

Fill in this information to identify the case:

Debtor Eiger BioPharmaceuticals, Inc

United States Bankruptcy Court for the: Northern District of Texas
(State)

Case number 24-80040

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Merck Sharp and Dohme LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? <u>Merck Sharp and Dohme LLC</u> <u>Adam Gates</u> <u>Mailstop UG4C-74</u> <u>PO Box 1000</u> <u>New Wales, PA 19454-2505, USA</u> Contact phone <u>267-305-2174</u> Contact email <u>adam_gates@merck.com</u>	Where should payments to the creditor be sent? (if different) Contact phone _____ Contact email _____
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) (see summary page for notice party information) Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) <u>43</u>	
		Filed on <u>07/18/2024</u> MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? ☒ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ Unliquidated. Does this amount include interest or other charges?
☒ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.

Rejection damages claim for rejection of License Agreement. See addendum.

9. Is all or part of the claim secured? ☒ No
☐ Yes. The claim is secured by a lien on property.
Nature or property:
☐ Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: \$ _____

Annual Interest Rate (when case was filed) _____ %
☐ Fixed
☐ Variable

10. Is this claim based on a lease? ☒ No
☐ Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? ☒ No
☐ Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No

☐ Yes. Check all that apply:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 10/02/2024
MM / DD / YYYY

/s/Adam Gates
Signature

Print the name of the person who is completing and signing this claim:

Name Adam Gates
First name Middle name Last name

Title Executive Director, Strategic Alliances

Company Merck Sharp and Dohme LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone _____ Email _____



Verita (KCC) ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (888) 733-1544 | International (310) 751-2638

Debtor: 24-80040 - Eiger BioPharmaceuticals, Inc				
District: Northern District of Texas, Dallas Division				
Creditor: Merck Sharp and Dohme LLC Adam Gates Mailstop UG4C-74 PO Box 1000 New Wales, PA, 19454-2505 USA Phone: 267-305-2174 Phone 2: Fax: Email: adam_gates@merck.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded			
	Related Document Statement:			
	Has Related Claim: No			
	Related Claim Filed By:			
	Filing Party: Creditor			
Disbursement/Notice Parties:				
<table><tr><td>Merck Sharp and Dohme LLC Office of the Corporate Secretary 126 East Lincoln Avenue PO Box 2000 Rahway, NJ, 07065 Phone: Phone 2: Fax: E-mail: office.secretary@merck.com</td><td>Merck Sharp and Dohme LLC Emily Sauter 126 East Lincoln Avenue Mailstop RY 60-258B Rahway, NJ, 07065 Phone: Phone 2: Fax: E-mail: emily.sauter@merck.com</td></tr></table>			Merck Sharp and Dohme LLC Office of the Corporate Secretary 126 East Lincoln Avenue PO Box 2000 Rahway, NJ, 07065 Phone: Phone 2: Fax: E-mail: office.secretary@merck.com	Merck Sharp and Dohme LLC Emily Sauter 126 East Lincoln Avenue Mailstop RY 60-258B Rahway, NJ, 07065 Phone: Phone 2: Fax: E-mail: emily.sauter@merck.com
Merck Sharp and Dohme LLC Office of the Corporate Secretary 126 East Lincoln Avenue PO Box 2000 Rahway, NJ, 07065 Phone: Phone 2: Fax: E-mail: office.secretary@merck.com	Merck Sharp and Dohme LLC Emily Sauter 126 East Lincoln Avenue Mailstop RY 60-258B Rahway, NJ, 07065 Phone: Phone 2: Fax: E-mail: emily.sauter@merck.com			
Covington and Burling LLP Martin Beeler 620 Eighth Avenue New York, NY, 10018 USA Phone: Phone 2: Fax: E-mail: mbeeler@cov.com				
Other Names Used with Debtor:	Amends Claim: Yes - 43, 07/18/2024			
	Acquired Claim: No			
Basis of Claim: Rejection damages claim for rejection of License Agreement. See addendum.	Last 4 Digits: No	Uniform Claim Identifier:		
Total Amount of Claim: Unliquidated	Includes Interest or Charges: No			
Has Priority Claim: No	Priority Under:			

Has Secured Claim: No	Nature of Secured Amount:
Amount of 503(b)(9): No	Value of Property:
Based on Lease: No	Annual Interest Rate:
Subject to Right of Setoff: No	Arrearage Amount:
	Basis for Perfection:
	Amount Unsecured:
Submitted By: Adam Gates on 02-Oct-2024 3:35:23 p.m. Eastern Time	
Title: Executive Director, Strategic Alliances	
Company: Merck Sharp and Dohme LLC	

**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)

ADDENDUM TO AMENDED PROOF OF CLAIM OF MERCK SHARP & DOHME LLC

This is an addendum (“**Addendum**”) to, and a part of, the amended proof of claim filed by Merck Sharp & Dohme LLC, (“**Merck**”) against debtor Eiger Biopharmaceuticals, Inc. (“**Debtor**”).

