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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

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)
(Emergency Hearing Requested)

**DEBTORS' EMERGENCY MOTION FOR
ENTRY OF AN ORDER (I) AUTHORIZING THE
DEBTORS TO (A) FILE A CONSOLIDATED CREDITOR
MATRIX AND (B) FILE A CONSOLIDATED LIST OF 30 LARGEST
UNSECURED CREDITORS; (II) WAIVING THE REQUIREMENT TO
FILE A LIST OF EQUITY SECURITY HOLDERS; (III) AUTHORIZING
THE DEBTORS TO REDACT CERTAIN PERSONALLY IDENTIFYING
INFORMATION; AND (IV) APPROVING THE FORM AND MANNER OF
NOTIFYING CREDITORS OF THE COMMENCEMENT OF THE
CHAPTER 11 CASES AND OTHER INFORMATION**

Emergency relief has been requested. Relief is requested not later than 1:30 p.m. prevailing Central Time on April 3, 2024.

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.



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.

A hearing will be conducted on this matter on April 3, 2024 at 1:30 p.m. prevailing Central Time in Courtroom 1, Floor 14, 1100 Commerce Street, Dallas, TX 75242-1496.

You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 1.650.479.3207. Video communication will be by use of the Cisco WebEx platform. Connect via the Cisco WebEx application or click the link on Judge Jernigan's home page. The meeting code is 479 393 582. Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of electronic hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jernigan's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

The debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors") state as follows in support of this motion:²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, granting, among other things, the following relief:
 - a. authorizing the Debtors to (i) file a consolidated creditor matrix and (ii) file a consolidated list of the thirty (30) largest unsecured creditors;
 - b. waiving the requirement to file a list of equity security holders;
 - c. authorizing the Debtors to redact personally identifying information from documents filed with the Court (as defined below) in these chapter 11 cases (including any creditor matrix, the schedules of assets and liabilities, and the statement of financial affairs)
 - d. approving the form and manner of notice of the commencement of these chapter 11 cases and other information; and
 - e. granting related relief.

² A detailed description of the Debtors and their business, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the *Declaration of David Apelian in Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the First Day Declaration.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Northern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the Court’s entry of a final order in connection with this motion.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 107(c), and 521 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 1007, 6003 and 6004, rule 1007-1(d) of the Bankruptcy Local Rules for the Northern District of Texas (the “Local Rules”), and the Procedures for Complex Cases in the Northern District of Texas.

Background

5. The Debtors are a commercial-stage biopharmaceutical company focused on the development of innovative therapies for hepatitis delta virus (HDV) and other serious diseases. All of the Debtors’ rare disease programs have FDA Breakthrough Therapy designation.

6. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these cases, and no statutory committee has been appointed.

Basis for Relief Requested

I. Cause Exists to Authorize the Debtors to Prepare a Consolidated List of Creditors.

7. Section 521(a)(1) of the Bankruptcy Code states that “[t]he debtor shall[] file[] a list of creditors . . . ,” and is implemented by Bankruptcy Rule 1007(a)(1), which requires a debtor in a voluntary case to “file with the petition a list containing the name and address of each entity included or to be included on Schedules D, E/F, G, and H as prescribed by the Official Forms.” 11 U.S.C. § 521(a)(1); Fed. R. Bankr. P. 1007(a)(1).

8. The Debtors submit that permitting them to maintain a single consolidated list of creditors (the “Consolidated Creditor Matrix”), in lieu of maintaining a separate creditor matrix for each Debtor, is warranted. Requiring the Debtors to segregate and convert their computerized records to a Debtor-specific creditor matrix format would be an unnecessarily redundant task because the Debtors’ creditors may overlap. Because the preparation of separate lists of creditors for each Debtor would be expensive, time consuming, and administratively burdensome, the Debtors respectfully request authority to file one Consolidated Creditor Matrix for all Debtors. Moreover, courts routinely grant relief similar to the relief requested herein. *See, e.g., In re Impel Pharmaceuticals Inc.*, Case No. 80016 (SGJ) (Bankr. N.D. Tex. Dec. 21, 2023) [Docket No. 54] (authorizing a consolidated mailing matrix); *In re Ebix, Inc.*, Case No. 23-80004 (SWE) (Bankr. N.D. Tex. Dec. 19, 2023) [Docket No. 55] (same); *In re Sunland Medical Foundation*, Case No. 23-80000 (MVL) (Bankr. N.D. Tex. Aug. 29, 2023) [Docket No. 38] (same); *In re Tuesday Morning*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. May 29, 2020) [Docket No. 103] (same); *In re Northwest Senior Housing Corporation*, Case No. 22-30659 (Bankr. N.D. Tex. Apr. 19, 2022) [Docket No. 89] (same).

