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

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

LIQUIDATING TRUSTEE'S MOTION FOR SUMMARY JUDGMENT ON CONTESTED MATTER, EXPUNGING ADMINISTRATIVE CLAIM OF SENTYNL THERAPEUTICS, INC.

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Ave., Dallas, Texas 75201.

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Dundon Advisers LLC, c/o Joshua Nahas, in its capacity as liquidating trustee (the "Liquidating Trustee" or "LT") of the liquidating trust of Eiger BioPharmaceuticals, Inc., *et al.* (the "Debtor" or "Eiger" or "Eiger Bio"), appointed pursuant to the Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates, by and through its undersigned counsel, hereby submits this *Motion for Summary Judgment On Contested Matter, Expunging Administrative Claim of Sentynl Therapeutics, Inc.* ("Sentynl", and the "Motion"). The Motion is in further support of the *Objection and Response of the Liquidating Trustee and Plan Administrator to Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc.* [Docket No. 777 / Docket No. 784 (sealed)] (the "Administrative Claim Objection"). Sentynl's Administrative Claim was filed on November 1, 2024 via its *Motion for Allowance of Administrative Expense Claim* [Docket No. 729] (the "Administrative Claim").

PRELIMINARY STATEMENT

1. The Court need not conduct an evidentiary hearing on the outstanding issues raised in the Administrative Claim. Instead, this Court can find, via strict contract construction and consideration of limited uncontested facts, in the nature of a summary judgment ruling on this contested matter, that Sentynl's administrative claim is without merit in law or fact and should be expunged.

2. Sentynl alleges that the estate failed to meet its contractual obligations when it assigned certain contracts to Inno.[2] Specifically, Sentynl points to the estate's obligation under Section 3.7 of the Sublicense Agreement, to use [redacted]

[2] Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Administrative Claim Objection.

[redacted][3]

3. First, Sentynl's "rights" under Section 3.7 of the Sublicense Agreement, no matter how far or wide Sentynl may argue those rights reach, are limited to those Retained Agreements that are not manufacturing contracts. It is an undisputed fact that the Lonza and Corden contracts are manufacturing contracts. But no obligation to use reasonable efforts "*not to assign in a manner that would adversely affect*" was imposed upon the Debtors with respect to "Manufacturing" contracts. As a result, Sentynl's administrative claim, which asserts breaches by the estate with respect to the use of reasonable efforts in assigning the Lonza and Corden manufacturing contracts, fails under a summary judgment standard, without need for further evidence.

4. Second, even if this Court were to find that "Manufacturing" contracts, notwithstanding the express language of the Sublicense Agreement, are included within the estate's "reasonable efforts" obligation, the record of the proceedings herein, which of course the Court can take judicial notice of, unequivocally establish that the estate's efforts more than met the "reasonable efforts" standard during the period between May 3, 2024, and August 24, 2024 (the date this Court signed the Order approving the Inno sale). No further evidentiary review is required. These include Sentynl being on repeat notice through May, June, July and August of 2024 that the "Retained Agreements" could (May and June) and would (July and August) be assigned to a third party after, at the latest, the end of the 6-month period. It is undisputed that at no point through the entry of the Order approving the Inno sale on August 24, 2024, or the closing thereof on September 3, 2024, did Sentynl object or even advise the Debtors that its reasonable efforts were insufficient, despite being on repeat notice of all of it. And, notwithstanding Sentynl's

[3] *See* Sublicense Agreement, Section 3.7 (emphasis added), attached under seal to the *Declaration of Joshua Nahas in Support of the Administrative Claim Objection* ("Nahas Decl.") at Docket No. 778 / Docket No. 785 (sealed).

silence, the estate negotiated protective language for Sentynl in Inno's asset purchase agreement – namely, providing for Inno to negotiate in good faith with Sentynl to assure supply of Zokinvy.