1. On April 1, 2024 (“**Petition Date**”), the Debtor and certain affiliated entities (collectively, “**Debtors**”), filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 101, *et seq.*) (“**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas (“**Bankruptcy Court**”). As of the date of this Addendum, the Debtors are operating their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

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. On April 5, 2024, the Bankruptcy Court issued an order directing joint administration of the Debtors' chapter 11 cases [Docket No. 81]. The cases are jointly administered under Case No. 24-80040 (SGJ). As of the date of this Addendum, no trustee or examiner has been appointed in these cases. On June 10, 2024, the Office of the United States Trustee for the Northern District of Texas appointed the Official Committee of Unsecured Creditors in the Debtors' bankruptcy cases [Docket No. 322]. In addition, on June 25, 2024, the Office of the United States Trustee for the Northern District of Texas appointed the Official Equity Security Holders' Committee [Docket No. 359].

3. The Initial Claim. On July 18, 2024, Merck (as successor in interest to Merck Sharp & Dohme Corp., as successor in interest to Schering Corporation) filed a proof of claim ("**Initial Claim**") asserting a contingent and unliquidated claim for prepetition indemnifiable Liability that may arise under the terms of that certain License Agreement dated as of September 3, 2010, by and between Merck and Debtor (as amended, "**License Agreement**") [Claim No. 43].²

4. The Rejection Damages Claim. Pursuant to the License Agreement, Merck granted to Debtor an exclusive and world-wide license to certain intellectual property for the compound lonafarnib, owned by Merck ("**Licensed IP**"), to treat Progeria in humans ("**Progeria Field**") and for certain human antiviral applications ("**Antiviral Field**").

5. On April 24, 2024, the Bankruptcy Court entered 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], as supplemented by the Court's Order filed at Docket No. 221 ("**Zokinvy Sale Order**"). In connection with

² The License Agreement and related amendments contain sensitive and confidential commercial information and thus are not attached to this Addendum. Merck believes that the Debtor has a copy of the License Agreement in its possession. If necessary, Merck will provide a copy to the Debtor upon written request.

the Zokinvy Sale Transactions (as defined in the Zokinvy Sale Order), among other things, the Debtor granted a sublicense of Debtor's rights under the License Agreement in the Progeria Field (but not the Antiviral Field) to Sentyln Therapeutics, Inc. ("**Sentyln**"), and Merck entered into the Merck Side Letter, all as further described and implemented under the Zokinvy Sale Order.

6. On August 21, 2024, the Bankruptcy Court entered 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) Granting Related Relief* [Docket No. 558] ("**Lonafarnib Sale Order**," and together with the Zokinvy Sale Order, the "**Sale Orders**"). In connection with the Lonafarnib Sale Transaction (as defined in the Lonafarnib Sale Order, and together with the Zokinvy Sale Transaction, the "**Sale Transactions**"), the Debtor, among other things, granted a sublicense of Debtor's rights under the License Agreement in the Antiviral Field (but not the Progeria Field) to Eiger InnoTherapeutics, Inc. ("**Eiger Inno**," together with Sentyln, "**Buyers**"), and Merck entered into a side letter with Eiger Inno, all as further described and implemented in the Lonafarnib Sale Order.³

7. As a consequence of the Sale Transactions, the Debtor has transferred to each of the respective Buyers all of its license rights with respect to the Progeria Field and Antiviral Field, and Merck has entered into certain agreements with the Buyers, as contemplated by the Sale Transactions and Sale Orders, governing the use of the Licensed IP by the Buyers.

³ Certain documents pertaining to the sale transactions remain nonpublic and/or filed under seal on the docket in the Bankruptcy Cases because they contain sensitive and confidential information and are thus not attached to this addendum. Merck believes that the Debtor has copies of such documents in its possession. If necessary, Merck will provide copies of such documents within Merck's possession to the Debtors upon request.

8. On September 5, 2024, the Bankruptcy Court entered the *Order (I) Authorizing the Debtors to Reject the Merck License and (II) Granting Related Relief* [Docket No. 638] (“**Rejection Order**”). The Rejection Order, among other things, authorized the Debtor’s to reject the License Agreement and required the filing of any rejection damages claim with respect to the rejected License Agreement within 30 days from the date of entry of the Rejection Order. This claim is timely filed under the terms of the Rejection Order.