9. The Court has authority to grant the relief requested in this motion under section 105(a) of the Bankruptcy Code, which empowers bankruptcy courts to enter “any order, process,

or judgment that is necessary or appropriate” to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). Section 105(a) codifies the “equitable power” of bankruptcy courts and provides “broad authority” to accomplish tasks important to the implementation of the Bankruptcy Code. Courts in this and other districts have allowed debtors to file a consolidated creditor matrix in other chapter 11 cases. *See, e.g., In re Impel Pharmaceuticals Inc.*, Case No. 80016 (SGJ) (Bankr. N.D. Tex. Dec. 21, 2023) [Docket No. 54] (authorizing debtors to file a consolidated creditor matrix); *In re Ebix, Inc.*, Case No. 23-80004 (SWE) (Bankr. N.D. Tex. Dec. 19, 2023) [Docket No. 55] (same); *In re Tuesday Morning Corp.*, Case No. 20-31476 (HDH) (Bankr. N.D. Tex. May 29, 2020) [Docket No. 103] (same); *In re J.C. Penney Co., Inc.*, Case No. 20-20182 (DRJ) (Bankr. S.D. Tex. May 16, 2020) [Docket No. 68] (same); *In re Neiman Marcus Grp. Ltd LLC*, Case No. 20-32519 (DRJ) (Bankr. S.D. Tex. May 8, 2020) [Docket No. 241] (same).

II. Cause Exists to Authorize the Debtors to Prepare a Consolidated List of the 30 Largest Unsecured Creditors.

10. Pursuant to Bankruptcy Rule 1007(d), a debtor shall file “a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders[.]” Fed. R. Bankr. P. 1007(d). This list is primarily used by the Office of the United States Trustee to evaluate the types and amounts of unsecured claims against the debtor and, thus, identify potential candidates to serve on an official committee of unsecured creditors appointed in the debtor’s case. Similarly to the Consolidated Creditor Matrix, the Debtors request authority to file a consolidated list of their thirty (30) largest general unsecured creditors (the “Consolidated Top 30 Creditors List”). The Consolidated Top 30 Creditors List will help alleviate administrative burdens, costs, and the possibility of duplicative service, and assist efforts to communicate with these creditors. For the sake of clarity, the Debtors are not requesting authority in this motion to (a) file consolidated schedules of assets and liabilities and statements of financial affairs or

(b) substantively consolidate the Debtors. Courts routinely grant similar relief to the relief requested herein. *See, e.g., In re Impel Pharmaceuticals Inc.*, Case No. 80016 (SGJ) (Bankr. N.D. Tex. Dec. 21, 2023) [Docket No. 54] (authorizing a consolidated top 30 general unsecured creditors list); *In re Ebix, Inc.*, Case No. 23-80004 (SWE) (Bankr. N.D. Tex. Dec. 19, 2023) [Docket No. 55] (same); *In re Sunland Medical Foundation*, Case No. 23-80000 (MVL) (Bankr. N.D. Tex. Aug. 29, 2023) [Docket No. 38] (same); *In re Tuesday Morning Corp.*, Case No. 23-90001 (ELM) (Bankr. N.D. Tex. Apr. 4, 2023) [Docket No. 747] (authorizing a consolidated top 40 general unsecured creditors list); *In re Rockall Energy Holdings, LLC*, Case No. 22-90000 (MXM) (Bankr. N.D. Tex. Mar. 11, 2022) [Docket No. 69] (authorizing a consolidated top 30 general unsecured creditors list).

