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Jason S. Brookner
Texas Bar No. 24033684
Emily F. Shanks
Texas Bar No. 24110350
**GRAY REED**
1601 Elm Street, Suite 4600
Dallas, TX 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
eshanks@grayreed.com

Kizzy L. Jarashow (*pro hac vice*)
**GOODWIN PROCTER LLP**
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Telephone: (212) 813-8800
Email: KJarashow@goodwinlaw.com

-and-

David R. Chen (*pro hac vice*)
**GOODWIN PROCTER LLP**
520 Broadway Suite #500
Santa Monica, CA 90401
Telephone: (424) 252-6400
Email: davidchen@goodwinlaw.com

***Counsel to EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc.***

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

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

**EIT PHARMA, INC.'S, RESPONSE TO MOTION OF SENTYNL THERAPEUTICS, INC. TO (I) ENFORCE THE ZOKINVY SALE ORDER AND (II) FOR CONTEMPT AGAINST EIGER INNOTHERAPEUTICS, INC.**

EIT Pharma, Inc., formerly known as Eiger InnoTherapeutics, Inc., ("EIT") files this response (the "Response") to the *Motion of Sentynl Therapeutics, Inc to (I) Enforce the Zokinvy*

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2155 Park Boulevard, Palo Alto, California 94306.


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*Sale Order and (II) for Contempt Against Eiger Innotherapeutics, Inc*. [Docket Nos. 779 & 781] (the "Motion"). In support hereof, EIT respectfully represents as follows:[2]

**Introduction and Summary**

1. The Motion—like the request for administrative claim filed by Sentynl at Docket No. 729 (the "Administrative Claim")—is nothing more than a textbook case of buyer's remorse. Or stated simply, a self-inflicted wound. Or perhaps even more simply, "oops."

2. Sentynl purchased certain of the Debtors' assets after presumably doing extensive diligence and being fully apprised of all assets for sale and how the various assets, information, and contracts interplayed and intersected with each other. Sentynl made a conscious, knowing, and willful decision to purchase only certain assets and take assignments of only certain of the Debtors' contracts while, at the same time, leaving behind other assets and contracts. Sentynl acted purposely and intentionally.

3. One can only assume Sentynl determined to leave behind certain assets and contracts because the matters covered by those items were not, in Sentynl's mind, "mission critical" and could be secured cheaper and more efficiently elsewhere. As the Motion and Administrative Claim lay bare, however, Sentynl lost its gamble, and now realizes the error of its ways. Rather than fess up to its own miscalculation and engage in discussions to resolve the matter on a commercial basis, however, Sentynl has instead decided to distort the factual record, and attempt to side-step its own willful determinations by laying the blame for the problem it created for itself at the feet of the estate, EIT and others.

4. The Debtors had an exclusive license to develop and commercialize Lonafarnib. Lonafarnib is used to develop Zokinvy for the treatment of Progeria and is also actively being

[2] Capitalized terms not immediately defined herein have the meaning as defined later on in this Response.

developed into a new drug to treat hepatitis delta virus ("HDV"). HDV is considered the most severe form of hepatitis, characterized by rapid disease progression and significantly increased risk of liver cancer and liver failure if left untreated. Given the intense competition and critical unmet medical needs in this therapeutic area, timely advancement is essential. Progeria, while severe, is rare, with between 100 and 200 patients worldwide, approximately 18 of which are in the U.S. Conversely, there are about 100,000 HDV patient in the U.S. alone, and over 15 million globally.

5. It was always contemplated that the primary market for Lonafarnib was treatment of HDV. The Debtors contracted with several vendors for certain services and supplies related to the manufacture of Lonafarnib, including Corden and Lonza.[3] Because the Progeria patient pool is small by comparison, it is much more economical for those vendors to work with a single developer for Lonafarnib for both Progeria and HDV. Therefore, because of Zokinvy's minimal manufacturing scale, manufacturers may be reluctant to enter into contractual agreements to produce Zokinvy as a standalone product (which is presumably why the Debtors had a single manufacturing supply chain of Lonafarnib for both indications). It would appear this is the fate suffered by Sentynl—who should have known better.

6. Nevertheless, the Debtors separately sold their two indications for Lonafarnib to different purchasers: (i) the Zokinvy assets related to the treatment of Progeria were sold to Sentynl (the "Sentynl Sale"); and (ii) the Lonafarnib assets related to the treatment of HDV and the remaining indications were sold to EIT (the "EIT Sale"). As such, Sentynl bought the ***rights to manufacture*** and commercialize Lonafarnib ***for Zokinvy*** for treatment of Progeria, and EIT bought the broader ***ability and the rights to manufacture*** (and the underlying infrastructure,

[3] "Corden" refers to Corden Pharma International and/or any affiliate Including Corden Pharma Colorado and Corden Pharma International GmbH. "Lonza" refers to Lonza Bend Research, Inc. f.k.a Bend Research Inc.

materials, information, and contracts to do so) and the right to commercialize Lonafarnib for the treatment of HDV. At all times, the Debtors were transparent with Sentynl that (1) the Debtors were retaining the vendor contracts necessary for the manufacture of Lonafarnib needed both for Progeria and HDV which could be sold separately; (2) many of the items and services that Sentynl required for the manufacture of Zokinvy overlap with certain of the Lonafarnib assets related to the manufacture of Lonafarnib for the treatment of HDV (in fact, it is substantially the same process to manufacture both drugs); and (3) it may be difficult to negotiate separate vendor agreements with the overlapping vendors who generally provided services related to the manufacture of Lonafarnib for both Zokinvy and HDV.

7. Sentynl—as a sophisticated pharmaceutical company—no doubt conducted its own due diligence with this in mind, and determined exactly what assets it did or did not need or want in connection with the sale and its commercialization of Zokinvy. Indeed, as explained further below, Sentynl and the Debtors even entered into a postpetition Sublicense Agreement and agreed to a 6-month time period during which Sentynl could consider whether it wanted to take an assignment of certain vendor contracts—namely, the Corden MSA and the Lonza MSA[4]—which were expressly excluded from the Sublicense Agreement or obtain their own contracts with Lonza, Corden, or other manufacturers that provide similar services.

