold pursuant to a sale order); *Matter of PFO Glob., Inc*., 26 F.4th 245, 253 (5th Cir. 2022) (bankruptcy court had jurisdiction to pause state court litigation controlled by a prior order); *In re E. Orange Gen. Hosp., Inc*., 587 B.R. 53, 75 (D.N.J. 2018) (affirming bankruptcy court's barring claims against purchaser on motion to enforce sale order); *In re CTE 1 LLC*, No. 19-30256 (VFP), 2024 WL 2349620, at *10 (Bankr. D.N.J. May 21, 2024) (granting motion to enforce sale order and precluding discovery against purchaser on successor liability claims); *In re Old Carco LLC*, 593 B.R. 182, 189 (Bankr. S.D.N.Y. 2018) (barring claims, in part, on grounds that they are enjoined under terms of the sale order); *Cent. W. Virginia Energy Co. v. Wheeling-Pittsburgh Steel Corp.*, 245 Fed. Appx. 415, 426 (6th Cir. 2007) (affirming bankruptcy court enjoinment of creditor from reducing the amount of coal it suppled under assignments).

E. Corden and Lonza Should Turnover the Required Data and Information on an Ongoing Basis Without Any Involvement from Eiger Inno

35. Eiger Inno cannot credibly argue that Sentynl did not acquire the rights to the Required Data and Information under the Zokinvy Sale Order, which provides that "[a]ll Persons that are presently or on the Closing Date may be in possession of some or all of the Transferred Assets are directed to surrender possession of such Transferred Assets to the Purchaser as of the Closing Date."[85] Additionally, the "terms and provisions of the Amended Zokinvy Stalking Horse APA, the Transaction Documents, the Bid Procedures Order, and this Zokinvy Sale Order shall be binding in all respects . . . upon any and all third parties . . . ."[86] Thus, regardless of the assignment of the Corden or Lonza agreements to Eiger Inno, Corden and Lonza are each obligated to deliver the property to which Sentynl is entitled. This obligation is ongoing because new data is generated every time the stability of product already on the market is tested, which continues for years after the product is released for sale. If, at any point, stability fails, Sentynl must investigate and determine the implications to patient safety and, if the product is determined unsafe, issue a recall.

36. Sentynl seeks an order compelling Corden and Lonza to turnover the Required Data and Information – property that it acquired and is entitled to under the Zokinvy APA – without any further interference from Eiger Inno. Ordering the turnover of property acquired pursuant to a bankruptcy court's sale order is an appropriate enforcement mechanism. *See Matter of RE Palm Springs II, L.L.C.,* 106 F.4th 406, 413 (5th Cir. 2024) (affirming bankruptcy court's interpretation and enforcement of sale order through an order for construction company to turnover materials and equipment related to partially completed hotel project). The Court should do so here and

[85] Zokinvy Sale Order ¶ 11.

[86] Zokinvy Sale Order ¶ 22.

prevent Eiger Inno from needlessly jeopardizing the quality and safety of existing batches of API for Zokinvy.

F. <u>Eiger Inno Should Be Ordered to Show Cause Why Its Actions Are Not Violations of the Zokinvy Sale Order</u>

37. Section 105(a) expressly authorizes bankruptcy courts to "issue any order . . . necessary or appropriate to carry out the provisions" of Title 11 or to take any action or make any "determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a); *see also Placid Refining Co. v. Terrebonne Fuel and Lube, Inc.* (*In re Terrebonne Fuel & Lube, Inc.*), 108 F.3d 609, 613 (5th Cir. 1997) (holding that a bankruptcy court has the power under section 105 to issue sanctions, including civil contempt proceedings, in order to carry out the provisions of the Bankruptcy Code). Notably, a finding of bad faith is not required pursuant to 11 U.S.C. § 105, only a finding of violation of a court order.

38. "*Taggart* applies broadly to orders entered in Chapter 11 proceedings . . . ." *In re Fieldwood Energy LLC*, No. 20-33948, 2024 WL 4173048, at *16 (Bankr. S.D. Tex. Sept. 12, 2024) "Under *Taggart*, three elements must be proven for a court to hold a party in contempt: '(1) the party violated a definite and specific order of the court requiring him to . . . refrain from performing . . . particular . . . acts; (2) the party did so with knowledge of the court's order; and (3) there is no fair ground of doubt as to whether the order barred the party's conduct.'" *In re McKinney*, No. 21-50046-RLJ11, 2022 WL 1632156, at *2 (Bankr. N.D. Tex. Apr. 28, 2022) (citing *In re City of Detroit, Mich*., 614 B.R. 255, 265 (Bankr. E.D. Mich. 2020)). "But 'a party's subjective belief that she was complying with an order ordinarily will not insulate her from civil contempt if that belief was objectively unreasonable.'" *Id.* at *3 (citing *Taggart v. Lorenzen*, 587

U.S. 554, 561 (2019)). This standard is easily met here for Eiger Inno's violations of the Zokinvy Sale Order.

39. Eiger Inno violated Section 3.7 of the Sublicense Agreement (and therefore violated the Zokinvy Sale Order) by taking assignment of the Lonza MSA. To provide cover, and without any disclosure to Sentynl until the ink was dry, Eiger Inno entered the Settlement Agreement, but the Settlement Agreement is no remedy for this violation of a Court order. Sentynl never consented to and actively opposed any intermediary position for Eiger Inno. Sentynl was deliberately excluded from its negotiation and is not a party to or third-party beneficiary under the Settlement Agreement. There was no principled reason to exclude Sentynl and contrive this indirect contractual arrangement. Rather, the Settlement Agreement confirms Eiger Inno's knowledge of the Zokinvy Sale Order's prohibition and leaves no fair ground of doubt as to whether the Zokinvy Sale Order barred the assignment. The same is true for the assignment of the Corden MSA and whatever actions Eiger Inno has taken to cause Corden to believe that it cannot contract with Sentynl or transfer data directly to Sentynl without Eiger Inno's approval. Accordingly, Eiger Inno should be ordered to show cause why it should not be found in contempt.