III. Waiving the Requirements to File a List of Equity Security Holders and to Provide Notice Directly to the Equity Security Holders Is Warranted in these Chapter 11 Cases.

11. Bankruptcy Rule 1007(a)(3) requires a debtor to file a list of the debtor’s equity security holders within fourteen (14) days after the petition date. Bankruptcy Rule 2002(d) requires that equity security holders be provided notice of, among other things, the commencement of the bankruptcy case and the confirmation hearing. Bankruptcy courts have authority to modify or waive the requirements under both rules. Fed. R. Bankr. P. 1007(a)(3) (“[U]nless the court orders otherwise, the debtor shall file . . . a list of the debtor’s equity security holders”); Fed. R. Bankr. P. 2002(d) (“[U]nless otherwise ordered by the court, the clerk . . . shall in the manner and form directed by the court give notice to all equity security holders”); *see also* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”); Fed. R. Bankr. P. 9007 (“When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.”).

12. The requirements to file a list of, and to provide notice directly to, equity security holders should be waived as to Debtor Eiger BioPharmaceuticals, Inc. (“Eiger”). Eiger’s common stock is publicly traded on NASDAQ, with approximately 1.5 million outstanding shares of common stock as of the Petition Date and cannot be readily traced to specific individual holders. Eiger only maintains a list of its registered equity security holders and therefore must obtain the names and addresses of its beneficial shareholders from a securities agent. Preparing and submitting such a list with last known addresses for each equity security holder and sending notices to all such parties would create undue expense and administrative burden with limited corresponding benefit to the estates or parties in interest.

13. Eiger has taken or will take several actions to inform its equity security holders of the commencement of these chapter 11 cases. With its petition, Eiger filed a list of persons and entities with significant holdings of its outstanding common stock. On or about the date hereof, the Debtors will issue a press release announcing the filing. As soon as is practicable following the date hereof, the Debtors intend to cause the notices required under Bankruptcy Rule 2002(d) to be served on registered holders of Eiger’s common stock and published in full in *The New York Times* (National Edition) and the *San Francisco Chronicle* in the Debtors’ business judgment. In light of these actions, the Debtors request that the requirements to file a list of, and to provide notice directly to, Eiger’s equity security holders (other than registered holders of Eiger’s common stock) be waived.

IV. Redaction of Individuals’ Personally Identifying Information Is Warranted.

14. Local Rule 1007-1(d) allows for the redaction of certain personal data identifiers from all documents and pleadings filed with the Court, including Social Security numbers, names of minor children, dates of birth, and financial account numbers. N.D. Tex. L.B.R. 1007-1(d). The Debtors respectfully seek entry of an order further authorizing the redaction of personally

identifying information from any document filed or to be filed with the Court in these chapter 11 cases, so as to protect individuals and to prevent the Debtors from potentially violating applicable data privacy and protection laws or regulations.

15. Section 107(c) of the Bankruptcy Code enables the Court to issue orders that protect parties from the potential harm that could result from disclosing personally identifying information:

(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or unlawful injury to the individual or the individual's property:

(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed in a case under this title.

(B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1). Title 18 of the United States Code defines “means of identification” as:

any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, *including* any—

(A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number.

18 U.S.C. § 1028(d)(7) (emphasis added).

16. While transparency is important to the judicial process, Congress recognized a counterbalancing interest in enacting section 107(c)(1) of the Bankruptcy Code: the need to protect the identities and privacy of individuals who have dealings with debtors. The language of both statutes cited above demonstrates Congress's desire for courts to have flexibility to protect

individuals' identities. Section 107(c)(1)(B) of the Bankruptcy Code allows a bankruptcy court to shield "[o]ther information" apart from "means of identification," and the definition of "means of identification" is itself a non-exhaustive list of personally identifying information. *See* 2 Collier on Bankruptcy P 107.04 (16th ed. 2023). Accordingly, although an individual creditor's home address is not explicitly enumerated as a "means of identification," it is nevertheless within the broad scope of section 107(c)(1)(B) of the Bankruptcy Code and should be protected to avoid risks of, among other things, identity theft, domestic violence, harassment, stalking, or phishing scams.³ *See* Hr'g Tr. at 37:25–38:5, *In re THG Holdings LLC*, No. 19-11689 (JTD) (Bankr. D. Del. Aug. 22, 2019) [Docket No. 180] ("I think [that the list in 18 U.S.C. § 1028(d) is] an inclusive list. It wouldn't seem to make much sense that I could order the names [of individuals] not to be disclosed, but [their] addresses had to be; that wouldn't make any sense to me.").