8. After the expiration of the 6-month term, these agreements were then assigned to EIT pursuant to the terms of the EIT Sale. Sentynl had notice of, and an opportunity to object to, the EIT Sale and the assignment of the Lonza MSA and Corden MSA but ***failed to do so.*** Despite

[4] The "Corden MSA" refers collectively to the Master Services Agreement with CordenPharma dated March 22, 2016 and the Commercial Quality Agreement with CordenPharma dated February 19, 2020. The "Lonza MSA" refers collectively to that certain Commercial Quality Agreement, dated October 17, 2019, as amended by Amendment No. 1 to Quality Agreement, dated February 15, 202 and that certain Quality Agreement for Commercial Manufacture of Product, dated November 1, 2023. EIT refers to the Corden MSA and the Lonza MSA collectively herein as the ("Corden and Lonza Agreements").

the parties' attempts to help Sentynl and the continued extension of time prior to assignment of the Corden and Lonza Agreements, as reflected in the Liquidating Trustee's response to the Administrative Claim [Docket No. 777]. Sentynl, however, refused to help itself commercialize and deliver Zokinvy to those in need. Now, rather than take accountability for its own actions and shortcomings, and rather than deal with its own issues which it created for itself, Sentynl is attempting to take from others that which it could have, but did not, take for itself: agreements and/or items or services expressly purchased by and transferred to EIT pursuant to the terms of the EIT Sale.

9. Not only did Sentynl fail to raise these alleged issues when it had the chance during the Debtors' chapter 11 case, but the plain language of the Sublicense Agreement and the Lonafarnib APA belie Sentynl's contentions.

10. After the EIT Sale closed, EIT offered many times over to negotiate a business deal with Sentynl as a means to reach a mutually beneficial business relationship for each party to develop its respective drug. EIT offered to provide access to certain Lonafarnib assets purchased by EIT, including access to manufacturing materials. Sentynl, however, refused EIT's terms.

11. EIT even entered into a Settlement Agreement with the Liquidating Trustee to provide Sentynl with materials from Lonza for its production of key intermediates for Zokinvy. But again, Sentynl, refused to participate in a global settlement with EIT and now asserts that the Settlement Agreement undermines the Zokinvy APA.

12. Sentynl then—without any warning—filed the Motion, contending ***it*** somehow owns certain Lonafarnib assets expressly purchased by EIT, and accuses EIT of sabotaging its ability to manufacture Zokinvy. This contention both defies reality and could not be further from the truth. The fact of the matter is that Sentynl intentionally did not purchase all the assets

necessary to manufacture its drug and is now attempting to extort money and/or property from EIT and the Liquidating Trustee, instead of engaging in good faith to negotiate a business agreement. The Court should look past Sentynl's thin veil and see its desperation exactly for what it is: a "throw it all against the wall" approach to find a solution for what Sentynl now realizes was its own improvident decisions.

13. EIT has now spent considerable time and money defending itself and protecting the assets that it clearly and fairly purchased—time and money that EIT could otherwise have used to continue developing Lonafarnib for the treatment of millions of patients with HDV. Instead, EIT now finds itself at the center of Sentynl's scorched-earth, last-ditch effort to mend its self-inflicted wound. But Sentynl must live with the consequences of its own actions (or inactions) and cannot and should not be permitted to unravel all that EIT has worked for and purchased to save its own skin.

14. At the outset, Senynl's Motion should be dismissed because it is procedurally improper, seeking injunctive relief that cannot be granted in a contested matter. But if the Court determines to nonetheless hear the merits of the issues as presented, the Motion should be denied for the following reasons:

a. Other than the Double Sold Materials, Sentynl did not purchase and has no rights to the assets purchased by EIT.

b. EIT has not interfered with Sentynl's ability to commercialize Zokinvy.

c. The Sublicense Agreement did not preclude the assignment of the Corden and Lonza Agreements; nor did EIT have any obligation to refuse the assignment of the Corden and Lonza Agreements.

d. The Settlement Agreement is not a collateral attack on the Zokinvy Sale Order.

15. Additionally, the Court need not order EIT to show cause. EIT has in no way interfered with or otherwise violated a Court order, and Sentynl has not otherwise met the threshold required for an order to show cause to issue.

## Background

16. On April 1, 2024, Eiger Biopharmaceuticals, Inc. et al. (the "Debtors" or "Eiger") filed voluntary chapter 11 petitions. The Debtors' cases are jointly administered.

### A. The Zokinvy APA and the Sublicense Agreement

17. On April 24, 2024, the Court entered its *Order (I) Approving the Sale of the Debtors' Zokinvy Assets, (II) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief* [Docket No. 162] (the "Zokinvy Sale Order"), approving that certain *Asset Purchase Agreement by and between Sentynl Therapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated March 31, 2024* (annexed as Exhibit 1 to the Zokinvy Sale Order)) (the "Zokinvy APA"). The closing occurred on May 3, 2024. *See Notice of Closing of Zokinvy Sale Transaction* [Docket No. 214] (the "Zokinvy Notice of Closing"). The Zokinvy Notice of Closing sets forth the list of contracts assigned to Sentynl in connection with the Zokinvy APA, and the Corden and Lonza Agreements are ***not*** included.

18. Article 2 Section 2.1(a) through (i) of the Zokinvy APA sets forth the "Transferred Assets" purchased by Sentynl. Section 2.1 expressly incorporates the Sublicense Agreement with respect to "Transferred Inventory," which is defined in section 3.3 of the Sublicense Agreement as set forth below.

19. As part of the Sentynl Sale, the Debtors and Sentynl entered into that certain *Sublicense Agreement, dated as of May 3, 2024, by and among Purchaser and the Seller*,

substantially in the form attached to the Zokinvy APA as Exhibit E [filed under seal pursuant to order at Docket No. 188] (the "Sublicense Agreement"). The postpetition Sublicense Agreement relates to the prepetition license agreement by and between Merck Sharp & Dohme Corp. ("Merck") and the Debtors, granting a license to the Debtors for the right to develop and commercialize Lonafarnib for the treatment of Progeria. "Transferred Inventory" is defined in Section 3.3 the Sublicense Agreement and is incorporated in the Zokinvy APA as follows:

> all rights, title and interest in and to all Licensed Progeria Product (including raw materials and active pharmaceutical ingredients), and the inventory of the Licensed Progeria Product, in each case in [the Debtors'] or its affiliates possession and control and **that is further described by category, quantity, unit of measure, lot number and storage location in Schedule 3.3(a)** [of the Sublicense Agreement]. (emphasis added).

Schedule 3.3(a) of the Sublicense Agreement lists all the Transferred Inventory purchased by Sentynl in two categories: Finished Goods and Raw Materials.

20. Also under the Sublicense Agreement and subject to the Debtors' retained rights therein, the Debtors granted an exclusive sublicense to Sentynl to further develop and commercialize Lonafarnib in the Progeria field. *See* Sublicense Agreement, § 2.1. Under this sublicense, Sentynl is entitled to "Merck Know-How" and Debtor "Know-How" in commercializing Zokinvy.

21. The Sublicense Agreement further contemplated that the Debtors would retain certain contracts with vendors the Debtors used for services related to Zokinvy and Lonfarnib for HDV, which are referred to in the Sublicense Agreement as "Retained Agreements." The Retained Agreements included the Corden and Lonza Agreements and, therefore, Sentynl did not obtain any rights to the Corden and Lonza Agreements under the Sublicense Agreement.