5. Third, and assuming that the Court is inclined to move beyond the determinations above on "Commercialize" versus "Manufacture", as well as the reasonable efforts reflected on this Court's docket, Sentynl's administrative claim regarding an alleged lack of "reasonable efforts" regarding the Corden manufacturing contract must be rejected as "late filed." Sentynl included no claims or complaints regarding the Corden contracts prior to the expiration of the Administrative Claims Bar Date.[4]

JURISDICTION AND VENUE

6. 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 within the meaning of 28 U.S.C. § 157(b).

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

8. The basis for the relief requested herein is section 7056 of title 11 of the United States Code ("Bankruptcy Code").

RELEVANT BACKGROUND

9. On September 5, 2024, the Court entered the Confirmation Order [Docket No. 639], anticipating a 100% distribution to unsecured creditors, and a substantial dividend to equity. The Confirmation Order approved the Debtors' Fifth Amended Joint Plan of Liquidation and set the

[4] The Administrative Claims Bar Date was set at 30 days after the effective date of the Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates, which was approved by this Court in the *Order Approving the Debtors' Amended Disclosure Statement and Confirming the Fifth Amended Joint Plan of Liquidation of Eiger BioPharmaceuticals, Inc. and its Debtor Affiliates* (the "Confirmation Order") [Docket No. 639]. The Liquidating Trustee and Plan Administrator consented to a brief extension for Sentynl, allowing the administrative claim filing on November 1, 2024.

Administrative Claims Bar Date[5] for 30 days after the Effective Date of the Plan. Insofar as the Plan went effective on September 30, 2024, *see* Docket No. 685, the Administrative Claims Bar Date was therefore October 30, 2024. At Sentynl's request, the Liquidating Trustee agreed to a brief extension of the Administrative Claims Bar Date for Sentynl to November 1, 2024.

10. On November 1, 2024, Sentynl filed the Sentynl Administrative Claim [Docket No. 729], outlining a purported $45,200,000 administrative claim related to an alleged post-petition breach by the estate of the Sentynl APA.

11. On March 7, 2025, after months of unsuccessful negotiation with Sentynl, the Liquidating Trustee and the Plan Administrator filed the Administrative Claim Objection [Docket No. 777 / Docket No. 784 (sealed)].

12. On March 21, 2025, the Court entered a 'Notice of Hearing' that set the hearing on the Administrative Claim for April 15, 2025.

13. On April 15, 2025, this Court held a status conference on the Sentynl Administrative Claim whereupon a consensual schedule was set for litigating the Administrative Claim, among other things, including setting an evidentiary hearing for May 28th and May 29th, to the extent that same remained necessary. *See* Docket No. 828.

ARGUMENT

14. "Summary judgment is appropriate whenever a movant establishes that the pleadings, affidavits, and other evidence available to the court demonstrate that no genuine issue of material fact exists, and the movant is, thus, entitled to judgment as a matter of law." *In re Hereford Biofuels, L.P.*, No. 09-30453-SGJ-7, 2011 WL 2133820, at *8 (Bankr. N.D. Tex. Apr. 6, 2011). "A genuine issue of material fact is present when the evidence is such that a reasonable

[5] Capitalized terms used in this paragraph have the meaning ascribed in the Confirmation Order.

fact finder could return a verdict for the non-movant." *Id*. "Factual controversies must be resolved in favor of the non-movant, 'but only when there is an actual controversy, that is, when both parties have submitted evidence of contradictory facts.'" *Id.* (citing *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994)). "If the movant satisfies its burden, the non-movant must then come forward with specific evidence to show that there is a genuine issue of fact." *Id.* "The non-movant may not merely rely on conclusory allegations or the pleadings. Rather, it must demonstrate specific facts identifying a genuine issue to be tried in order to avoid summary judgment." *Id.* (citing ed. R. Civ. P. 56(c)(1)).

I. Summary Judgment Should be Entered Expunging Sentynl's Claim as a Matter of Strict Contract Interpretation, Because the Lonza and Corden Contracts are Indisputably "Manufacturing" Contracts, for which Sentynl did not Contract for any "Rights" to "Reasonable Efforts" or Otherwise, in Connection with Their Assignments.