17. Further, section 1028(d)(7)(A) refers to any "name or number" that can be used to identify someone when combined with any other information. 18 U.S.C. § 1028(d)(7). Certainly, an address could be used in this way, and so while not explicitly mentioned, home address information fits squarely within the types of "means of identification" set forth by section 1028(d)(7)(A).⁴

³ This risk in relation to section 107(c)(1) of the Bankruptcy Code is not speculative and has manifested in recent chapter 11 cases. For example, as described in the "creditor matrix motion" filed in *In re Charming Charlie Holdings Inc.*, No. 19-11534 (CSS) (Bankr. D. Del. Jul. 11, 2019) [Docket No. 4], the abusive former partner of a debtor's employee used the publicly accessible creditor and employee information filed in the case to track the employee at her new address, which had not been publicly available until then, forcing the employee to change addresses again. *See id.* In a more recent case, customers of a cryptocurrency company received phishing emails from purported legal advisors of the debtors. *See In re Celsius Network LLC*, No. 22-10964 (MG) (Bankr. S.D.N.Y. Nov. 30, 2022) [Docket No. 1527].

⁴ *See also* Hr'g Tr. 61:22-25, 62:1-3, *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del. Dec. 19, 2019) (addresses are a "means of identification" that may be protected under Bankruptcy Code section 107(c), because "the residential address . . . appears on the driver's license, and that is why driver's licenses are protected, because of the driver's address. And further on in section 1028, a means of identification, which is the term used in section 107, specifically includes a driver's license, which, again, is material for containing a home address."); Hr'g Tr. 28:10-12, *In re Quorum Health Corp.*, Case No. 20-10766 (KBO) (Bankr. D. Del. May 6, 2020) ("As I've held before, the combination of the names and addresses is a means of identification under 28 U.S.C. § 1028(d)(7)(a)."); Hr'g Tr. 37:25, 38:1-4, *In re THG Holdings LLC*, Case No. 19-11689 (JTD) (Bankr. D. Del.

18. In addition, privacy protection regulations are being enacted in key jurisdictions. For instance, in 2018, the state of California enacted the California Consumer Privacy Act of 2018 (the “CCPA”), which provides individuals domiciled in California the right to request their collected personal information be deleted by entities subject to the regulation.⁵ Violators risk injunctions and civil penalties of up to \$2,500 for each violation and up to \$7,500 for each intentional violation. Cal. Civ. Code § 1798.155. The CCPA applies to all for-profit entities doing business in California (“CCPA Entities”) that collect and process consumers’ personal data and satisfy one of the following criteria: (a) annual gross revenue in excess of \$25 million; (b) buys, shares, receives, or sells the personal information of more than 50,000 consumers, households, or devices for commercial purposes; or (c) receives 50% or more of their annual revenues from selling consumers’ personal information. Cal. Civ. Code § 1798.140(c)(1). The CCPA likely does not apply to the Debtors as the revenue for the fiscal year ended December 31, 2023, was \$15.8 million, and the Debtors do not satisfy the other CCPA triggers.

