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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.

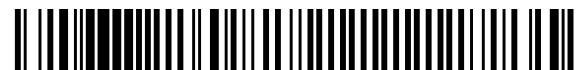
Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**SENTYNL THERAPEUTICS, INC.'S SUPPLEMENTAL RESPONSE AND OBJECTION
TO EIT PHARMA, INC., FORMERLY KNOWN AS EIGER INNOTHERAPEUTICS,
INC.'S EMERGENCY MOTION TO CONFIRM TERMS OF LONAFARNIB/LAMBDA
SALE ORDER**

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”), submits this supplemental response and objection to EIT’s² Emergency Motion,³ and respectfully states as follows.

PRELIMINARY STATEMENT

1. *Nemo dat quod non habet*. No one can convey what one does not own. This maxim is but one constraint on EIT’s Emergency Motion, which broadly (and vaguely) asks the Court to declare that “what it owns is what it owns.” Such a declaration is insufficient to resolve, or put anyone on notice, of anything. Can a declaration of “I own what I own” resolve an ownership dispute between two parties? No, it cannot.

2. The Emergency Motion (and its Proposed Order) are too obscure and fail to consider (let alone meaningfully discuss or account for) that EIT was the second purchaser. EIT could not have purchased what the Debtors already sold to Sentynl any more than the Debtors could have conveyed it twice. The Debtors effectively gave EIT a quitclaim. Perhaps that was effective to transfer any assets or rights the Debtors retained after the Sentynl sale, but it is not superior to any assets or rights transferred to Sentynl before the date of the Lonafarnib sale. EIT has failed to establish what it did purchase—in the Emergency Motion, in informal requests after, and through interrogatories it has yet to respond to. The silence is deafening.

3. Worse yet, even if EIT had identified what things it believes it bought, the Proposed Order is directed at Corden.⁴ But any order to Corden must also: (a) acknowledge Sentynl’s superior rights (acquired by first in time purchase and license) to materials, information, and data held at or by Corden; (b) make clear to Corden and any other third party that Sentynl has such rights; and (c) limit the relief to EIT accordingly and prevent it from continuing to interfere. EIT’s

² Eiger InnoTherapeutics, Inc., now known as EIT Pharma, Inc. (“EIT”).

³ *EIT Pharma, Inc., Formerly Known as Eiger InnoTherapeutics, Inc.’s Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order* (the “Emergency Motion”). Docket No. 787.

⁴ Corden Pharma Colorado (“Corden”).

Emergency Motion cannot increase its ownership from the Lonafarnib APA⁵ and Lonafarnib Sale Order,⁶ both of which were subject to Sentyln's superior and prior rights under the Zokinvy® purchase.

4. Beyond those infirmities, Sentyln asks the Court to see EIT's Emergency Motion for what it is: a subterfuge—an attempt to gain positional leverage and collaterally attack the existing contested matters:

- a. Sentyln's Motion for Allowance,⁷ filed on November 1, 2024, in anticipation of a breach of the Sublicense Agreement⁸ – a breach which, unfortunately, came to fruition – arguing the Debtors assignment of certain contracts between it, Lonza,⁹ and Corden was in violation of rights granted in the Sublicense Agreement.
- b. Sentyln's Motion to Enforce, filed on March 7, 2025, seeking to prevent EIT from continuing to interfere with Sentyln's purchase of assets and rights granted in the Zokinvy APA,¹⁰ Sale Order,¹¹ and Sublicense Agreement, including by attempting to position itself as an intermediary in Sentyln's relationship with Lonza and Corden.

⁵ *Asset Purchase Agreement* by and between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024 and in the form attached as Exhibit A to the Lonafarnib Sale Order [Docket No. 558] (the "Lonafarnib APA").

⁶ Docket No. 558 (the "Lonafarnib Sale Order").

⁷ *Motion for Allowance of Administrative Expense Claim* [Docket No. 729] (the "Motion for Allowance").

⁸ *Sublicense Agreement*, dated as of the Closing Date, by and among Purchase 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] ("Sublicense Agreement").

⁹ Bend Research, Inc. ("Lonza").

¹⁰ *Asset Purchase Agreement* by and between Sentyln Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024, annexed as Exhibit 1 to the Zokinvy Sale Order [Docket No. 162] (the "Zokinvy APA").

¹¹ *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").

5. While those motions were pending, EIT magnified its interference with the Zokinvy® supply chain and filed the Emergency Motion, without explaining the emergency,¹² and to undermine the Motion for Allowance and Motion to Enforce with no evidence and a less than candid analysis of EIT's (let alone Sentyln's) rights.