22. The Debtors agreed to use "reasonable efforts to not . . . (i) sell, assign, transfer, convey, deliver or otherwise divest its interests in [the Retained Agreements] to a Third Party in a

manner that adversely affects, or would reasonably be expected to adversely affect . . . [Sentynl's] ability to Commercialize the Licensed Progeria Product." Sublicense Agreement, § 3.7.[5]

23. EIT understands that the Debtors discussed with Sentynl how the rights and obligations under certain manufacturing agreements, like the Corden and Lonza Agreements, could be assigned to Sentynl if Sentynl so desired. Upon information and belief, the Debtors made Sentynl aware that those agreements concerned Zokinvy as well as other development programs, and the Debtors were willing to assign such contracts to Sentynl. EIT is further informed that the Debtors understood Sentynl intended to negotiate ***new direct contracts*** with the third-party counterparties to the Retained Agreements and, thus, Sentynl negotiated with the Debtors the following provision in the Sublicense Agreement:

> For each [Retained Agreement] . . . Eiger shall retain each such [Retained] Agreements and grant to Sublicensee such rights or delegate such obligations under such Retained Agreement as necessary to fully exercise its rights and perform its obligations pursuant to this Agreement **until the earlier of,** unless otherwise agreed by the Parties in writing (a) the date that Sublicensee obtains a new agreement for substantially the same services as those provided by the counterparty under the Retained Agreement, or **(b) six (6) months from the Effective Date [May 3, 2024]**.

Sublicense Agreement, Section 3.7 (emphasis added). The Zokinvy APA and Sublicense Agreement both, therefore, unequivocally provided that Sentynl was not purchasing certain contracts it would need in connection with the assets it acquired, but that Sentynl would nonetheless have 6 months to locate, identify, and/or negotiate replacement services provided under the Retained Agreements, or request that the Debtors assign the relevant agreements to Sentynl.

[5] Section 1.6 of the Sublicense Agreement defines "Commercialization" as "with respect to Licensed Product, any and all activities directed to the marketing, promotion, distribution, offering for sale and selling such product, importing and exporting such product for sale, and interacting with Regulatory Authorities regarding the foregoing. Commercialization shall also include Commercialization Studies. "Commercialize" has a correlative meaning." Thus, commercialization expressly does not include the development or manufacture of Zokinvy.

24. The date that was six months after the May 3, 2024 Effective Date was November 3, 2024. On and after that date, there was no restriction on assignment of the Corden or Lonza Agreements.

**B. The Lonafarnib APA and the Debtors' Assignment of Corden and Lonza Agreements to EIT**

25. On August 2, 2024, the Debtors filed their *Notice of Cancellation of Auction(s), Designation of Winning Bid for the Lonafarnib Sale Transaction, and Transition to Private Sale Process for Lonafarnib/Lambda Sale Transactions* [Docket No. 489] (the "Lonafarnib Sale Notice"), selecting EIT as the highest and best bidder for the Lonafarnib/Lambda Assets. The Lonafarnib Assigned Contracts and Cure Amounts, attached to the Lonfarnib Sale Notice as Exhibit A, specifically listed the contracts to be assumed and assigned as part of the EIT Sale (collectively, the "Assigned Contracts"). The Debtors provided notice to all parties, including Sentynl, that the Debtors would be assigning the Cordon MSA and the Lonza MSA to EIT. *See Certificate of Service* [Docket No. 511] (Exhibit C) (listing counsel for Sentynl as a service party). Sentynl did not object.

26. On August 5, 2024, the Debtors filed their *Emergency Motion for the Entry of an Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to a Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) Granting Related Relief* [Docket No. 490] (the "Sale Motion") seeking, among other things, approval of that certain *Asset Purchase Agreement by and Between Eiger InnoTherapeutics, Inc., as Purchaser, and Eiger BioPharmaceuticals, Inc., as Seller, Dated as of August 1, 2024* [Docket No. 490-1] (the "Lonafarnib APA"), and the

assumption and assignment of the Assigned Contracts, including the Corden and Lonza Agreements.

27. On August 21, 2024, the Court entered its *Revised Order (I) Authorizing the Sale of the Lonafarnib and Lambda Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases, (III) Granting the Purchaser the Protections Afforded to A Good Faith Purchaser, (IV) Approving Purchaser Protections in Connection with the Sale of the Lonafarnib and Lambda Assets, and (V) and Granting Related Relief* [Docket No. 558] (the "Lonafarnib Sale Order").

28. Section 2.1(h) of the Lonafarnib APA, which lists the assets being sold to EIT (defined as the "Transferred Assets" in section 2.1 of the Lonafarnib APA) specifically and expressly lists the following as "Transferred Assets":

> all right, title and interest in and to (i) any raw materials (including work in process, buffer stock held by vendors, dies and active pharmaceutical ingredients inventory, **reference standards and materials, and all components and materials used in the Manufacture of any Lonafarnib Antiviral Product)**, finished goods and other inventory of all Lonafarnib Antiviral Products in the possession or control of, otherwise held by or on behalf of (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level), or owned by the Seller Group; and (ii) all good and marketable unbroken lots of packaged finished goods inventory of all Lonafarnib Antiviral Product in the possession or control of, or otherwise held by or on behalf of (including by or on behalf of any contractors or other service providers acting on behalf of the Seller Group, directly or indirectly, at any level), the Seller Group as of Closing, regardless of where located, and all rights to receive refunds, rebates or credits in connection therewith (for the avoidance of doubt, the Transferred Assets also include all manufactured product, packaging material, compounds and any other similar assets relating to any Lonafarnib Antiviral Product, and any assets that are under manufacture); **in each case including** the raw materials, reference standards and materials, and inventory listed in **Schedule 2.1(h)**, as may be amended or supplemented at the request of Purchaser at any time prior to the Closing (collectively, "**Inventory**")[.] (emphasis added).

29. The Lonafarnib APA contemplated the assignment of certain Retained Agreements, referred to as "Existing Manufacturing Contracts" under the Lonafarnib APA. The Corden and Lonza Agreements were identified as "Existing Manufacturing Contracts." As such, the Lonafarnib APA expressly provides that the Corden and Lonza Agreements were automatically assigned and transferred to EIT on the "Existing Manufacturing Contract Transfer Date" as follows:

- Section 2.1(a) of the Lonafarnib APA transfers to EIT "all of the rights, title and interests in, to and under" … "the Existing Manufacturing Contracts" which shall occur "… on the applicable Existing Manufacturing Contract Transfer Date automatically..."

- Section 1.1 of the Lonafarnib APA provides that the "Existing Manufacturing Contract Transfer Date" means, with respect to an Existing Manufacturing Contract, "the date that is the ***earlier to occur*** of (a) **November 3, 2024**, (b) the date that [Sentynl] obtains a new agreement for substantially the same services as those provided to Seller by the counterparty under such Existing Manufacturing Contract prior to May 3, 2024, and (c) the date Purchaser and [Sentynl] agree to arrangements for the supply of Licensed Progeria Product under the Existing Manufacturing Contracts following the assignment thereof to Purchaser." (emphasis added).