19. Other key jurisdictions in which the Debtors do business also have privacy protection regulations. For example, the United Kingdom General Data Protection Regulation (the “UK GDPR”), the European General Data Protection Regulation (the “EU GDPR”), and similar laws in other countries impose significant constraints on the processing (which includes names

Aug. 22, 2019) (“And in terms of 1028(d) not including address[es], I agree. I think that’s an inclusive list. It wouldn’t seem to make much sense that I could order the names not to be disclosed, but the addresses had to be; that wouldn’t make any sense to me.”); Hr’g Tr. 17:15-17, *In re L.K. Bennett U.S.A., Inc.*, Case No. 19-10760 (KG) (Bankr. D. Del. Apr. 9, 2019) (“[I] do think that the list of matters to be considered personally identifiable is not exclusive”); Hr’g Tr. 47:20-22, *In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. June 24, 2019) (noting that section 1028(d) specifically mentions a driver’s license, which lists the person’s home address, concluding that “[it] strikes me that section 107(c) does indeed protect this type of information”); *see also In re KP Engineering, LP*, Case No. 19-34698 (DRJ) (Bankr. S.D. Tex. Aug. 26, 2019) (authorizing redaction of addresses of employees in the creditor matrix).

⁵ *See, e.g.*, Hr’g Tr. 43:2–6, *In re Pier I Imports, Inc.*, Case No. 20- 30805 (KRH) (Bankr. E.D. Va. Mar. 13, 2020) (“[T]he State of California has adopted very extensive privacy provisions that would cover something like this. And do we need -- I mean, and this does -- this company does business in California. I mean, they’re going to be concerns there, are there not?”).

and home address of individuals) (“Personal Data”). The UK GDPR and EU GDPR apply to all organizations processing Personal Data in the context of an establishment in the United Kingdom or a European Union country (“European Economic Area”) member state (and, in some circumstances, organizations established in other countries when processing Personal Data to individuals located in the United Kingdom or European Economic Area, respectively). In addition, to the extent a United Kingdom organization processed personal data of individuals located outside the United Kingdom during the post-Brexit transition period, the EU GDPR continues to apply to the processing of that Personal Data for the time being.

20. The UK GDPR and EU GDPR require a legal basis for any processing (including disclosure) of Personal Data. The only possible legal basis which may apply for disclosing the Personal Data in this instance would be the legitimate interests ground (Article 6(1)(f) UK GDPR and EU GDPR). This ground, however, will not apply where the processing is not necessary for the relevant purpose, which includes where there is a less intrusive way of achieving that purpose. This ground will also not apply where the rights and freedoms of the relevant individuals override the legitimate interest in question when balanced against it. In addition, processing (including disclosure) under the UK GDPR and EU GDPR must comply with the principle of data minimization, which also requires that any processing must be necessary in relation to its purpose. The disclosure of the unredacted names and home addresses of individual creditors is not necessary for the purpose of the relevant parties reviewing the amounts owed to those individuals as part of the chapter 11 process, and redaction would be a less intrusive way of achieving this purpose. The right of individual creditors not to have their unredacted names and home addresses disclosed would also override the legitimate interest of disclosing them to assist with the chapter 11 case.

Disclosure in an unredacted form therefore risks breaching the UK GDPR and EU GDPR on account of (a) having no legal basis and (b) breaching the minimization principle.

21. Violators of the UK GDPR and EU GDPR risk severe penalties. If an organization is found to have processed information in breach of the UK GDPR, the organization may be fined up to the higher of £17,500,000 or 4% of worldwide annual turnover—*i.e.*, total annual revenues—of the preceding financial year. *See* Data Protection Act 2018, section 157(5)(a) (as amended by Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019). Similarly, if an organization is found to have processed information in breach of the EU GDPR, the organization may be fined up to the higher of €20,000,000 or 4% of worldwide annual turnover—*i.e.*, total annual revenues—of the preceding financial year. *See* General Data Protection Regulation (EU) 2016/679, art. 83(5). The processing of information includes transferring or disclosing it to others. As the Debtors have subsidiaries in Ireland and England and Wales, the UK GDPR and EU GDPR may apply to the Debtors, specifically as certain of the Debtors may be processing data related to their creditors, including employees, as well as their individual equity holders in the context of an establishment in the United Kingdom or in a member state of the European Economic Area.