6. EIT's actions after filing the Emergency Motion only highlight its improper purpose. EIT has now refused to release material, information, and data that Sentyln owns or has license rights to until Sentyln pays – again – to license or buy things from EIT that Sentyln has already bought or licensed and that EIT does not own. Put differently, Sentyln is being asked to pay a yet-to-be-determined ransom to re-purchase or re-license material, information, and data so the lives of children with Progeria who rely on Zokinvy® are not cut short.

7. [REDACTED]

[REDACTED]

8. Sentyln respectfully requests the Court deny the Emergency Motion, as already subsumed into the existing contested matters (Motion to Enforce and Motion for Allowance), and order that Sentyln holds superior rights to the assets, materials, information, and data that it purchased or licensed in the earlier Zokinvy APA and related Sublicense Agreement and that Sentyln can contract directly with Corden to re-establish a supply of the drug.

¹² Sentyln asked EIT for this information informally. EIT refused to provide it. Sentyln has since served interrogatory responses trying to understand EIT's emergency (or need for relief at all). EIT has stated it will provide answers to those interrogatories on April 14, the day before the hearing on the Emergency Motion. Sentyln reserves its right to supplement its argument based on those responses.

BACKGROUND

A. Case Background

9. The Debtors filed this case on April 1, 2024, “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.”¹³

10. On April 24, 2024, the Court entered the Zokinvy Sale Order which approved the Zokinvy APA, including the Sublicense Agreement.

11. On August 21, 2024, the Court entered the Lonafarnib Sale Order which approved the Lonafarnib APA.

12. On November 1, 2024, Sentynl filed its Motion for Allowance, asserting an administrative expense based on an anticipated breach of the Sublicense Agreement by the Liquidating Trustee.¹⁴

13. On March 7, 2025, Sentynl filed its Motion to Enforce,¹⁵ asserting EIT was wrongfully interfering with its rights under the Zokinvy APA and Sublicense Agreement.

14. On March 24, 2025, EIT filed the Emergency Motion. The next day, Sentynl filed its response and request for a status conference, reserving its right to supplement given the emergency nature of EIT’s filing.¹⁶

¹³ Declaration of David Apelian in Support of the Chapter 11 Petitions and First Day Pleadings [Docket No. 19, ¶ 7]

¹⁴ Dundon Advisors LLC, in its capacity as liquidating trustee (“Liquidating Trustee”).

¹⁵ Motion (I) to Enforce the Zokinvy Sale Order and (II) for Contempt Against Eiger InnoTherapeutics, Inc. [Docket Nos. 779, 781] (“Motion to Enforce”).

¹⁶ 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) [Docket No. 790] (“Preliminary Reply”).

15. The Motion for Allowance and Motion to Enforce are set for a status conference on April 15, 2025; the Emergency Motion is currently set for an evidentiary hearing that same day.¹⁷

B. The Present Dispute Over Sentynl's Right to Contract with Corden

16. Since approximately June 2024, Sentynl has been attempting to:

- a. enter into independent contracts with Corden, including a “quality agreement” and a “master service agreement”; and
- b. obtain access to critical materials, information, and data that are required to manufacture, distribute, and sell currently existing inventories of Zokinvy®.

17. Those efforts were on track, until EIT threatened Corden to blockade the supply chain. EIT apparently contacted Corden and instructed that all discussions, negotiations, or other matters related to Lonafarnib (the active molecule in both EIT's unapproved drug and Zokinvy®) must go only through EIT, blocking Sentynl's access to critical materials and information it needs immediately and on a go forward basis to provide Zokinvy® to patients. Yet, the Corden contracts assigned to EIT do not have an exclusivity clause, and Sentynl does have first-purchaser (and likely exclusive) rights to the material, information, and data it seeks access to, including those in Corden's possession.

18. [REDACTED]

[REDACTED]

[REDACTED]

¹⁷ Docket Nos. 792 (Emergency Motion), 802 (Motion for Allowance), 803 (Motion to Enforce).

¹⁸ [REDACTED]

[REDACTED]

19. So Corden informed Sentynl that it could not provide access to those materials, information, and data without a Court order or an agreement from EIT. Because of the urgent need to access things Sentynl already owns or has license rights to, Sentynl contacted EIT asking for what should have been an un-adversarial agreement. EIT refused. Instead, it claimed to own the materials, information, and data; although it stated it would be willing to work out a “deal” or “sell access rights” to Sentynl.