**C. Sentynl Did Not Object to the Assignment of the Corden and Lonza Agreements to EIT**

30. Pursuant to the Lonafarnib APA, which was negotiated long after the May 3, 2024 closing on the Sentynl APA, the Debtor assigned the Corden and Lonza Agreements to EIT on November 3, 2024, the last date that the Debtors were required to maintain the Retained Agreements under the Sublicense Agreement.

31. Sentynl received timely notice of the Sale Motion. *See Certificate of Service*, Docket No. 512. The Lonafarnib Sale Notice Notice listed the Corden and Lonza Agreements as assigned contracts. The Lonafarnib Sale Notice, which listed the Assigned Contracts, was served on Sentynl. *See Certificate of Service,* Docket No. 511. The EIT Sale, including the assignment

of the Corden and Lonza Agreements was approved on notice to, and without objection from, Sentynl.

32. On September 3, 2024, the EIT Sale closed. *See Notice of Closing of Lonafarnib/Lambda Sale Transactions* [Docket No. 616] (the "Notice of Closing"). The Corden and Lonza Agreements were specifically listed in the Final Lonafarnib Assigned Contracts List, attached as Exhibit A to the Notice of Closing, which designated them as "Existing Manufacturing Contracts." On September 4, 2024, the Debtors noticed Sentynl, that the Cordon and Lonza Agreements were to be assigned to EIT. *See Certificate of Service* [Docket No. 362] (Exhibit A) (setting forth counsel for Sentynl as notice party).

33. At no point throughout the EIT Sale process did Sentynl object to the Lonafarnib APA, the assets sold to EIT pursuant to the same, or to the assignment of the Corden and Lonza Agreements to EIT. Upon information and belief, Sentynl did not notify the Debtors that the assignment of the Lonza MSA and Corden MSA to EIT would in any way adversely affect, or could reasonably be expected to adversely affect, Sentynl's ability to commercialize Zokinvy. Moreover, Sentynl had the opportunity to purchase the Lonafarnib assets, but affirmatively chose not to.

**D. EIT Worked in Good Faith with Sentynl and the Liquidating Trustee Regarding Sentynl's Access to the Lonfarnib Assets Purchased by EIT.**

**i. EIT's Attempted Negotiations with Sentynl**

34. Despite Sentynl's failure to take an assignment of the Corden and Lonza Agreements or to object to the assignment of the same to EIT, EIT attempted to work with Sentynl and the Liquidating Trustee to assist Sentynl in obtaining items it believed it needed to commercialize Zokinvy.

35. Section 7.12 of the Lonafarnib APA provides that:

> "[f]ollowing the Closing, Purchaser shall negotiate in good faith with the Zokinvy Buyer a Zokinvy Buyer Agreement which addresses the following matters: (a) the determination and allocation of Cross-Field Sales (as defined in the Merck License Agreement); (b) a safety data exchange agreement for the exchange of safety data relating to the Zokinvy Product and Lonafarnib Antiviral Products and responsibility for maintaining the Global Safety Databases; (c) a grant by Purchaser to the Zokinvy Buyer of a license to the Transferred Regulatory Information and Transferred Data to replace the license granted to Seller under Section 7.7, (d) a license and right of reference to, and right to access and receive copies of, the INDs and NDAs, including all modules thereof, related to the Zokinvy Product and all data related thereto directly from the Zokinvy Buyer, and letters of authorization in furtherance thereof; (e) a co-existence agreement for trademarks containing the word "Eiger"; and (f) supply by Purchaser to the Zokinvy Buyer of the Zokinvy Product under Purchaser's rights under the Existing Manufacturing Contracts after the Existing Manufacturing Contract Transfer Date for such Existing Manufacturing Contract.

36. To that end, EIT immediately expressed to Sentynl its desire to have a mutually beneficial relationship whereby the parties could work collaboratively on a business alliance that would ensure each of them had the Lonafarnib materials necessary to produce their respective drugs. Indeed, EIT, on at no less than 12 occasions between September and November 2024, attempted to negotiate favorable business terms beneficial for both parties and ultimately beneficial for both Progeria and HDV patients.

37. For example, EIT proposed to supply to Sentynl certain Lonafarnib assets that it purchased for Sentynl's future needs for the development of Progeria at cost or even for free. EIT explained to Sentynl that because the Lonafarnib requirements for HDV vastly exceed the relatively minute amounts needed to supply the very small number of Progeria patients, it would make sense that the small amount of Lonfarnib needed to supply the production of Progeria be "skimmed off" from one of the multiple yearly batches of Lonafarnib to be produced for HDV, which was consistent with the supply chain needs for Progeria contemplated by the Debtors prior to filing these bankruptcy cases. Ultimately, however, Sentynl refused to accept any proposal.

38. On November 1, 2024, Sentynl filed its *Motion for Allowance of Administrative Expense Claim* [Docket No. 729], alleging that the assignment of the Lonza MSA to EIT would impact Sentynl's ability to commercialize Zokinvy and accordingly, breached the Zokinvy APA and Sublicense Agreement. To aid in paving a path to resolution of that matter, EIT agreed to extend the Existing Manufacturing Contract Transfer Date (as defined in the Lonafarnib APA) initially until November 5, 2024 and continued to work with the Liquidating Trustee ultimately extending the Existing Manufacturing Contract Transfer Date to December 20, 2024, more than 30 days past the latest originally-contemplated assignment date.

39. Additionally, in December 2024, EIT attempted in good faith to negotiate a cross-field sales agreement with Sentynl to establish a cross-field sales relationship for the two Lonafarnib indications for Progeria and HDV. Believing Sentynl was willing to agree to a cross-field sales agreement, EIT spent significant time and money drafting and negotiating such agreement only for Sentynl to refuse to agree to any cross-field sale terms. During this time, EIT also engaged with Sentynl and the Liquidating Trustee to negotiate a global settlement, but Sentynl refused to engage productively.

**ii. The Settlement Agreement**

40. In the continued spirit of collaboration, and in an additional effort to comply with its obligations under section 7.12 of the Lonafarnib APA, EIT also entered into that certain Settlement Agreement with the Liquidating Trustee dated December 18, 2024 (the "Settlement Agreement"). As an attempt to provide Sentynl with the information it contends is necessary to commercialize Zokinvy, the Settlement Agreement, among other things, facilitated the entry of a pharmacovigilance agreement between EIT and Sentynl. The Settlement Agreement, among other things, obligates EIT to supply Sentynl (upon its request) Lonafarnib material that Lonza manufactures for EIT under the Lonza MSA solely for Sentynl's use for the production of Zokinvy.