G. Sentynl Requests Attorneys' Fees and Costs for Prosecuting Eiger Inno's Violations of the Zokinvy Sale Order

40. If Eiger Inno fails to show that it has not violated this Court's orders, Sentynl is entitled to monetary compensatory sanctions for Eiger Inno's violations of the Zokinvy Sale Order.

> [C]ivil contempt sanctions may not have the primary purpose of punishing the contemnor or vindicating the authority of the court. Rather, they must be remedial, and for the benefit of the complainant.
>
> That means civil contempt sanctions must be calculated either to (1) coerce the contemnor into compliance with a court order or (2) compensate another party for the contemnors violations. . . . . Contempt sanctions imposed for compensatory purposes are civil only if they are based upon evidence of complainants actual loss.

Matter of Highland Capital Mgmt., L.P., 98 F.4th 170, 174–75 (5th Cir. 2024) (citations and quotations omitted, alterations adopted).

41. Here, civil contempt sanctions in the form of attorney's fees and costs for Sentynl are appropriate remedial sanctions against Eiger Inno for months of interference with the manufacture and supply of Zokinvy and rights Sentynl acquired under the Zokinvy Sale Order.

42. Following the resolution of any contempt proceeding, Sentynl is prepared to submit a motion for attorneys' fees and costs to enable the Court to conduct a lodestar analysis or otherwise apply the *Johnson* factors. *See In re Pilgrim's Pride Corp.*, 690 F.3d 650, 656 (5th Cir. 2012) ("[A]fter calculating the lodestar, bankruptcy courts retain[ ] the discretion to adjust the lodestar upwards or downwards to reflect their consideration of the Johnson factors."); *In re Cahill*, 428 F.3d 536, 539 (5th Cir. 2005) ("the bankruptcy court did not abuse its discretion by using the precalculated lodestar amount . . . because it properly applied the . . . Johnson factors to the specific facts of the case, setting forth a reasoned analysis and providing reasons why the lodestar amount did not need to be adjusted"); *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974) ("the novelty and difficulty of the questions" involved in the case is a factor in the determination of a reasonable fee).

RESERVATION OF RIGHTS

43. In filing this Motion, Sentynl does not waive any claims it may have against Eiger Inno or the claim it has asserted against the Debtor's estate in Sentynl's Admin Claim. Sentynl further reserves all rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Motion.

WHEREFORE, Sentynl respectfully requests that this Court grant the relief requested herein and such other and further relief as is just and necessary. A proposed form of order is attached as **Exhibit A** for the Court's use and consideration.

Dated: March 7, 2025

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: */s/ L. James Dickinson*

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Counsel for Sentynl Therapeutics, Inc.

CERTIFICATE OF CONFERENCE

Pursuant to L.B.R. 7007-1(b), I certify that I conferred with David Chen, counsel for Eiger Inno, by telephone on March 7, 2025 regarding the Motion. Eiger Inno disagrees that its actions violated the Zokinvy Sale Order and is opposed to the relief sought in the Motion.

/s/ Joshua D. Morse
Joshua D. Morse

CERTIFICATE OF SERVICE

I certify that, on March 7, 2025, I caused a copy of the foregoing Motion to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas and to be emailed to the following parties.

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/s/ James Dickinson
L. James Dickinson

EXHIBIT A

Proposed Order

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

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

ORDER GRANTING SENTYNL THERAPEUTICS, INC.'S MOTION TO ENFORCE THE ZOKINVY SALE ORDER AND SETTING SHOW CAUSE HEARING

Upon consideration of *Sentynl Therapeutics, Inc.'s Motion (I) to the Enforce Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* (the "Motion"),[2] all objections thereto, all proceedings before the Court, and after due deliberation and sufficient cause appearing therefor, it is hereby:

[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] Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

ORDERED that Eiger Inno is prohibited and enjoined from enforcing the Section 2.8 of the Lonza Bend MSA against Lonza or its affiliates or taking any other action that would prevent Lonza or any applicable affiliate from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy; and it is further

ORDERED that Eiger Inno is prohibited and enjoined from pursuing or entering any agreement or taking any other actions that would prevent Corden or any affiliate from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy; and it is further

ORDERED that Eiger Inno is prohibited and enjoined from challenging Sentynl's rights to the existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA in any manner whatsoever, and those rights shall continue until all ongoing regulatory requirements with respect to these inventories have been satisfied; and it is further

ORDERED that Lonza and Corden are each authorized and directed to immediately provide Sentynl data, information, and know-how associated with existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA on an ongoing basis; and it is further

ORDERED that Eiger Inno is prohibited and enjoined from interfering with the turnover of Required Data and Information from Lonza and Corden to Sentynl in any manner whatsoever; and it is further

ORDERED that Eiger Inno shall 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 at a hearing to be held at _____ (CT) on _____, 2025; and it is further

ORDERED that this Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

END OF ORDER

EXHIBIT C

Schedule 2.1(h)
Raw Materials and Inventory

Inventory

Use	Description	Quantity	Unit	Lot	Exp Date	Location(s)	Notes:
HDV	SZ 4 WHITEOP CAPSULE Shell	7.2	Kg	7202096	09/28/2026	Patheon	Imprinted "LNF 25" Capsule Shells for 25mg HDV
HDV	SZ 4 WHITEPOX CAPSULE Shell	72.0	Kg	7206089	04/19/2027	Patheon	Imprinted "LNF 25" Capsule Shells for 25mg HDV
HDV	SZ 4 WHITEOP CAPSULE Shell	33.7	Kg	7208817	08/25/2027	Patheon	Imprinted "LNF 25" Capsule Shells for 25mg HDV
HDV	LNF 25MG BULK	71.3	Kg	CNBMK	8/31/2026	Patheon	25mg PPQ1 (~480,000 Capsules)