15. What were the estate's express obligations that Sentynl claims were not met? Only one, contained in Section 3.7 of the Sublicense Agreement, to use [redacted] (emphasis added).

16. Initially, then, any analysis of the "rights" provided to Sentynl under Section 3.7 must be cabined and limited by what Sentynl actually purchased under the Sublicense Agreement. So, what did it purchase? Sentynl purchased the right to "Manufacture" Zokinvy, but not the right to contract with particular manufacturing parties. Indeed, Sentynl expressly contemplated in the Sublicense Agreement that it would be required to identify alternative manufacturers and/or alternative manufacturing agreements: [redacted]

[redacted] *See* Sublicense Agreement, Section 3.7. Relatedly, the Sublicense Agreement envisioned the transfer of certain data to "Third Party" manufacturers [redacted] *See id*., Section 7.2.

17. Sentynl also purchased the right to "Commercialize" Zokinvy, and the right to "reasonable efforts" by the Debtors "to not…assign" contracts to third parties in a manner that would adversely affect Sentynl's ability to "Commercialize" Zokinvy.

18. Pursuant to the Sublicense Agreement:

[redacted]

[redacted]

[6] Why didn't Sentynl reach out to the Debtors when the Motion to sell the Lonafarnib assets was pending, to obtain a written extension of the deadline? Instead, it waited until October 15, six weeks after the automatic assignment of the Retained Agreements to Inno had been approved by this Court and set to occur on November 3, 2024. *See Reply in Support of Motion for Allowance of Administrative Expense Claim of Sentynl Therapeutics, Inc*. Docket No. 800 / Docket No. 801 (sealed)] (the "Sentynl Reply"), at ¶ 6, (stating Sentynl did not reach out to the LT until October 15, 2024 on its concerns with the pending Lonza assignment to Inno whereupon Sentynl requested that the Lonza contract instead be assigned to Sentynl); *see also* Exhibit B to the Sentynl Reply (providing for such communication). And its reach out to the Liquidating Trustee at that time was limited to a concern about the automatic assignment of the Lonza contract, with no mention of the Corden contract. *See id*.

[redacted]

See Sublicense Agreement, at Definition 1.6, 1.35 (emphasis added).

19. Therefore, via these expressly defined terms, "Commercialization" does not include "Manufacturing" and "Manufacturing" does not include "Commercialization." Each involves an entirely separate step in bringing the product to market. Indeed, the term "Commercialization" begins with reference to "marketing, promotion, and distribution," all of which activities occur after the product is manufactured, and "Manufacture" includes none of these, but only product creation, quality control, and testing.

20. And the use of the capital "C" in Commercialize, clearly indicates that the contracting parties, Sentynl and the Debtors, intended to refer to the term defined in Section 1.6 of the same agreement.

21. Importantly, Sentynl knew how to use these separately defined terms "Commercialize" and "Manufacture" elsewhere in the Sublicense Agreement, acknowledging, for example, at §11.3 thereof, that [redacted]

(emphasis added). *See Western and Southern Life Insurance Company v U.S. Bank National Association*, 2022 WL 3204910 (N.Y.A.D. 1 Dept., Aug. 09, 2022) (noting that "courts must construe contracts in a manner which gives effect to each and every part, so as not to render any provision meaningless or without force or effect")[7]; *see also John Hancock Life Ins. Co. v. Abbott Labs,* 478 F.3d 1, 7-8 (1st Cir. 2006) ("Where the parties to a contract take pains to define a key

[7] Pursuant to Section 15.2 of the Sublicense Agreement, the Sublicense Agreement is governed by New York law.

term specially, their dealings under the contract are governed by that definition . . .[P]arties to a contract may serve as their own lexicographers and may assign a particular meaning to any word they choose.")