20. As explained below, Sentynl either owns or has license rights to the materials, information, and data it is currently requesting. And it owns or has license rights to materials, information, and data it will request in the future related to the manufacture, distribution, and commercialization of Zokinvy®. Granting EIT’s Emergency Motion would hinder (or possibly

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[REDACTED]

destroy) those rights by allowing EIT to continue claiming (falsely) that it can blockade Sentynl's access to them, this time under the guise of a Court order on the Emergency Motion.

ARGUMENT

A. EIT Fails to Establish what “Inventory” It Claims to Own

21. EIT's Emergency Motion asks the Court for a broad declaration that it purchased, owns, and is entitled to all “Inventory,” as that term is defined in the Lonafarnib APA, but minimizes how Sentynl bought assets and rights falling within EIT's definition of “Inventory” first. Sentynl had already filed its Motion to Enforce. EIT knew that there was a dispute over what EIT owns and what rights EIT has. Understanding that background, EIT's failure to *specifically* identify the “Inventory” kills EIT's *sub rosa* declaratory action.

22. As but one example, within the Lonafarnib APA's definition of “Inventory” is “the raw materials, reference standards and materials, and inventory listed in Schedule 2.1(h).”²² But Schedule 2.1(h) lists 14 items that Sentynl owns 100% of – everything in the columns titled “Retained by Eiger (Grams) as reference materials” and “Transferred to Zokinvy Buyer (Grams).”²³ EIT now concedes these belong to Sentynl, tacitly admitting its Emergency Motion was too broad to begin with.

23. In addition, as of the date of this filing, EIT refuses to acknowledge Sentynl's ownership or rights to the Reference Standards, Quality Documents, Batch Records, and Stability Data for inventories of existing drug product manufactured by Corden pre-bankruptcy and acquired by Sentynl under the Zokinvy APA—though EIT agrees Sentynl owns the existing, underlying drug product. Corden refuses to release the Reference Standards, Quality Documents, Batch Records, and Stability Data without EIT's express agreement to do so or without a Court

²² Lonafarnib APA, ¶ 2.1(h).

²³ See Docket 790, ¶¶ 3-5, Exs. C-D.

order that instructs or clearly permits Corden to do so. Without access to such materials, information, and data, Sentynl cannot supply Zokinvy® to patients. EIT cannot blockade the Zokinvy® supply chain when it cannot even specify what it owns.

24. After the Emergency Motion was filed, Sentynl contacted EIT's counsel asking for a list of everything EIT seeks to confirm it owns in the Emergency Motion. EIT refused to provide that information informally. Sentynl then served interrogatories asking EIT seeking the same information. EIT has signaled it will delay any response until April 14, the day before the Emergency Motion hearing.

25. Only after EIT has provided a fulsome disclosure of the specific things it claims to own can Sentynl (or the Court) determine whether EIT in fact owns those things or whether they were purchased or licensed by Sentynl prior to the Debtors' later sale to EIT. A cynic might think EIT's delay was gamesmanship. Unless EIT can timely identify, with specificity enough for Sentynl to investigate that claim, the hearing cannot go forward. Even if EIT provided a list on April 14, Sentynl cannot be expected to fully brief its ownership or rights to each asset identified in less than one day.

26. The Court should deny the Emergency Motion. EIT overreached by filing it. The Emergency Motion compounds EIT's existing blockade of the Zokinvy® supply chain to the detriment of Progeria patients and Sentynl. Even if granted, the proposed declaratory judgment that "EIT owns what it owns" would not solve EIT's, Corden's, or Sentynl's problems or help the blockaded patients. Finally, as set forth below, the "Inventory" that EIT seeks to import to the Court's declaration is flawed because it includes things that Sentynl has already bought or licensed. The Debtors did not own what they had already sold to Sentynl at the time of the EIT sale. The Debtors could not have sold what they did not own to EIT.

B. EIT Fails to Recognize Its Purchase Is Subject and Subordinate to Sentynl's Zokinvy® Purchase

27. *Primus tempore, potior jure.* First in time, first in right. Sentynl owns what EIT would like to own because Sentynl bought it first (and EIT knew that). The Debtors could only sell EIT what the Debtors owned at the time of the sale.²⁴ Sentynl purchased and licensed assets from the Debtors *before* EIT entered (and the Court approved) the Lonafarnib APA. Combining those two unobjectionable points, EIT could not purchase anything the Debtors had already sold or licensed to Sentynl, because the Debtors could not sell what they did not continue to own after the Zokinvy® transaction.

28. Everything EIT “took” in the Lonafarnib APA is subject and subordinate to the earlier Zokinvy APA and its related Sublicense Agreement. EIT could not have purchased, could not have exclusively licensed, and cannot assert superior rights to any asset, material, information, or data that was sold or licensed to Sentynl.