Reference Material

	Raw Material Lot	Current On-hand in kilos	Gram Conversion	Retained by Eiger (Grams) as reference materials	Transferred to Zokinvy Buyer (Grams)
1	LONAFARNIB SDD 29.1 Kg 00-0120 Retest Patheon US Only	29.1	29,100	50	29,050
2	LONAFARNIB SDD 54.9 Kg 00-0332 Retest Patheon Global	54.9	54,900	50	54,850
3	YGK BP1515-LT 91.6 Kg 203002 Retest Corden US Only	91.6	91,600	50	91,550
4	YGK BP1515-LT 120.0 Kg 203003 Retest Corden US Only	120	120,000	50	119,950
5	YGK BP1515-LT 84.3 Kg 222004 Retest Corden Global	84.3	84,300	50	84,250
6	YGK BP1515-LT 118.8 Kg 228005 Retest Corden Global	118.8	118,800	50	118,750
7	GLS BP1515-JJ 18.8 Kg 11693 Retest Corden Global	18.8	18,800	50	18,750

8	GLS BP1515-JJ 9.9 Kg GLS-J-20210201 Retest Corden Global	9.9	9,900	50	9,850
9	GLS BP1515-JJ 59.9 Kg GLS-J-20210201 Retest Corden Global	59.9	59,900	50	59,850
10	GLS BP1515-JJ 300 Kg GLS-J-20221201 10/27/2024 Corden Global	300	300,000	50	299,950
11	BP1515-WA Stage 1 0.6 Kg BO2210B22B Retest Corden Global	0.6	600	50	550
12	BP1515-Y Stage 2 46.6 Kg BO2210B023 Retest Corden Global	46.6	46,600	50	46,550
13	Lonafarnib API 17.9 Kg BO2011B901 Retest Lonza Bend US Only	17.9	17,900	50	17,850
14	Lonafarnib API 43.1 Kg BO2210B024 2/28/2026 Lonza Bend Global	43.1	43,100	50	43,050

EXHIBIT D

Schedule 3.3(a)

Transferred Inventory

FINISHED GOODS

Description	Quantity	Unit	Lot	Exp Date	Location(s)	Notes:
50mg BS - US/Clin	3355	Ea.	CKFDX	5/31/2027	Patheon	Britestock 30ct - Only for use in Zokinvy US/TR/IL + all Clinical and MAP
50mg BS - US/Clin	237	Ea.	CHHMC	11/30/2025	Patheon	Britestock 30ct - Only for use in Zokinvy US/TR/IL + all Clinical and MAP
75mg BS - US/Clin	1880	Ea.	CKFDY	5/31/2027	Patheon	Britestock 30ct - Only for use in Zokinvy US/TR/IL + all Clinical and MAP
75mg BS - US/Clin	34	Ea.	CHHMD	11/30/2025	Patheon	Britestock 30ct - Only for use in Zokinvy US/TR/IL + all Clinical and MAP
50mg BS Global	3354	Ea.	CSGBG	1/31/2028	Patheon	Britestock 30ct - For global use, all demand types
75mg BS Global	1326	Ea.	CSGBK	1/31/2028	Patheon	Britestock 30ct - For global use, all demand types
Clinical Label 50mg	497	Ea.	Multi	11/30/2025	Fisher+Sciensus+Clinigen	Clinical Label 30ct - For global use Clincial Studies and MAP
Clinical Label 75mg	470	Ea.	Multi	11/30/2025	Fisher+Sciensus+Clinigen	Clinical Label 30ct - For global use Clincial Studies and MAP
US TR IL Zokinvy 50mg	165	Ea.	CKFDZ	11/30/2025	McKesson	US Zokinvy Commercial for use anywhere that accepts the US SKU
US TR IL Zokinvy 75mg	390	Ea.	CKFFB	11/30/2025	McKesson	US Zokinvy Commercial for use anywhere that accepts the US SKU
US TR IL Zokinvy 75mg	73	Ea.	CNCPZ	11/30/2025	McKesson	US Zokinvy Commercial for use anywhere that accepts the US SKU
DE Zokinvy 50mg	49	Ea.	CMXTG	11/30/2024	Sciensus	DE Zokinvy Commercial for use anywhere that accepts the DE SKU
DE Zokinvy 75mg	6	Ea.	CMXTH	11/30/2024	Sciensus	DE Zokinvy Commercial for use anywhere that accepts the DE SKU
DE Zokinvy 50mg	120	Ea.	CSFCY	1/31/2027	Sciensus	DE Zokinvy Commercial for use anywhere that accepts the DE SKU
DE Zokinvy 75mg	120	Ea.	CSFCZ	1/31/2027	Sciensus	DE Zokinvy Commercial for use anywhere that accepts the DE SKU
FR Zokinvy 50mg	120	Ea.	CSDWX	1/31/2027	Sciensus	FR Zokinvy Commercial for use anywhere that accepts the FR SKU
FR Zokinvy 75mg	120	Ea.	CSDXB	1/31/2027	Sciensus	FR Zokinvy Commercial for use anywhere that accepts the FR SKU
UK Zokinvy 50mg	120	Ea.	CSFDB	1/31/2027	Patheon	UK Zokinvy Commercial for use anywhere that accepts the UK SKU
UK Zokinvy 75mg	120	Ea.	CSFDC	1/31/2027	Patheon	UK Zokinvy Commercial for use anywhere that accepts the UK SKU
US Zokinvy 50mg Non-Rev	26	Ea.	CNCPY	11/30/2025	Clinigen	US Zokinvy Commercial for use anywhere that accepts the US SKU
US Zokinvy 50mg Non-Rev	6	Ea.	CGGVC	9/30/2024	Clinigen	US Zokinvy Commercial for use anywhere that accepts the US SKU
US Zokinvy 50mg Non-Rev	150	Ea.	CKFDZ	11/30/2025	Clinigen	US Zokinvy Commercial for use anywhere that accepts the US SKU
US Zokinvy 75mg Non-Rev	147	Ea.	CHSMY	9/30/2024	Clinigen	US Zokinvy Commercial for use anywhere that accepts the US SKU
US Zokinvy 75mg Non-Rev	35	Ea.	CGGVD	9/30/2024	Clinigen	US Zokinvy Commercial for use anywhere that accepts the US SKU