Per the Settlement Agreement, EIT shall provide such material at EIT's cost and "such that Sentynl is in substantially no worse position in obtaining its requirements of the Material for use with Zokinvy for the treatment of Progeria had Sentynl been able to contract directly with Lonza[.]" Settlement Agreement, § 1.

**E. The "Double Sale"**

41. As stated above, under section 2.1(h) of the Lonafarnib APA, EIT purchased all "Transferred Assets" that fall under the broadly definition of "Inventory," ***including but not limited to*** those assets listed on Schedule 2.1(h) of the Lonafarnib APA as follows:

**Schedule 2.1(h)**
**Raw Materials and Inventory**

**Inventory**

| Use | Description | Quantity | Unit | Lot | Exp Date | Location(s) | Notes: |
|---|---|---|---|---|---|---|---|
| HDV | SZ 4 WHITEOP CAPSULE Shell | 7.2 | Kg | 7202096 | 09/28/2026 | Patheon | Imprinted "LNF 25" Capsule Shells for 25mg HDV |
| HDV | SZ 4 WHITEPOX CAPSULE Shell | 72.0 | Kg | 7206089 | 04/19/2027 | Patheon | Imprinted "LNF 25" Capsule Shells for 25mg HDV |
| HDV | SZ 4 WHITEOP CAPSULE Shell | 33.7 | Kg | 7208817 | 08/25/2027 | Patheon | Imprinted "LNF 25" Capsule Shells for 25mg HDV |
| HDV | LNF 25MG BULK | 71.3 | Kg | CNBMK | 8/31/2026 | Patheon | 25mg PPQ1 (~480,000 Capsules) |

**Reference Material**

| | Raw Material Lot | Current On-hand in kilos | Gram Conversion | Retained by Eiger (Grams) as reference materials | Transferred to Zokinvy Buyer (Grams) |
|---|---|---|---|---|---|
| 1 | LONAFARNIB SDD 29.1 Kg 00-0120 Retest Patheon US Only | 29.1 | 29,100 | 50 | 29,050 |
| 2 | LONAFARNIB SDD 54.9 Kg 00-0332 Retest Patheon Global | 54.9 | 54,900 | 50 | 54,850 |
| 3 | YGK BP1515-LT 91.6 Kg 203002 Retest Corden US Only | 91.6 | 91,600 | 50 | 91,550 |
| 4 | YGK BP1515-LT 120.0 Kg 203003 Retest Corden US Only | 120 | 120,000 | 50 | 119,950 |
| 5 | YGK BP1515-LT 84.3 Kg 222004 Retest Corden Global | 84.3 | 84,300 | 50 | 84,250 |
| 6 | YGK BP1515-LT 118.8 Kg 228005 Retest Corden Global | 118.8 | 118,800 | 50 | 118,750 |
| 7 | GLS BP1515-JJ 18.8 Kg 11693 Retest Corden Global | 18.8 | 18,800 | 50 | 18,750 |

| | | | | | |
|---|---|---|---|---|---|
| 8 | GLS BP1515-JJ 9.9 Kg GLS-J-20210201 Retest Corden Global | 9.9 | 9,900 | 50 | 9,850 |
| 9 | GLS BP1515-JJ 59.9 Kg GLS-J-20210201 Retest Corden Global | 59.9 | 59,900 | 50 | 59,850 |
| 10 | GLS BP1515-JJ 300 Kg GLS-J-20221201 10/27/2024 Corden Global | 300 | 300,000 | 50 | 299,950 |
| 11 | BP1515-WA Stage 1 0.6 Kg BO2210B22B Retest Corden Global | 0.6 | 600 | 50 | 550 |
| 12 | BP1515-Y Stage 2 46.6 Kg BO2210B023 Retest Corden Global | 46.6 | 46,600 | 50 | 46,550 |
| 13 | Lonafarnib API 17.9 Kg BO2011B901 Retest Lonza Bend US Only | 17.9 | 17,900 | 50 | 17,850 |
| 14 | Lonafarnib API 43.1 Kg BO2210B024 2/28/2026 Lonza Bend Global | 43.1 | 43,100 | 50 | 43,050 |

42. Certain of the "Raw Materials Lots" listed in the Reference Material Chart are denoted as "Transferred to Zokinvy Buyer," as shown in the far-right column. EIT always understood that it did not purchase such materials as they were previously "transferred to [Sentynl].". Although at the time of the execution and closing of the Lonafarnib APA, EIT believed it had purchased the 50 grams of Raw Material in lots 1–14 as shown in the column labeled "Retained by Eiger (Grams) as reference materials," EIT later learned that such materials were actually previously sold to Sentynl (the "Double Sold Materials"). Notably, these Double Sold Materials align with and equal the materials set forth in Schedule 3.3(a) of the Sublicense Agreement that were sold to Sentynl under the Zokinvy APA. As EIT attempted to make clear in its *Emergency Motion to Confirm Terms of Lonafarnib/Lambda Sale Order* [Docket No. 787] (the "Motion to Confirm") and in numerous communications with counsel to Sentynl, EIT concedes that the Double Sold Materials were, in fact, previously sold to Sentynl, and EIT disclaims any right to such materials under its Lonafarnib APA.

## Response

### I. The Relief Sought Is Procedurally Improper

43. As a threshold matter, Sentynl's Motion should be denied without considering the merits because it should have been brought as an adversary proceeding. Although the Motion is

not altogether clear on the relief it seeks against EIT—it reads more like a puff piece highlighting Sentynl's many alleged grievances, rather than a coherent request for relief—one thing is clear: the Motion seeks injunctive relief against EIT. Specifically, Sentynl asks the Court to (1) ***enjoin*** EIT "from enforcing the exclusivity provision in the [Lonza MSA] or taking any actions that would prevent Lonza (or any applicable affiliate) from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy[;]" (2) ***enjoin*** EIT "from pursuing or entering any agreement or taking any other actions that would prevent third-party [Corden] (or any affiliate) from providing products, materials, services, data, information, or know-how to Sentynl in connection with the manufacture, supply, or commercialization of Zokinvy; and (3) ***enjoin*** EIT "from challenging Sentynl's rights to the existing Zokinvy inventories purchased by Sentynl under the Zokinvy APA in any manner whatsoever, which continue until all ongoing regulatory requirements with respect to these inventories have been satisfied." Motion, p. 1, ¶¶ (i), (iii), and (v).

44. Federal Rule of Bankruptcy Procedure 7001 requires that a proceeding to obtain an injunction or other equitable relief must be filed as an adversary proceeding. Fed. R. Bankr. P. 7001(7). *Parker v. Parker, (In re Parker)*, 789 F. App'x 462, 463 n.2 (5th Cir. 2020) ("[L]itigated matters that arise during the pendency of a bankruptcy case" are either adversary proceedings or contested matters. An adversary proceeding is necessary "to obtain an injunction or other equitable relief, except when a chapter 9, 11, 12, or 13 plan provides for the relief.") (citation omitted); *In re Highland Cap. Mgmt., L.P.*, No. 19-34054-SGJ-11, 2024 WL 2703149, at *5 (Bankr. N.D. Tex. May 24, 2024) (explaining that a request for equitable relief that was not provided for in the plan must be filed as an adversary proceeding under Bankruptcy Rule 7001(7)).