22. In this case, cause exists under section 107(c) to redact the personally identifying information of individuals and other natural persons, including individuals who are employees, directors, officers, or individual equity holders of the Debtors, because such information could be used to perpetuate identity theft or create other risks to the individuals' safety and welfare. Accordingly, the Debtors seek authorization to redact from any paper filed or to be filed with the Court in these chapter 11 cases, including the Consolidated Creditor Matrix and the schedules and statements: (a) the names, home addresses, email addresses, and any other personally identifiable

information of individual creditors—including the Debtors’ employees, contract workers, debtholders, and equity security holders, as applicable, and (b) the names, home and email addresses, and other Personal Data of any natural person to the extent they are processed subject to the UK GDPR or EU GDPR.

23. The Debtors propose to provide upon request an unredacted version of the Consolidated Creditor Matrix, the schedules of assets and liabilities, and the statement of financial affairs to the Court, the Office of the United States Trustee for the Northern District of Texas (the “U.S. Trustee”), and counsel to any committee of unsecured creditors appointed in these chapter 11 cases. The Debtors believe such procedures would be fair, would not impair the rights of any parties, and are within the bounds of this Court’s prior decisions. Accordingly, the Debtors ask the Court to enter an order authorizing the redaction of personally identifying information as set forth herein.

V. Service of the Notice of Commencement.

24. Bankruptcy Rule 2002(a) provides, in relevant part, that “the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days’ notice by mail of: (1) the meeting of creditors under § 341 or § 1104(b) of the Code” Fed. R. Bankr. P. 2002(a). Subsection (f) provides that notice of the order for relief shall be sent by mail to all creditors. Fed. R. Bankr. P. 2002(f).

25. Through Kurtzman Carson Consultants LLC, the Debtors’ proposed claims, noticing, and solicitation agent, the Debtors propose to serve the notice of commencement in the form attached as Exhibit 1 to the proposed Order (the “Notice of Commencement”) on all parties entitled to such notice and, at the same time, to advise them of the meeting of the creditors under section 341 of the Bankruptcy Code. Service of a single, consolidated Notice of Commencement will not only avoid confusion among creditors but will prevent the Debtors’ estates from incurring

unnecessary costs associated with serving multiple notices to the parties listed on the creditor matrix. Accordingly, the Debtors submit that service of a single, consolidated Notice of Commencement is warranted.

26. In addition, the Debtors intend to file the Notice of Commencement, in a form fit for publication, in *The New York Times* (National Edition) and the *San Francisco Chronicle* within five (5) days of entry of the proposed Order.

27. The Debtors submit that the filing of the Notice of Commencement and publication thereof is adequate and sufficient notice of (a) the commencement of the Debtors' chapter 11 cases and (b) scheduling of the Section 341 Meeting.

Emergency Consideration

28. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Failure to receive the relief requested in this motion during the first twenty-one days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture, jeopardizing the Debtors' ability to run a value maximizing sale process for the benefit of its creditors and parties in interest. The Debtors have satisfied the "immediate and irreparable" harm standard in Bankruptcy Rule 6003 and request that the Court approve the relief requested on an emergency basis.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

29. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h), which is necessary to implement the relief requested in this motion.

Reservation of Rights

30. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim or interest on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested in this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (f) a request for or approval to assume, adopt, or reject any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; or (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

Notice

31. The Debtors will provide notice of this motion to the following: (a) the U.S. Trustee for the Northern District of Texas; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Innovatus Life Sciences Lending Fund I, LP, as agent to the Debtors' secured lenders, and counsel thereto; (d) the United States Attorney's Office for the Northern District of Texas; (e) the Food and Drug Administration; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for the states in which the Debtors conduct business; and (i) any party that has requested notice

pursuant to Bankruptcy Rule 2002. No other or further notice is needed in light of the nature of the relief requested.

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The Debtors respectfully request entry of the order granting the relief requested herein and granting such other relief as the Court deems appropriate under the circumstances.