RAW MATERIALS

LONAFARNIB SDD	29.1	Kg	00-0120	Retest	Patheon	US Only
LONAFARNIB SDD	54.9	Kg	00-0332	Retest	Patheon	Global
UK Zokinvy 50mg	120	Ea.	CSFDB	1/31/2027	Patheon	UK Zokinvy Obselete but usable for Transpo Studies
UK Zokinvy 75mg	120	Ea.	CSFDC	1/31/2027	Patheon	UK Zokinvy Obselete but usable for Transpo Studies
YGK BP1515-LT	91.6	Kg	203002	Retest	Corden	US Only
YGK BP1515-LT	120.0	Kg	203003	Retest	Corden	US Only
YGK BP1515-LT	84.3	Kg	222004	Retest	Corden	Global
YGK BP1515-LT	118.8	Kg	228005	Retest	Corden	Global
GLS BP1515-JJ	18.8	Kg	11693	Retest	Corden	Global
GLS BP1515-JJ	9.9	Kg	GLS-J-20210201	Retest	Corden	Global
GLS BP1515-JJ	59.9	Kg	GLS-J-20210201	Retest	Corden	Global
GLS BP1515-JJ	300	Kg	GLS-J-20221201	10/27/2024	Corden	Global
BP1515-WA Stage 1	0.6	Kg	BO2210B22B	Retest	Corden	Global
BP1515-Y Stage 2	46.6	Kg	BO2210B023	Retest	Corden	Global
Lonafarnib API	17.9	Kg	BO2011B901	Retest	Lonza Bend	US Only
Lonafarnib API	43.1	Kg	BO2210B024	2/28/2026	Lonza Bend	Global

Schedule 3.3(b)

Storage Agreements

See Schedule 3.3(a) for locations of transferred materials.

- Master Services Agreement with Clinigen Healthcare Ltd dated April 26, 2018
- Master Services Agreement with Fisher Clinical Services, Inc. dated May 6, 2016 (Retained Agreement per Schedule 3.7)
- Master Manufacturing Services Agreement with Patheon, Inc. dated January 9, 2020 (Retained Agreement per Schedule 3.7)

EXHIBIT 15

Filed Under Seal
unredacted copies will be emailed to the
parties listed on the certificate of service,
and available at the hearing

EXHIBIT 16

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)**

DECLARATION OF JAMES VOLLINS IN SUPPORT OF THE LIQUIDATING TRUSTEE AND THE PLAN ADMINISTRATOR'S LIMITED RESPONSE TO MOTION OF SENTYNL THERAPEUTICS, INC TO (I) ENFORCE THE ZOKINVY SALE ORDER AND (II) FOR CONTEMPT AGAINST EIGER INNOTHERAPEUTICS, INC.

I, James Vollins, pursuant to section 1726 of title 28 of the United States Code, hereby declare that the following is true to the best of my knowledge, information, and belief:

1. I worked as General Counsel, Chief Compliance Officer, and Corporate Secretary of Eiger Biopharmaceuticals, Inc. ("Eiger" or the "Debtors") from April 2023 through September 30, 2024 (the effective date of the Debtors' Plan of Liquidation).

2. While working for Eiger, I was a member of the team managing negotiation and due diligence with Sentynl Therapeutics, Inc. ("Sentynl") concerning the sale of certain assets related to the FDA approved drug Zokinvy (lonafarnib). The Sentynl representatives involved in the negotiations and due diligence included Michael Hercz, Senior Vice President, General Counsel & Chief Compliance Officer.

3. Sentynl's interest in acquiring assets related to Zokinvy pre-dated Eiger's Chapter 11 filing by more than six (6) months. Sentynl and Eiger participated in many months of pre-transaction due diligence. As part of the pre-transaction due diligence process, Eiger shared with

[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.

Sentynl certain manufacturing and quality agreements, including, but not limited to, Eiger's agreements with Lonza Bend Research ("Lonza") and Corden Pharma ("Corden").

4. In connection with the filing for Chapter 11 protection, Eiger evaluated the potential for reorganizing its business around the drug development program evaluating lonafarnib for the treatment of HDV and/or selling assets related to that drug development program to a third party. Given the potential options for the lonafarnib/HDV program, Eiger had a reasonable and material economic interest in retaining certain agreements and/or rights in agreements concerning lonafarnib for HDV. Eiger contracted with several of the same vendors for certain services related to the commercialization and manufacture of Zokinvy (lonafarnib) and lonafarnib for HDV.

5. On March 28, 2024, I emailed draft sublicense schedules to Sentynl's General Counsel, Mr. Hercz, for his review. Draft Schedule 3.7 included the Lonza and Corden contracts as proposed contracts to be "retained" by Eiger. The draft schedule included a drafting note to Sentynl reflecting Eiger's willingness to discuss how rights and obligations under those manufacturing agreements could be assigned or assumed by Sentynl if Sentynl wanted to acquire or assume any of Eiger's rights in those agreements.

> "Note to Sentynl: These/manufacturing storage agreements concern Zokinvy and various development programs. Eiger is open to discussing an optimal manner to assign the portions of the agreements related to Zokinvy, add Sentynl as a party for Zokinvy only, or manage as retained agreement for reasonable period post sale."

6. I understood that Sentynl intended to negotiate new direct contracts with the third party vendors who provided services to Eiger under the "Retained Agreements" and/or new contracts with different manufacturers for substantially the same services after the effective date of the Zokinvy sale transaction.

7. Sentynl agreed that Eiger should manage certain manufacturing agreements, including, but not limited to, Eiger's agreements with Lonza and Corden as "Retained Agreements" until the earlier of the date that Sentynl obtained a new agreement for substantially the same services as those provided by the counterparty under the Retained Agreement or six (6) months from the closing date of the sale transaction.

8. Schedule 3.7 of the final sublicense agreement executed between Eiger and Sentynl identified the Lonza and Corden agreements as "Retained Agreements" that were not purchased or assumed by Sentynl.

9. Sentynl never asked me or to my knowledge anyone else employed at Eiger to amend the Lonza agreements or otherwise waive any exclusivity provision included in that agreement.

10. At no time prior to my last day employed by Eiger (September 30, 2024) did Sentynl notify me or, to my knowledge, anyone else employed at Eiger, that the assignment of the Lonza or Corden agreements to Eiger Innotherapeutics, Inc. ("Inno") would adversely affect, or would reasonably be expected to adversely affect, Sentynl's ability to commercialize Zokinvy.