45. Moreover, the Motion does not even address the standard 4-part injunction test, instead citing only to section 105(a) of the Bankruptcy Code, thereby evidencing that Sentynl seeks "pure" injunctive relief.

46. If that were not enough, the Motion also seeks relief against Lonza and Corden, third parties who are not before the Court. Seeking relief against such third parties requires: (i) commencing an action under Federal Rule of Civil Procedure 3, which initiates an adversary proceeding under Federal Rule of Bankruptcy Procedure 7003, and (ii) proper notice and service of summons of the complaint under Federal Rule of Bankruptcy Procedure 7004. Because the Motion clearly seeks equitable relief through an injunction against EIT and relief against third parties, a contested matter is procedurally improper.

## II. Other Than the Double Sold Materials and Inventory Listed in Schedule 3.3(a) of the Sublicense Agreement, Sentynl Did Not Purchase Any Corden or Lonza Inventory or Any Rights to the Corden or Lonza Agreements

47. Assuming the Court nonetheless proceeds by contested matter, the Motion is not well taken. Sentynl contends that "the Lonafarnib APA purports to retain quantities of certain 'Reference Material' that were previously purchased by Sentynl under the Zokinvy APA." Motion, ¶ 17. As stated above and set forth in EIT's Motion to Confirm, EIT concedes that it has no interest in the Double Sold Materials, as they were previously sold to Sentynl—that is, the 50 grams in each of raw material lots 1–14 listed in the Reference Material chart on Schedule 2.1(h) of the Lonafarnib APA, reproduced above.

48. No other materials were "double sold," given the plain language of the parties' purchase agreements. EIT purchased all "Inventory" pursuant to the Lonafarnib APA, broadly including raw materials, work in process, stock, active pharmaceutical ingredients, inventory, reference standards and materials, and all components, materials, finished goods, and other inventory used in the ***manufacture*** of any Lonafarnib product, including (but not limited to) the

items listed in Schedule 2.1(h) of the Lonafarnib APA. EIT also took an assignment of the Corden and Lonza Agreements and became the counterparty to the same.

49. As Sentynl points out in its Motion, the Zokinvy Sale Order defines "Transferred Inventory" by direct reference to the Sublicense Agreement, which specifically describes the exact "Finished Goods and "Raw Materials" obtained by Sentynl in Schedule 3.3(a) thereof, as incorporated into the Zokinvy APA. As explained above, to the extent any of those "Finished Goods" or "Raw Materials" overlap with the items listed in Schedule 2.1(h) of the Lonafarnib APA, EIT agrees that those were sold to Sentynl; however, pursuant to the more general language in the Lonafarnib APA and by virtue of the assignment of certain related "Retained Agreements" to EIT (including the Corden and Lonza Agreements), EIT purchased all other "Inventory" and all rights to services under the Corden and Lonza Agreements pursuant to the Lonafarnib APA. EIT would not have pursued the EIT Sale if that were not the case, as these are key to EIT's ability to approve and manufacture Lonafarnib for the treatment of HDV. And Sentynl did not object to the sale to EIT, the Lonafarnib APA, or any of the other EIT Sale documents filed on the docket.

50. Further, section 11.2(v) of the Sublicense Agreement as it relates to Sentynl's "Transferred Inventory" states that Schedule 3.3(a) sets forth a complete and accurate list of the Transferred Inventory . . . as of immediately prior to the Effective Date." Thus, Sentynl purchased the "Transferred Inventory" listed in Schedule 3.3(a) of the License Agreement and nothing else—any reference standards or materials that were not Double Sold Material or was not listed on Schedule 3.3(a) of the Sublicense Agreement is now owned by EIT.

51. Notwithstanding the above, Sentynl—through tortured mental gymnastics—seems to assert that Sentynl somehow owns or has rights to reference standards or other inventory (other than what is listed in Schedule 3.3(a) of the Sublicense Agreement) in Corden's and Lonza's

possession that Sentynl believes it acquired under the Zokinvy APA pursuant to the Sublicense Agreement.[6] This is apparently based on arguments that (1) under the Sublicense Agreement, the Debtors granted Sentynl an exclusive sublicense to "Merck Know-How," Debtor "Know How," and "Merck IP" to "Develop, make, have made, use, import, export, Commercialize, sell, offer for sale, and market Licensed Progeria Product in the Progeria Field in the Territory[;]" (2) under section 3.2 of the Sublicense Agreement the Debtors were obligated to perform certain "Transition Activities[;]" (3) the Debtors were obligated to transfer certain "Regulatory Information[;]" (4) the Debtors were obligated to transfer "Merck Know-How" in their possession and control and necessary to replicate the Zokinvy manufacturing process. *See* Sublicense Agreement, §§ 2.1, 3.2, 3.5, 5.1, 7.2, and 15.12.

52. But Sentynl fails to explain how these provisions in any way relate to EIT or the assets EIT separately purchased under the Lonafarnib APA, or how this in any way obligates EIT or any third party to provide items or services purchased by EIT under the Lonafarnib APA. These are ***Debtor*** obligations, not obligations of EIT or third parties, such as Lonza or Corden.

53. Sentynl also fails to connect the dots as to how obtaining *a license* relates to purchasing *the underlying materials necessary to utilize the license*. In fact, these are two separate issues—much like your grandmother giving you the *recipe* for her cake, but not all *the actual ingredients or the necessary baking tools*. That is what we have here: Sentynl merely received a license authorizing it to develop, manufacture, and commercialize Lonafarnib specifically for Zokinvy for the treatment of Progeria patients. But this has nothing to do with owning or acquiring any rights to use the manufacturing process or manufacturing infrastructure—a process and

[6] Motion, ¶ 12., p. 9 n. 44 (citing Sublicense Agreement Sections 2.1 (License Grant), 3.2 (Transition Activities), 3.5 (Transfer of Regulatory Information), 5.1 (Regulatory Filings Transfer), 7.2 (Transfer of Manufacturing Technology), and 15.12 (Further Actions)).

infrastructure that is not exclusive to the production of Zokinvy and, in fact, is also used for the production of Lonafarnib for HDV because the two drugs share the same active ingredient.

54. By failing to actually purchase all the underlying materials or processes necessary to utilize its license, all Sentynl bought was an intangible right. One can secure a license to a patent, to use the underlying technology, but one still must go buy the parts necessary to deploy (aka, manufacture or produce) the item that embodies the technology. Just because Sentynl believes it ***requires*** certain data, materials, information etc. to utilize its license to manufacture or commercialize Zokinvy does not mean that Sentynl ***actually acquired or owns*** such data, materials, information etc. These are two separate matters and that is where Sentynl's gambit failed.