22. Moreover, "even where there is ambiguity, if parties to a contract omit terms—particularly, terms that are readily found in other, similar contracts—the inescapable conclusion is that the parties intended the omission. The maxim *expressio unius est exclusio alterius*, as used in the interpretation of contracts, supports precisely this conclusion." *Quadrant Structured Products Co., Ltd. v Vertin, No. 112*, 2014 WL 2573378 (N.Y., June 10, 2014) (citing Glen Banks, New York Contract Law § 10.13 [West's N.Y. Prac. Series 2006]); *see also In re Ore Cargo, Inc.*, 544 F.2d 80, 82 (2d Cir. 1976) (applying the maxim *expresiso unius est exclusio alterius* to hold that where a sophisticated drafter failed to reference a specific term the court was precluding from implying that term from the general language in the agreement).

23. Notwithstanding this obligation contained in §11.3, Sentynl takes the approach, in its papers, that it saw itself as entitled to essentially sit back and do nothing while the estate researched and handed them their entire manufacturing supply chain on a silver platter, despite the fact that they were not buying any manufacturing contracts. *See* Sentynl Reply, at ¶ 4 ("Yet, the LT insists its assignment to EIT was reasonable, even though the LT performed zero qualitative or quantitative analysis of how the assignment would affect Sentynl's rights"); *see also id.*, at ¶ 5 ("Because the LT knew of adverse effects but did no research on the damage"); *see also id.*, at ¶ 8 ("the LT did not know (or examine) how long the extant supply would last before another supply chain could be established"); *see also id.*, at ¶ 11 ("the LT also failed to account for the risk of a 'stockout' (a shortfall in the distribution to Zokinvy® patients) if the supply chain is not restored and a new supply chain is required."). This was not the deal nor what they contracted for.

24. Reading into the Sublicense Agreement an estate obligation related to assigning the Lonza and Corden contracts as to Sentynl's ability to *manufacture Zokinvy through those particular CDMOs* would be "read[ing] into [an] agreement[] between sophisticated parties provisions that are not there . . .[and] the court cannot supply what is absent." *In re Solutia Inc.*, 379 B.R. 473, 485 (Bankr. S.D.N.Y. 2007).

25. Sentynl refers to the Debtors' obligation to use reasonable efforts with respect to [redacted] in an effort to argue that there are expansive reasonable efforts obligations beyond the defined term "Commercialize." *See* Sublicense Agreement, Section 3.7. But in the same sentence where this language is quoted, is the use of the limiting defined term "Commercialize" as the right granted under this agreement for Retained Agreements. One of the most well-known principles of contact construction is that a court is to read the specific over the general, *see Sanchez Oil & Gas Corp. v. Crescent Drilling & Prod., Inc.*, 7 F. 4th 301, 308 (5th Cir 2021), ("specific contractual provisions control over general ones"), and those "rights …under this Agreement," are clearly limited, i.e., cabined, by the defined term "Commercialize." Because Sentynl did not contract for any manufacturing rights specific to Lonza or Corden, Sentynl's claim – that the estate breached a narrow "reasonable efforts" obligation -- must be dismissed.

26. Sentynl seeks, in its Administrative Claim, that for which it did not contract for: namely, rights to specific contracts which are named, i.e., with Lonza and Corden, which contracts it did not purchase. Worse yet, Sentynl seeks to impose on the estate a "reasonable efforts" obligation with respect to the transfer of "Manufacturing" Contracts it did not purchase, when the reasonable efforts obligation of Section 3.7 of the Sublicense Agreement was expressly limited to

"Commercialization" contracts. As a result, this Court should enter summary judgment expunging Sentynl's Administrative claim in its entirety.

II. Summary Judgment Can be Entered Expunging the Sentynl Administrative Claim In its Entirety, Simply Based on the Public Record of Pleadings Evidencing the Debtors' "Reasonable Efforts" Through September 3, 2024

27. In the event that the Court finds, contrary to Point I, above, that the estate's "reasonable effort" obligation went beyond "Commercialization" contracts, to the Lonza and Corden "Manufacturing" Contracts, then the claim should nevertheless be expunged, on a summary judgment standard, based on the "reasonable efforts" made by the Debtors, all as evidenced by the public record of this Chapter 11 proceeding, through September 3, 2024. The Court need not look beyond the public record through September 3, 2024 to determine that the Debtors met the "reasonable efforts" required by Section 3.7 of the Sublicense Agreement. What follows are the Debtors' "reasonable efforts" as evidenced by the record herein.