11. On several occasions, I solicited Sentynl's interest in acquiring Eiger's assets related to lonafarnib for HDV, citing the potential value of the drug under development and the potential positive synergies of Sentynl acquiring all Eiger's assets relative to lonafarnib. I did not advise Sentynl's General Counsel, Mr. Hercz, of the "potential for a third party purchaser to improperly 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'" as is claimed in Sentynl's motion to enforce the sale order and hold Inno in contempt.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.

Dated: March 27, 2025

By: */s/ James Vollins*
James Vollins

EXHIBIT 17

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Counsel for Sentynl Therapeutics, Inc.

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)

SENTYNL THERAPEUTICS INC.'S OMNIBUS EMERGENCY MOTION 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 Avenue, Dallas, Texas 75201.

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

Sentynl Therapeutics, Inc. ("Sentynl")[2] submits this *Omnibus Emergency Motion 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* (the "Motion"). In support thereof, Sentynl respectfully states as follows:

RELIEF REQUESTED & INTRODUCTION

1. Sentynl seeks three forms of relief, all related to its Motion for Allowance[3] or forthcoming reply in support ("Reply"). ***First***, Sentynl requests an order converting the hearing on its Motion for Allowance currently set for April 15, 2025,[4] to a status conference and setting an evidentiary hearing on the Motion for Allowance on or after May 23, 2025. ***Second***, Sentynl requests an order allowing it to exceed LBR 7007-2's 10-page limit for reply briefs. ***Third***, Sentynl

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion for Allowance.

[3] *Motion for Allowance of Administrative Expense Claim* [Docket No. 729] ("Motion for Allowance").

[4] It is unclear whether the Court intends to receive evidence at the April 15, 2025, hearing. The hearing was set by the Liquidation Trustee, whose counsel initially represented to Sentynl in an email that the hearing would be a "***status conference setting***." The Liquidation Trustee's counsel has since backtracked from their earlier position, asserting evidence will be presented at the April 15, 2025, hearing. Sentynl attempted to resolve the dispute and enter into an agreed discovery and hearing schedule with the Liquidating Trustee. The Liquidating Trustee declined.

requests an order authorizing it to file an unredacted version of its Reply and supporting materials, which will contain confidential, commercially sensitive, and trade secret material, under seal.

2. Emergency relief is appropriate. Sentynl's Reply is currently due April 7, 2025. The evidentiary hearing on Sentynl's Motion for Allowance is currently set for April 15, 2025, but discovery is only now commencing. Neither date allows adequate time for a motion on regular notice. If emergency relief is not granted, Sentynl will be prejudiced because:

a. the parties will not have had time to conduct (or have conducted in earnest) adequate discovery;

b. Sentynl will be forced to conduct and defend duplicative discovery and depositions – from EIT[5] and from the Liquidating Trustee[6] – over the same subject;

c. Sentynl will not have sufficient pages to fully and fairly address the Liquidating Trustee's arguments; and

d. without sealing, Sentynl would be forced to omit relevant, but confidential, material in its reply.

3. Sentynl has repeatedly met and conferred with the Liquidating Trustee.[7] The Liquidating Trustee does ***not*** oppose Sentynl's request for additional pages, nor does it oppose Sentynl's request to file the Reply and supporting documents under seal.

4. The Liquidating Trustee has indicated, however, that it ***does*** oppose Sentynl's request to convert the April 15, 2025, evidentiary hearing on the Motion for Allowance to a status

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5 EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc. ("EIT").

6 Dundon Advisers, LLC, as Liquidating Trustee under the confirmed chapter 11 plan.

7 Counsel for Sentynl and the Liquidating Trustee have conferred several times via email, telephone, and videoconference. Sentynl has repeatedly requested the Liquidating Trustee agree to continue the hearing on the Motion for Allowance to: (1) allow time for discovery; and (2) allow for resolution of the Motion to Enforce, which may itself resolve many of the issues in the Motion for Allowance. The Liquidating Trustee has refused, asserting an immediate hearing is necessary so the Liquidating Trustee can make distributions to unsecured creditors and equity holders.

conference and set an evidentiary hearing for a later date. Instead, it requests multiple depositions and thousands of documents in advance of the April 15 hearing.

BACKGROUND

5. Sentynl purchased the right and ability to make the drug Zokinvy® in the Zokinvy Asset Purchase Agreement,[8] but the Liquidating Trustee breached that by making a Settlement Agreement[9] with EIT that unreasonably interferes with the Zokinvy® supply chain. Sentynl was forced to file the Motion for Allowance to protect its rights.

6. On March 7, 2025, the Liquidating Trustee and the Plan Administrator[10] filed an Objection to the Motion for Allowance.[11] According to the Objection, Sentynl's Reply is due April 7, 2025. Also on March 7, 2025, Sentynl filed its related Motion to Enforce[12] the Zokinvy Sale Order.

7. On March 21, 2025, the Liquidating Trustee filed a notice[13] setting a hearing on the Motion for Allowance and the Motion to Enforce[14] for April 15, 2025.

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[8] That certain *Asset Purchase Agreement* by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, dated March 31, 2024 (the "Zokinvy APA"), annexed as Exhibit 1 to the *Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] ("Zokinvy Sale Order"), and as from time to time amended in accordance with the Zokinvy Sale Order or further order of this Court, including by the First Amendment to the Zokinvy Asset Purchase Agreement attached to the Zokinvy Sale Order.

[9] Docket No. 778-5, Exh. E (the "Settlement Agreement").

[10] Gary Broadbent, as plan administrator under the confirmed chapter 11 plan (the "Plan Administrator").

[11] *Objection and Response of the Liquidating Trustee and Plain Administrator to Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* under seal [Docket No. 777] ("the "Objection").

[12] *Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc.* [Docket Nos. 779, 781] (the "Motion to Enforce").

[13] Docket No. 786.

[14] Sentynl filed the Motion to Enforce, which involves a dispute between Sentynl and EIT. Yet the Liquidating Trustee (not Sentynl or EIT) set ***Sentynl's*** Motion to Enforce for hearing ***without*** conferring with Sentynl and without discovery.