9. Under the License Agreement, the Debtor is obligated to make payments to Merck and perform in accordance with contractual covenants and other terms and conditions for the benefit of Merck. Debtor’s payment obligations include the payment of certain development and commercialization milestones and royalties related to the use of the Licensed IP as set forth in Article VII of the License Agreement. As is common for transactions of the type contemplated by the License Agreement, the Debtor is subject to extensive performance obligations regarding, for example, regulatory compliance, intellectual property maintenance and enforcement, pharmacovigilance, and confidentiality and nondisclosure. Merck files an unliquidated claim against the Debtor for any and all damages arising from the Debtor’s material breach of its obligations under the License Agreement, including the payment and performance obligations set forth above, as a result of the rejection of the License Agreement under the Rejection Order (“**Rejection Damages Claim**”).

10. Credits/Setoff. Merck expressly reserves any and all rights of setoff, netting, recoupment and all similar such rights, and nothing herein shall be construed as a waiver of such rights. Merck holds no security interests and has not received any security for the Rejection Damages Claim.

11. Reservation of Rights. Merck preserves any and all (a) rights to asserts claims on any ground, including, without limitation, claims based upon (i) indemnity, (ii) contribution, (iii) *quantum meruit*, or (iv) unjust enrichment; and (b) all procedural and substantive rights, claims and defenses with

respect to any claim that has been or may be asserted against Merck by the Debtor or any other person or entity whatsoever.

12. Amendments and Supplements. Merck expressly reserves any and all rights to amend, clarify and/or supplement the Rejection Damages Claim at any time and for any reason, including without limitation, to: (a) assert and file additional, supplementary and/or amended proofs of claim; (b) correct, increase, liquidate, or amend the amounts referred to herein; (c) add or amend documents and other information, and to describe further the Rejection Damages Claim; (d) add or include any other debtor or any other entity, including, but not limited to, any entity which may become a debtor or debtor-in-possession; (e) add or amend categories of payments or liabilities; (f) assert further priority, security interests or similar rights with respect to the claim asserted herein; and (g) file or otherwise assert requests for the payment of administrative claims.

13. Other Claims Preserved. This Rejection Damages Claim is made without prejudice to the rights of Merck to file proofs of claim with respect to any other indebtedness, obligation or liability of the Debtor and/or any debtor-affiliates.

14. No Implied Amendment. The filing of this amendment to the Initial Claim shall in no way, by implication or otherwise, alter, amend, supplement, or modify the Initial Claim except as expressly set forth herein. The Initial Claim shall remain valid and in full force and effect.

15. No Waiver/Consent. The filing of this Rejection Damages Claim does not constitute, and should not be construed to be, a waiver by Merck of (a) any rights, claims, defenses, or remedies, whether under applicable law or otherwise, against any other entity that may be liable for all or part of the Rejection Damages Claim, whether an affiliate of the Debtor, an assignee, guarantor or otherwise; (b) any obligation owed to Merck; (c) the right to a jury trial in any proceeding so triable; (d) the right to have any private right causes of actions or non-core matters finally adjudicated by an Article III judge; or (e) the right to

seek to have the reference withdrawn with respect to the subject matter of the Rejection Damages Claim, any objection or other proceedings commenced with respect thereto, or any other proceedings commenced in the Debtor's case against or otherwise involving Merck. The filing of this Rejection Damages Claim does not constitute and should not be construed to be, (i) an election of remedies by Merck; (ii) a consent by Merck to a jury trial in the Bankruptcy Court or any other court in any proceeding as to any and all matters so triable herein, or in any case; (iii) a consent by Merck to the jurisdiction of the Bankruptcy Court for any matter; or (iv) a consent to entry of final order on any private right cause of action or non-core matter by the Bankruptcy Court.

16. Notice. All notices and communications concerning this Rejection Damages Claim should be addressed and sent to:

Merck Sharp & Dohme LLC
Mailstop UG4C-74, PO Box 1000
North Wales, PA 19454-2505
Attn: Adam Gates
adam_gates@merck.com
Tel: 267-305-2174

and

Merck Sharp & Dohme LLC
Office of the Corporate Secretary
126 East Lincoln Ave
P.O. Box 2000
Rahway NJ 07065
office.secretary@merck.com

and

Merck Sharp & Dohme LLC
126 E. Lincoln Ave., Mailstop RY60-258B
Rahway, NJ 07065
Attn: Emily Sauter
emily.sauter@merck.com
Tel: 732-594-2509

and

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY
Attn: Martin Beeler
mbeeler@cov.com
Tel: 212-841-1023

or to such other person as directed by Merck.