55. Moreover, the license the Debtors granted to Sentynl under section 2.1 of the Sublicense Agreement is subject to Section 2.3, which states that the Debtors retained all rights to "Develop, make, have made, use, import, export, Commercialize, sell, offer for sale, and market the Licensed Compound and Licensed Product in the Field (excluding the Progeria Field) in the Territory." Sublicense Agreement, § 2.3(a). Meaning that the Debtors retained the rights to develop, manufacture, and commercialize etc. Lonafarnib for ***non-Progeria*** products—such as for the treatment of HDV—which the Debtors were then free to sell to EIT under the Lonafarnib APA. Once the Debtors assigned the manufacturing contracts (*i.e.*, the "Existing Manufacturing Contracts") to EIT and EIT became the counterparty under the same, EIT bought the manufacturing infrastructure.

56. Sentynl's twisted logic just does not make sense, and certainly cannot and should not divest EIT of assets it rightfully purchased.

## III. EIT Is Not and Has in No Way Interfered with Sentynl's Ability to Commercialize Zokinvy

57. Sentynl generally asserts that EIT has interfered, or is currently interfering, with Sentynl's ability to manufacture Zokinvy. Motion, p. 6 § B. Throughout its Motion, Sentnyl launches similar allegations against EIT. For example, Sentynl states that EIT has "demonstrated a willingness to withhold critical pharmacovigilance data reporting and database access" in violation of Sentynl's alleged Rights. Motion, ¶ 21. Senynl also contends that EIT refused to allow Sentynl to establish a direct relationship with Lonza. Motion, ¶ 9. None of these allegations are true.

58. Despite having purchased the pharmacovigilance data to which Sentynl presumably refers, EIT has gone above and beyond to work with Sentynl to come to a mutually beneficial agreement to share such data—for free or at cost. Sentynl, however, has been unwilling to work or negotiate with EIT on a solution to its own problem. At all times, EIT has complied with its obligations under the Lonfarnib APA and Lonfarnib Sale Order. In fact, ***Sentynl's actions*** have prevented EIT from finalizing its own application for Lonafarnib for the treatment of HDV, delaying the drug's commercial launch, which has in turn jeopardized EIT's critical relationship with Corden and Lonza.

### *a. The Sublicense Agreement Did Not Preclude the Assignment of the Corden and Lonza Agreements*

59. Sentynl, however, stretches matters even further, arguing that EIT's alleged interference arises from the ***Debtors'*** alleged breach of the ***Debtors'*** obligation under the Sublicense Agreement to use reasonable efforts not to assign the Retained Agreements (*i.e.*, the Corden or Lonza Agreements) in a manner that adversely affects Sentynl's rights under the Sublicense Agreement or adversely affects its ability to "Commercialize" Zokinvy. By Sentynl's reasoning, because the Debtors allegedly told Sentynl that the Retained Agreements were

necessary for the manufacture and commercialization of Zokinvy, either (i) the Debtors were prohibited from assigning the Corden and Lonza Agreements to EIT or (ii) EIT somehow directly interfered with Sentynl's ability to "Commercialize" Zokinvy by accepting the assignment of the Corden and Lonza Agreements. Both arguments defy logic, particularly given the healthy time period that was provided to Sentynl to enter into alternative arrangements prior to assignment, and of which Sentynl was keenly aware.

60. Pursuant to the Sublicense Agreement, as incorporated by the Zokinvy APA, the Debtors were neither prohibited nor precluded from assigning the Corden or Lonza Agreements. Quite the opposite is true: assignment of the Corden and Lonza Agreements were expressly envisioned in Section 3.7 of the Sublicense Agreement, which gave Sentynl six (6) months to determine whether those agreements would be assigned to it. Thus, Sentynl's Sublicense Agreement *itself* contemplates that the Lonza MSA may be transferred on or after November 3, 2024. And Sentynl was even provided with an additional 47 days, until December 20, 2024, before the assignments took effect.

61. Sentynl admits the Debtors disclosed that the Corden and Lonza Agreements were necessary for the manufacture and/or commercialization of Zokinvy; yet Sentynl did not seek an assignment of these contracts. Despite receiving notice of the proposed assignment of these contracts to EIT (upon the 6-month expiration date), not once did Sentynl object to the proposed assignment or assert that the assignment would hinder its ability to manufacture or commercialize its product. Its failure to timely object to such assignment operates as a waiver. *In re Bludworth Bond Shipyard, Inc.*, 93 B.R 520, 521 (Bankr. S.D. Tex. 1988) (failure on the part of a party in interest to file an objection prior to the deadline fixed by the court results in waiver of the right to object); *Precision Indus., Inc. v. Qualitech Steel SBQ, LLC*, 327 F.3d 537, 548 (7th Cir. 2003)

(enforcing a sale order because, in part, the objecting party failed to object to the sale). Sentynl failed to conduct proper due diligence or perhaps slept on its rights. Either way, however, Sentynl cannot now re-trade the deal to which it agreed.

62. Further, under section 3.7 of the Sublicense Agreement, ***the Debtors*** (not EIT) were responsible for using "***reasonable efforts***" not to assign the Retained Agreements to a third party in a manner that would be expected to adversely affect Sentynl's ability to "Commercialize" Zokinvy. *See* Sublicense Agreement, § 3.7. Sentynl suggests that somehow this means that ***EIT*** was obligated not to accept the assignment of Retained Agreements that would adversely affect Sentynl's ability to "Commercialize" Zokinvy. Setting aside that this is clearly a ***Debtor*** obligation under a contract to which EIT is not a party, even if the Debtors' obligation in the Sublicense Agreement was somehow imputed to EIT (as Sentynl suggests) and obligated EIT to refuse the assignment of the Corden or Lonza Agreements (which would have resulted in EIT walking away from the EIT Sale), the defined term "Commercialize" limits any such obligation. It is specifically defined as "any and all activities directed to the marketing, promotion, distribution, offering for sale and selling such product, importing and exporting such product for sale, and interacting with Regulatory Authorities." *See generally* Sublicense Agreement, § 1.6, 2.1. Such definition expressly does not include the ***manufacture*** of Zokinvy. Therefore, it does not matter if the assignment of the Corden and Lonza Agreements adversely affect the ***manufacture*** of Zokinvy. Nevertheless, EIT has consistently offered to manufacture the licensed Progeria Product for Sentynl at cost plus reasonable overhead, and therefore the assignment of the Lonza MSA to EIT does not adversely affect Sentynl's ability to manufacture its product, as Sentynl asserts.