8. On March 24, 2025, EIT filed the EIT Emergency Motion,[15] claiming that it bought some unspecified inventory that is not listed as inventory.

9. On March 25, 2025, Sentynl filed its Response to EIT Emergency Motion, opposing the relief sought and requesting a status conference.[16]

10. On March 26, 2025, EIT filed a notice[17] setting a hearing on the EIT Emergency Motion for April 15, 2025.

11. On March 27, 2025, the Liquidating Trustee and Plan Administrator filed their Limited Response[18] to the Motion to Enforce. In the Limited Response, and building off arguments made in the Objection, the Liquidating Trustee and Plan Administrator requested that Sentynl disclose proprietary and confidential information relating to the Zokinvy® supply chain to show how the Zokinvy supply chain has been unreasonably interfered with.[19] That information is also relevant to (indeed core to) the Motion for Allowance.

12. On April 1, 2025, Sentynl and EIT filed a *Joint Stipulation and Agreed Order* setting forth an agreed discovery and briefing schedule for the Motion to Enforce [Docket No. 796] (the "Joint Stipulation").

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[15] *Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order* [Docket No. 787] (the "EIT Emergency Motion").

[16] *(I) Response to EIT Pharma, Inc., Formerly Known as Eiger Innotherapeutics, Inc.'s Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order and (II) Request for Status Conference Pursuant to 11 U.S.C. § 105(d)* [Docket No. 790]

[17] Docket No. 792.

[18] *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.* [Docket No. 793] (the "Limited Response").

[19] "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." Limited Response at 6.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this matter under 28 U.S.C. § 1334 and this is a core proceeding pursuant to 28 U.S.C. § 157(b). Sentynl consents to the Court's entry of a final order on this Motion. Venue is proper under 28 U.S.C. §§ 1408 and 1409 and the relief requested in this motion is predicated on 11 U.S.C. § 105(a) and (d), §107(b), and Bankruptcy Rules 1001, 9018, 9014.

BASIS FOR RELIEF REQUESTED

I. THE COURT SHOULD CONVERT THE APRIL 15, 2025, HEARING ON THE MOTION FOR ALLOWANCE TO A STATUS CONFERENCE AND SET A FUTURE EVIDENTIARY HEARING

14. Section 105 of the Bankruptcy Court provides that the Court "shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case." 11 U.S.C. § 105(d). For at least three reasons, the Court should exercise its authority and discretion to convert the April 15, 2025, hearing on the Motion for Allowance to a status conference and set an evidentiary hearing either: (a) at the same time as the evidentiary hearing on Sentynl's Motion to Enforce; or (b) on a date after the Court has adjudicated (or the parties have resolved) the Motion to Enforce.

15. ***First***, 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. Under Fed. R. Bankr. P. 1001, the Court and all parties should act "to secure the just, speedy, and inexpensive determination of every case and proceeding." The Court gains efficiencies by consolidating discovery and hearing schedules on the two motions. Documents would only have to be reviewed and produced once, witnesses will only have to be deposed once, and the Court would only have to hold one hearing on these issues. On the other hand, if the Court takes the

Motion for Allowance on April 15, 2025 (with incomplete discovery and abbreviated time), and the Motion to Enforce is heard four weeks later, the efficiencies are lost and the costs are increased.

16. The Liquidating Trustee and EIT have placed Sentynl in the middle of three contested matters: (1) the Motion for Allowance; (2) the Motion to Enforce; and (3) EIT's Emergency Motion. All three mostly overlap, including legal argument and documentary evidence and testimony necessary to prosecute or defend them.

17. Very briefly:

a. The Motion for Allowance generally asserts that Debtor Eiger Bio breached a Sublicense Agreement[20] between it and Sentynl post-petition by assigning, without limitation, the Lonza Bend MSA[21] to EIT and by entering into a surprise, midnight settlement agreement with EIT, both of which violate the Zokinvy APA, frustrate its purpose, and interfere with the Zokinvy® supply chain.

b. The Motion to Enforce generally asserts that EIT has interfered with the Zokinvy APA by blocking or refusing to permit a direct relationship between Sentynl and Lonza Bend[22] and Corden[23] which, effectively, interferes with Sentynl's supply chain and hinders Zokinvy® manufacturing and commercialization.

c. The exact purpose of the EIT Emergency Motion was unclear but has now been clarified to be a motion about inventory that is not listed. In it, EIT claims ownership of materials in the supply chain at Corden. 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. In other words, the EIT Emergency Motion cannot interfere with the supply chain or else it must be denied.

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[20] That certain *Sublicense Agreement, dated as of the Closing Date, by and among Purchaser and the Seller*, substantially in the form attached to the Zokinvy Asset Purchase Agreement as Exhibit E [filed under seal pursuant to order at Docket No. 188].

[21] That certain *Commercial Manufacturing and Supply Agreement with Lonza Bend, dated October 9, 2019*.

[22] Bend Research, Inc., a Lonza Company (or any affiliate).

[23] Corden Pharma Colorado (or any affiliate).

18. In context, the three Contested Matters have significant legal and evidentiary overlap. They deal with the coincident issues of:

a. Who owns what and who has what rights under the earlier Zokinvy APA (Motion for Allowance, Motion to Enforce, and EIT Emergency Motion);

b. Who owns what and who has what rights under the later Lonafarnib/Lambda APA (Motion for Allowance, Motion to Enforce, and EIT Emergency Motion);

c. Whether Sentynl has recourse against EIT for interfering with its rights under the Zokinvy APA and Zokinvy Sale Order (Motion for Allowance and EIT Emergency Motion); and

d. Whether Sentynl has an administrative expense claim based on a "sale" of materials the estate did not own or an assignment of contracts in a manner that it could not do because either would interfere with the manufacture and commercialization of Zokinvy® (Motion for Allowance).

19. In addition to overlapping legal issues, the parties will present the same, or extraordinarily similar, evidence. That will include documents and communications from Sentynl, EIT, and the Liquidating Trustee with each other, the Debtors, Lonza Bend, and Corden related to the Lonza Bend MSA and the Corden MSA.[24] It will also include testimony from the same individuals who were involved in the various transactions.