Dated: April 1, 2024
Dallas, Texas

SIDLEY AUSTIN LLP

/s/ Thomas R. Califano

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*Proposed Attorneys for the Debtors and Debtors
in Possession*

Certificate of Service

I certify that on April 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/ Thomas R. Califano

Thomas R. Califano

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)

(Joint Administration Requested)

**ORDER (I) AUTHORIZING THE DEBTORS TO
(A) FILE A CONSOLIDATED CREDITOR MATRIX AND
(B) FILE A CONSOLIDATED LIST OF 30 LARGEST UNSECURED
CREDITORS; (II) WAIVING THE REQUIREMENT TO FILE A LIST OF EQUITY
SECURITY HOLDERS; (III) AUTHORIZING THE DEBTORS TO REDACT CERTAIN
PERSONALLY IDENTIFYING INFORMATION; AND (IV) APPROVING THE
FORM AND MANNER OF NOTIFYING CREDITORS OF THE
COMMENCEMENT OF THE CHAPTER 11 CASES
AND OTHER INFORMATION**

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.

Upon the motion (“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 “Order”) (a) authorizing the Debtors to (i) file a consolidated creditor matrix and (ii) file a consolidated list of 30 largest unsecured creditors; (b) waiving the requirement to file a list of equity security holders; (c) authorizing the Debtors to redact personally identifying information from documents filed with the Court in these chapter 11 cases (including any creditor matrix, the schedules of assets and liabilities, and the statement of financial affairs); (d) approving the form and manner of notice of the commencement of these chapter 11 cases and other information; and (e) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; 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 bases as set forth herein.

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

2. The Debtors are authorized, but not directed, to file a Consolidated Creditor Matrix and a Consolidated Top 30 Creditors List.

3. The requirement that Debtor Eiger BioPharmaceuticals, Inc. ("Eiger") file a list of equity security holders pursuant to Bankruptcy Rule 1007(a)(3) is waived.

4. Any requirement that Eiger provide notice directly to equity security holders under Bankruptcy Rule 2002(d) is waived, and the Debtors are authorized to serve the notices required under Bankruptcy Rule 2002(d) on the registered holders of Eiger equity securities and, to the extent they are known, on beneficial holders, through the appropriate broker, Depository Trust Company participant, or other intermediary. The Debtors will cause the notices required under Bankruptcy Rule 2002(d) to be served on registered holders of Eiger's common stock and to be published in full in *The New York Times* (National Edition) and the *San Francisco Chronicle* in the Debtors' business judgment.

5. The Debtors are authorized, but not directed, to redact names, home and email addresses, and any other personally identifying information of individuals or any other natural person listed from any document filed or to be filed with the Court in these chapter 11 cases; *provided*, that the Debtors shall provide unredacted versions of any such document filed with the Court and redacted in accordance with this Order to (a) the Court, (b) the U.S. Trustee, and (c) counsel to any statutory committee appointed in these chapter 11 cases upon a request to the Debtors (email being sufficient) or to the Court, subject to the restrictions of the UK GDPR and EU GDPR. The unredacted version of the matrix shall include a header, or any other reasonable notice, with language putting the party in interest on notice of this Court's Order, the redacted nature of the document and attaching this Order.

6. The Notice of Commencement in the form attached as **Exhibit 1** to this Order is approved. Within five (5) business days of the entry of this Order, the Debtors are authorized to serve the Notice of Commencement on all parties on the creditor matrix and publish the same, in a form modified for publication, in *The New York Times* (National Edition) and the *San Francisco Chronicle* within five (5) business days of entry of this Order. Service of the Notice of Commencement shall be deemed adequate and sufficient notice of: (a) the commencement of these chapter 11 cases and (b) the scheduling of the meeting of creditors under section 341 of the Bankruptcy Code.

7. Nothing herein precludes a party in interest's right to seek emergency relief from the provisions herein or file a motion requesting that the Court allow access to the information redacted by this Order.

8. Nothing contained in this Motion or Order shall be deemed or construed as directing or otherwise effecting a substantive consolidation of the Debtors' chapter 11 cases.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. The Debtors are authorized to take all such reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

11. 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

Submitted By:

SIDLEY AUSTIN LLP

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*Proposed Attorneys for the Debtors and
Debtors in Possession*

Exhibit 1

Notice of Commencement

Information to identify the case:		
Debtor Name	<u>Eiger BioPharmaceuticals, Inc., et al.</u>	EIN <u>33-0971591</u>
United States Bankruptcy Court for the Northern District of Texas	Date Case Filed for chapter 11	<u>04/01/2024</u>
Case Number	<u>24-80040 (SGJ)</u>	

Official Form 309F1 (For Corporations or Partnerships)

Notice of Chapter 11 Bankruptcy Case

10/20

For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.