***b. The Settlement Agreement Is Not a Collateral Attack on the Zokinvy Sale Order***

63. Pursuant to EIT's obligations under section 7.12 of the Lonafarnib APA and after agreeing to an extension of the automatic assignment of the Lonza MSA, EIT and the Liquidating

Trustee entered into the Settlement Agreement. Under the Settlement Agreement, EIT, upon Sentynl's request, is obligated to supply Lonafarnib material that Lonza manufactures for EIT to Sentynl.[7]

64. Sentynl asserts that the Settlement Agreement is somehow an attack on the Zokinvy Sale Order and that it imposes problematic obligations on EIT. Motion, at 17–18, §§ B, C. The reality is that Settlement Agreement was not an attempt to somehow challenge the Zokinvy Sale Order or Zokinvy APA. To the contrary, EIT entered into the Settlement Agreement pursuant to its separate obligations under section 7.12 of the Lonafarnib APA, as explained above, and to enable both EIT and Sentynl to advance the development of their drugs. Likewise, the Settlement Agreement is not an attempt to challenge the Sublicense Agreement incorporated by the Zokinvy APA—as the Sublicense Agreement in no way precludes the assignment of the Corden and Lonza Agreements.

65. Because it is much more economical for vendors—like Lonza and Corden—to work with one manufacturer for the production of Lonafarnib for both Progeria (with a small patient pool) and HDV (with a much larger patient pool), the Settlement Agreement is an effort to streamline the production of Lonafarnib for Progeria without Sentnyl having to separately contract with such vendors, and still allowing Sentynl to receive the materials it needs for Zokinvy that it otherwise did not purchase. Thus, the Settlement Agreement actually ***benefits*** Sentynl, by providing Sentynl access to services necessary for the manufacture of Zokinvy that Sentynl would not otherwise be able to obtain.

66. Next, Sentynl contends that the Settlement Agreement leaves Sentynl "at the mercy

[7] The Settlement Agreement also obligated EIT to direct the third party IQVIA RDS Inc. ("IQVIA") to transfer a copy of the legacy Lonafarnib global safety database to Sentynl. That database has been transferred to Sentynl, and EIT believes that any issues with regard to Sentynl's access to IQVIA information have been resolved.

of a startup company" and will inevitably result in "complications." This offensive and speculative assertion ignores the facts. It was EIT that bargained for the assets and contracts that Sentynl left behind but now wants. And despite EIT agreeing to provide the Lonza materials to Sentynl, Sentynl bites the hand that feeds it. Sentynl either has to live with the consequences of the deal it struck, or it can choose to work with EIT under the Settlement Agreement.

67. Sentynl further complains that the Settlement Agreement only obligates EIT to supply materials to Sentynl for use with Zokinvy. Obviously, Sentynl only needs materials for use with the product that it purchased—Zokinvy. To suggest that it is somehow entitled to ***more*** goes to show what Senynl is ostensibly really after: proprietary information that EIT purchased under the Lonafarnib APA. Sentynl's remaining complaints could have been addressed if Sentynl had been willing to negotiate and work with EIT, as EIT persistently requested. Sentynl's refusal to engage in negotiations does not justify unwinding a Settlement Agreement to which Sentynl is not a party but under which Sentynl benefits.

## IV. The Court Need Not, and Should Not, Order EIT to Show Cause for Why Its Actions Are Not Violations of the Zokinvy Order.

68. A show cause order is unwarranted. Sentynl asks the Court to enter a show cause order for why EIT should not be held in contempt without having first met its burden to establish that EIT violated any Court order. *See, e.g.*, *Sealed Appellant 1 v. Sealed Appellee 1*, 211 F.3d 252, 255 (5th Cir. 2000) (the party moving for contempt bears the burden of proof); *Carter v. Transp. Workers Union of Am., Local 556*, 686 F. Supp. 3d 503, 512 (N.D. Tex. 2023) ("The party moving for contempt bears the burden of proof, and "show cause orders do not [ ] shift the burden to the alleged contemnor."). Sentynl has not, and cannot, show that EIT violated any provision of any order entered by the Court. As a result, the Court should reject Sentynl's request out of hand.

69. Moreover, Sentynl's serious allegations against EIT to support its request for a show cause order were made without factual support and without evidence. Indeed, Sentynl has served discovery on EIT to attempt to secure evidence to prove its absurd allegations against EIT. At best, the contempt portion of Sentynl's Motion should be rejected as conclusory and wholly lacking in support. At worst, making such serious allegations against EIT without the requisite factual support amounts to a violation of Federal Rule of Civil Procedure 11, incorporated into this proceeding through Federal Rule of Bankruptcy Procedure 9011.

**V. Sentynl's Actions Have Harmed EIT.**

70. Sentynl slept on its rights for at least 6 months before raising any issues related to its inability to manufacture Zokinvy. Once EIT was made aware of Sentynl's self-inflicted plight, EIT worked extensively with the Liquidating Trustee to provide information to Sentynl and worked with Sentynl to attempt to reach a consensual resolution. But Sentynl continued to employ dilatory tactics which continue to this day. EIT has now been drained of its resources, and the approval of Lonafarnib for HDV has been halted, resulting in a significant delay of the commercial launch of Lonafarnib for the treatment of HDV. It is time for the Court to put an end to Sentynl's nonsense, and allow EIT to deliver its product to ***millions of patients worldwide***.

**Conclusion**

71. As the Court is so fond of saying, "facts matter." A review of ***the facts*** makes it plain that Sentynl is desperate to find a way to reverse the results of a gamble that did not pay off. The Court should see through Sentynl's chicanery and deny the Motion.

**WHEREFORE**, EIT respectfully requests that the Court (i) deny the Motion, and (ii) grant such other and further relief as may be just and proper.

Respectfully submitted this 11th day of April, 2025.

**GRAY REED**

By: */s/ Jason S. Brookner*
Jason S. Brookner
Texas Bar No. 24033684
Emily F. Shanks
Texas Bar No. 24110350
1601 Elm Street, Suite 4600
Dallas, Texas 75201
Telephone: (214) 954-4135
Facsimile: (214) 953-1332
Email: jbrookner@grayreed.com
eshanks@grayreed.com

- and -

**GOODWIN PROCTER LLP**
Kizzy L. Jarashow (*pro hac vice*)
The New York Times Building
620 Eighth Avenue
New York, NY 10018
Telephone: (212) 813-8800
Email: kjarashow@goodwinlaw.com

- and -

**GOODWIN PROCTER LLP**
David R. Chen (*pro hac vice*)
520 Broadway Suite #500
Santa Monica, CA 90401
Telephone: (424) 252-6400
Email: davidchen@goodwinlaw.com

***Counsel to Eit Pharma, Inc. formerly known as Eiger InnoTherapeutics, Inc.***

**Certificate of Service**

The undersigned hereby certifies that on the 11th day of April, 2025, he caused a true and correct copy of the foregoing document to be served via the Court's CM/ECF system.

*/s/ Jason S. Brookner*
Jason S. Brookner