20. Because of the coextensive issues and evidence, the Court should have the Motion to Enforce and Motion for Allowance heard together. The two motions should share a discovery timeline and plan. That captures the efficiency of presenting witnesses for a single deposition and a single hearing.

21. ***Second***, resolution of the Motion to Enforce will likely streamline the Motion for Allowance. Put simply, if the Motion to Enforce is granted (so the supply chain for Zokinvy® is restored), Sentynl's will have a smaller administrative expense claim and many of the issues in the

[24] That certain *Master Services Agreement between Eiger BioPharmaceuticals, Merck Sharpe & Dohme Corporation, and CordenPharma Colorado*.

Motion for Allowance should be resolved or mooted. Thus, the Motion to Enforce is a gating issue to the Motion for Allowance. The Court would benefit from ruling on the Motion to Enforce either before or at the same time as the Motion for Allowance. The Liquidating Trustee has not provided any principled reason for why those efficiencies should not be captured.

22. ***Third***, the Court should not conduct an evidentiary hearing on this abbreviated timeline when there has not been a reasonable opportunity for discovery so that parties can fully and fairly present their case. The Liquidating Trustee proposes a schedule where the parties would have to collect, review, and *produce thousands of documents in less than seven days*. The parties would then have another *seven days to depose up to ten witnesses* scattered throughout the country, from New York to North Carolina to Dallas to Southern California.[25] Sentynl proposes, instead, the Court apply the schedule that EIT and Sentynl agreed to for the Motion to Enforce. That schedule is expedited, but reasonable. And it would allow the parties to be fully prepared to present full and complete evidence to the Court in a logical manner.

23. In sum, there are significant efficiencies to be gained by converting the April 15, 2025, hearing on the Motion for Allowance to a status conference and setting an evidentiary hearing either at the same time as the Motion to Enforce, or shortly after. In addition, the additional time will allow the parties to be fully prepared and present the Court with the best evidence available in the most logical manner possible, helping it to make a fully informed and reasoned decision. For all those reasons, Sentynl requests the Court continue the evidentiary hearing on its Motion for Allowance to May 23, 2025, or as soon thereafter as the matter may be heard.

II. SENTYNL SHOULD BE PERMITTED TO FILE A REPLY IN EXCESS OF 10 PAGES, EXPECTED TO BE 20 PAGES

[25] Each party has served four deposition subpoenas. The Liquidating Trustee has identified another two witnesses (one from each side) that may also be the subject of a deposition or trial subpoena. The parties are currently meeting and conferring about the number and timing of depositions.

24. As required by LBR 7007-2 extraordinary and compelling reasons exist to exceed the reply brief page limit to permit Sentynl to provide a complete picture of applicable law and relevant facts supporting its Motion for Allowance. Sentynl expects the reply will be 20 pages.

25. The Objection's primarily claim is that the Liquidating Trustee met contractual obligations to Sentynl by using "reasonable efforts" to avoid disrupting Sentynl's supply chain and/or ability to manufacture and commercialize Zokinvy®. Objection, ¶¶ 31-33. Inherent in that argument is the proposition that the Liquidation Trustee properly analyzed and understood:

a. what, exactly, is required to manufacture and commercialize Zokinvy®;

b. how the assignment of the Lonza Bend MSA and Corden MSA to EIT, without alteration, would affect the manufacture and commercialization of Zokinvy®; and

c. the required quantification/computation of the effects of the assignment to determine if those adverse effects were "reasonable".

The Liquidation Trustee, however, does meaningfully not discuss these points in its Objection. Sentynl suspects the Liquidating Trustee did not do these things at all.

26. However, Sentynl did. So Sentynl's reply will provide details (if the reply is sealed) about how the Liquidating Trustee's assignment of the Lonza Bend MSA and Corden MSA and Settlement Agreement unreasonably interfere with the Zokinvy® supply chain, including because of:

a. Regulatory requirements for producing commercial drugs, including full Good Manufacturing Practice ("GMP") compliance;

b. The process for achieving GMP compliance for replacement manufacturers and validating drug substance and drug substance intermediate batches in the event the existing supply chain is not reinstated;

c. The risk and result of non-compliance resulting from the imposition of a non-GMP compliant intermediary with no quality control program (*i.e.*, EIT) within the Zokinvy® supply chain (*e.g.*, prohibition on release of the drug to existing and new Progeria patients);

d. The time remaining before existing inventories will be depleted without relief from the Court, accounting for the expiration dates for existing inventories and shelf-life requirements for various markets; and

e. The time for which no Zokinvy® will be available for various markets (*e.g.*, the United States, the European Union, and Japan) after existing inventories are depleted and before a resupply is available if Sentynl must qualify a replacement manufacturing organization, perform a "tech transfer," validate the new process, and obtain regulatory approval for new batches to be released to the public.

27. Put simply, additional pages are necessary to address the complex regulatory framework governing pharmaceuticals, explain the process for qualifying replacement manufacturers, address the real and serious risks and costs of the breach of the Zokinvy APA, and, most importantly, position the Court to make an informed and reasoned decision.

28. Accordingly, Sentynl asserts that extraordinary and compelling reasons justify filing a Reply brief that is greater than 10 pages. As noted above, the Liquidating Trustee does not oppose this relief, subject to the Court's approval. Sentynl's reply should be 20 pages.

III. SENTYNL SHOULD BE AUTHORIZED TO FILE ITS REPLY AND SUPPORTING DOCUMENTS UNDER SEAL

29. 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.

30. 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").

31. 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.

32. Here, information contained in the Reply is proprietary and confidential (the "Confidential Information") and warrants protection under section 107(b) of the Bankruptcy Code.

33. This Court has previously sealed documents related to various sale transactions. *See* Docket Nos. 188, 773, 783, and the creditors and any parties-in-interest to these chapter 11 cases will not be prejudiced by allowing Sentynl to file the Confidential Information under seal.

34. Accordingly, Sentynl asserts that good cause exists to authorize filing of the Reply under seal. As noted above, the Liquidating Trustee does not oppose this relief (and sought and was granted the same relief for its Objection and its Limited Response).