1. Sentynl's License Rights

29. Beginning with Sentynl's license rights – because they are broader than Sentynl's purchase rights – the Sublicense Agreement contains three different “License Grants,”²⁵ two exclusive and one non-exclusive.

30. Whatever the Debtors sold to EIT remains subject to all three License Grants. EIT could never purchase those rights from the Debtors after Sentynl bought them. They were not in the “bundle of sticks” the Debtors quitclaimed to EIT. Any relief must to allow for Sentynl's superior (as to the two exclusive licenses) or equal (as to one non-exclusive license) rights. Again,

²⁴ See, e.g., *Transcor Astra Grp. S.A. v. Petroleo Brasileiro, S.A.—Petrobras*, No. H-08-2072, 2012 WL 12978040, at *5 (S.D. Tex. Feb. 7, 2012) (“[C]ourts have deemed it axiomatic that ‘in order to have the ability to sell something, one must own it.’”) (citing *Baker v. Comm’r of Internal Rev.*, 338 F.3d 789, 793 (7th Cir. 2003)).

²⁵ Sublicense Agreement, ¶ 2.1(a)-(c).

a declaration that “EIT owns what EIT owns” does not resolve this issue. What follows is a description of the three licenses Sentynl bought.

a.

²⁶ Sublicense Agreement, ¶ 2.1(a).

²⁷ Sublicense Agreement, ¶ 2.1(b).

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CONCLUSION

49. [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

50. EIT has failed to support its Emergency Motion with any evidence. It has failed to identify with any level of particularity what it wants the Court to declare it owns. And it has failed to account for Sentynl's superior ownership and license rights to materials, information, and data held at Corden. For all those reasons EIT's Emergency Motion must be denied and the Court should prohibit interference with the Zokinvy® supply chain. Accordingly, Sentynl respectfully requests the Court enter the Order attached hereto as **Exhibit A.**

Dated: April 11, 2025

Respectfully submitted,

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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 document to be emailed to the following parties:

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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.*³¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Jointly Administered)

**ORDER ON EIT PHARMA, INC., FORMERLY KNOWN AS EIGER
INNOTHERAPEUTICS, INC.'S EMERGENCY MOTION TO CONFIRM TERMS OF
LONAFARNIB/LAMBDA SALE ORDER**

Upon the motion (“Motion”)³² of EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc. (“EIT”), for entry of an order, (a) confirming the terms of the

³¹ 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.

³² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in *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) and Sentynl Therapeutics, Inc.’s Supplemental Response and Objection to EIT Pharma, Inc., Formerly Known as Eiger InnoTherapeutics, Inc.’s Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order*.

Lonafarnib/Lambda Sale Order, and (b) granting related relief, all as more fully set forth in the Motion, IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, this is a core proceeding pursuant to 28 U.S.C. § 157, this Court may enter a final order consistent with the United States Constitution, venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

2. The Corden Contracts do not grant EIT any exclusive rights that prevent Corden from entering into a direct contractual relationship with Sentynl and, accordingly, Corden is permitted to contract independently with Sentynl if Corden and Sentynl so choose. EIT may not prevent, prohibit, or interfere in any manner with Sentynl and Corden contemplating, negotiating, or entering into a contractual relationship. Similarly, EIT may take no action to enforce rights with Lonza that have the effect of disrupting the Zokinvy® supply chain. Lonza is permitted to contract independently with Sentynl if Lonza and Sentynl so choose. EIT may not prevent, prohibit, or interfere in any manner with Sentynl and Lonza contemplating, negotiating, or entering into a contractual relationship.

3. Sentynl may access the Transferred Inventory, Zokinvy Trademarks and Domain Names, Transferred Regulatory Information, Assigned Contracts, or Business Books and Records, as those terms are defined in the Zokinvy APA, or any other asset or right conveyed by the Debtors to Sentynl pursuant to the terms of the Zokinvy Sale Order, Zokinvy APA, and Sublicense Agreement (collectively, the “Zokinvy® Assets”). Corden and EIT shall follow Sentynl’s written instruction on the use or transfer of the Zokinvy® Assets.

4. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. Should Corden or Lonza require more specific guidance from this Court about this Order, the Court shall set a hearing on an emergency basis to avoid disruption of the Zokinvy® supply chain.

6. All remaining rights and remedies by or against EIT and Sentynl are expressly preserved, except the right of EIT (if it exists) to enjoin, disrupt, or in anyway interfere with the Zokinvy® supply chain.

7. All other relief sought in the Motion not expressly granted herein is DENIED.

8. 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.

9. Notwithstanding the applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry. This is a final order.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

END OF ORDER