This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read both pages carefully.

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor’s property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney’s fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk’s office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk’s office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>), or by visiting the Debtors’ case website at www.kccllc.net/Eiger.

The staff of the bankruptcy clerk’s office cannot give legal advice.

Do not file this notice with any proof of claim or other filing in the case.

1. Debtor’s full name	See chart below
2. All other names used in the last 8 years	
Debtor	Other Name(s)

Jointly Administered Cases:

DEBTOR	ADDRESS	CASE NO.	EIN
Eiger BioPharmaceuticals, Inc.	2155 Park Boulevard, Palo Alto, California 94306	24-80040 (SGJ)	33-0971591
EBPI Merger Inc.	2155 Park Boulevard, Palo Alto, California 94306	24-80041 (SGJ)	26-3679986
EB Pharma LLC	2155 Park Boulevard, Palo Alto, California 94306	24-80042 (SGJ)	61-1748352
Eiger BioPharmaceuticals Europe Limited	30 Upper High Street, Thame, Oxfordshire, OX9 3EZ United Kingdom	24-80043 (SGJ)	N/A
EigerBio Europe Limited	Room 002, 28-32 Pembroke Street Upper, Dublin 2, Ireland D02NT28 Ireland	24-80044 (SGJ)	N/A

3. Address	See chart above
4. Debtor's attorney (proposed) Sidley Austin LLP Thomas R. Califano (TX Bar No. 24122825) William E. Curtin (<i>pro hac vice</i> pending) Anne G. Wallace (<i>pro hac vice</i> pending) 787 Seventh Avenue New York, NY 10019 Sidley Austin LLP Charles M. Persons (TX Bar No. 24060413) 2021 McKinney Avenue, Suite 2000 Dallas, Texas 75201	Contact Phone: (212) 839-5300 tom.califano@sidley.com wcurtin@sidley.com anne.wallace@sidley.com Contact Phone: (214) 981-3300 cpersons@sidley.com
5. Bankruptcy clerk's office Documents in this case may be filed at this address: Earle Cabell Federal Building 1100 Commerce St., Rm. 1254 Dallas, TX 75242-1496 Hours open: Monday through Friday 8:30 a.m. – 4:30 p.m. Contact phone: (214) 753-2000 You may inspect all records filed in this case at this office or online at https://pacer.uscourts.gov , or by visiting the Debtors' case website at www.kccllc.net/Eiger .	
6. Meeting of creditors The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so. The timing of the meeting is to be determined. Additional information will be provided at a later date. Information can be found at the Debtors' case website, available at www.kccllc.net/Eiger . The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket.	
7. Proof of claim deadline Deadlines for filing proof of claim: To be determined. Additional information will be provided at a later date. Information can be found at the Debtors' case website, available at www.kccllc.net/Eiger . A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at www.uscourts.gov or any bankruptcy clerk's office. Your claim will be allowed in the amount scheduled unless: <ul style="list-style-type: none">■ your claim is designated as <i>disputed</i>, <i>contingent</i>, or <i>unliquidated</i>;■ you file a proof of claim in a different amount; or■ you receive another notice. If your claim is not scheduled or if your claim is designated as disputed, contingent, or unliquidated, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled. You may review the schedules at the bankruptcy clerk's office or online at https://pacer.uscourts.gov . Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.	
8. Exception to discharge deadline The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline.	If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline stated below. Deadline for filing the complaint: To be Determined.

9. Creditors with a foreign address If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

10. Filing a Chapter 11 bankruptcy case Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.

11. Discharge of debts Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

If you have questions about this notice, please contact the Debtors' Claims and Noticing Agent, Kurtzman Carson Consultants LLC, at (888) 733-1544 (U.S./Canada) or (310) 751-2638 (international), or by email at <http://www.kccllc.net/Eiger/inquiry>.

You may also find more information at www.kccllc.net/Eiger.