EMERGENCY CONSIDERATION

35. The hearing on Sentynl's Motion for Allowance is currently set for April 15, 2025. There is insufficient time for a motion to continue that hearing to be heard on regular notice. Failure to receive the relief requested (a short continuance) would jeopardize the parties' ability to present a full and complete evidentiary record and, thus, the Court's ability to make a fully informed decision.

36. Sentynl's Reply is currently due April 7, 2025. There is insufficient time for a motion authorizing additional pages or filing under seal. The additional pages are necessary to present a contextual and complete response to the Trustee's Objection. Filing under seal is necessary to protect confidential and commercially sensitive information, necessary to resolution of the Motion for Allowance (and Motion to Enforce).

37. Sentynl therefore requests that the Court approve the relief requested herein on an emergency basis.

NOTICE

38. Sentynl will provide notice of this Motion to Seal 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) the Liquidating Trustee and its counsel; (d) the Plan Administrator; and (e) EIT and its counsel. No other or further notice is needed in light of the nature of the relief requested.

Dated: April 2, 2025

Respectfully submitted,

PILLSBURY WINTHROP SHAW PITTMAN LLP

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CERTIFICATE OF SERVICE

I certify that, on April 2, 2025, I caused a copy of the foregoing Motion to Seal to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas and to be emailed to the following parties.

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EXHIBIT 18

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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.

24800402504040000000002

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 Motion[2] 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 Sentynl 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. Sentynl 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 Sentynl'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] Sentynl 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] *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] *See* Sublicense Agreement, Section 3.7, attached under seal as Exhibit B to the Nahas Decl.

14. [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] 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]

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[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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Email: RAParisi@pbnlaw.com

Counsel for the Liquidating Trustee

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:

(I) Sentynl Therapeutics, Inc. and Eiger InnoTherapeutics, Inc and their respective counsel who will all receive both the redacted as well as an unredacted version:

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Counsel to Cordon Pharma

/s/ S. Margie Venus
S. Margie Venus

EXHIBIT 19

Filed Under Seal
unredacted copies will be emailed to the
parties listed on the certificate of service,
and availabe at the hearing

EXHIBIT 20

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unredacted copies will be emailed to the
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EXHIBIT 28

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EXHIBIT 29

Filed Under Seal
unredacted copies will be emailed to the parties listed on the certificate of service, and available at the hearing

EXHIBIT 30

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

Signed April 8, 2025

United States Bankruptcy Judge

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)

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

Upon the motion ("Motion")[2] of Sentynl Therapeutics, Inc. ("Sentynl") for entry of an order (this "Order") (I) Setting Status Conference and Continuing Evidentiary Hearing; (II)

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

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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, 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 April 15, 2025, hearing on Sentynl's *Motion for Allowance of Administrative Expense Claim* is converted to a status conference and an evidentiary hearing will be set at a future date to be selected at that status conference.

3. Sentynl is authorized to file a reply brief in support of the *Motion for Allowance of Administrative Expense Claim* in excess of 10 pages.

4. Sentynl is authorized to file unredacted versions of the Reply and Supporting 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 Reply as determined by Sentynl. The Reply and Supporting 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, Sentynl, and EIT, and their successors or assigns; or (ii) further order of the Court after notice to the Liquidating Trustee, the Plan Administrator, Sentynl, and EIT 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.

5. 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.

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

7. Sentynl is authorized, but not directed, to take all such actions as are necessary or appropriate to implement the terms of this Order.

8. 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

EXHIBIT 31

April 3, 2025

CordenPharma International
Corden Pharma Colorado, Inc.
2075 55th Street I
Boulder, CO 80301 USA

Attention:
Alan Benson, Sr. Director, Sales & Key Account Management
(by email at alan.benson@cordenpharma.com)

Richard Janovjak, office of the General Counsel
(by email at richard.janovjak@cordenpharma.com)

with a copy to the office of General Counsel:

Dr. Naoki D. Takei, VP, General Counsel
(by email at Naoki.Takei@cordenpharma.com)

Re: Authorization and Direction to Corden to Provide Select Materials and Information to Sentynl Therapeutics, Inc.

Dear Alan and Richard,

This letter is submitted to you jointly by EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc. ("**EIT**") and Sentynl Therapeutics, Inc. ("**Sentynl**").

EIT and Sentynl, on behalf of each such party and all of its respectively affiliates, hereby agree and accordingly authorize and direct CordenPharma International, Corden Pharma Colorado, Inc. and any of their applicable affiliates (collectively, "**Corden**") to provide to Sentynl as promptly as possible (and in a manner mutually agreed upon between Sentynl and Corden) the materials, records and information described in *Exhibit A* attached hereto (the "**Materials and Information**"). The Materials and Information are related to Zokinvy® and are necessary for Sentynl to comply with applicable legal and regulatory requirements with respect to immediate and near term patient supply needs. Corden is expressly authorized and permitted to immediately deliver such Materials and Information to Sentynl without further consent from Sentynl or EIT or any of their respective affiliates.

Thank you for your prompt attention to this important matter.

Sincerely,

EIT Pharma, Inc.,

By: _____
Name:
Title:

Sentynl Therapeutics, Inc.

By: _____
Name:
Title:

Exhibit A

1. Reference Standard **(for Japanese patients)**
    a. Retest current Compound W and issue new CoA
        i. Standard Number – CPC-IHRS-0164; **Expires 31MAY2025**
    b. Retest current DS standard and issue new CoA
        i. Standard Number – CPC-IHRS-0012; **Expires 30JUN2025**
2. Quality Documents (**needed for MT QP release, for MAP/ROW patients**)
    a. OOS-605
    b. DEV-4889
    c. DEV-4906
3. Batch Records (**needed for MT QP release, for MAP/ROW patients**)
    a. BO2007B034
    b. BO2210B024
4. Stability Data
    a. BO1906P807 – Stability Final Report
    b. BO2011B901 – Stability 36M, 48M (Final) Report
    c. BO2210B22B – Stability 24M Report
    d. BO2210B023 – Stability 18M Report
    e. BO2210B024 – Stability 12M, 18M Report