28. First, as has been repeated ad nauseum, pursuant to this Court's Order dated April 24, 2024 approving the Sentynl APA and as set forth in the Sublicense Agreement, the parties identified a number of "Retained Agreements" with third-party service providers that would not be assumed by Sentynl, but would instead be retained by Eiger until the earlier of: [redacted] *See* Sublicense Agreement, Section 3.7 (emphasis added).

29. Sentynl's contract therefore gave it 6 months to obtain alternate arrangements, on account of the contracts being assigned on that 6-month anniversary, i.e., November 3, 2024.

30. On June 4, 2024, one month later, the Debtors filed a *Notice of Cure Amounts and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Remaining Assets Sale Transaction(s)* (the "Possible Assumption Notice") [Docket No. 313], which identified the Lonza and Corden contracts to be potentially assigned to a purchaser of the Debtors' remaining assets. Sentynl did not object to the Possible Assumption Notice.

31. Dovetailing precisely with the maximum 6-month time frame the Debtors granted to Sentynl under Section 3.7 of the Sublicense Agreement to make alternate arrangements, the Debtors thereafter reached agreement with Inno in late July of 2024 for the sale of the Lonafarnib for HDV assets. There, the Debtors agreed that the Lonza contracts and Corden contracts would not be assigned to Inno until the 6-month anniversary of the Sentynl contract, i.e., on November 3, 2024, or earlier if Sentynl was able, prior thereto, to obtain separate sources for the services performed by Lonza and Corden.

32. Evidencing this agreement, 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"). The Lonafarnib Assigned Contracts and Cure Amounts, attached to the Lonafarnib Sale Notice as Exhibit A, specifically list the contracts to be assumed and assigned to Inno (including the Lonza and Corden contracts). *Id*. The Debtors provided notice to all parties, including Sentynl, that the Debtors would be assigning the Corden and Lonza contracts to Inno. *See* Certificate of Service [Docket No. 511] (Exhibit C) (listing counsel for Sentynl as a service party). Sentynl did not object.

33. On August 5, 2024, the Debtors filed their emergency motion seeking Court approval of the Inno APA, and the assumption and assignment of the identified assigned contracts in the Lonafarnib Sale Notice, including the contracts with Lonza and Corden. *See* Docket No. 490 (the "Inno Sale Motion"). Sentynl did not object.

34. The Inno APA was approved by the Bankruptcy Court on August 21, 2024 [*see* Docket No. 558] after notice and a hearing [*see* Docket No. 509]. The sale order ("Inno Sale Order") states, *inter alia*:

> The Assumption and Assignment of the Assigned Contracts are integral to the Lonafarnib/Lambda APAs, do not constitute unfair discrimination, are in the best interests of the Debtors, their estates and creditors, and all other parties in interest, and are based on the reasonable exercise of sound business judgment by the Debtors. At the Closing and pursuant to Section 365 of the Bankruptcy Code and this Revised Lonafarnib/Lambda Sale Order, the Debtors shall assume and, subject to the terms in the Lonafarnib/Lambda APAs, assign to the Purchaser, and Purchaser shall take assignment from the Debtors of, the Assigned Contracts.

See Docket No. 558, at ¶ Z.

35. At no time between the filing of the Inno Sale Motion on August 5, and the entry of the Inno Sale Order on August 21, 2024 did Sentynl object to the assignment of the Lonza and Corden contracts pursuant to the Inno Sale Order. Nor did it make a request of the Debtors, as expressly envisioned in Section 3.7 of the Sublicense Agreement [redacted] for an extension of the 6-month deadline, after which time the Lonza and Corden contracts would be automatically assigned to Inno. *See* Sentynl Reply at ¶ 6 (stating Sentynl did not reach out to the LT until October 15, 2024 on its concerns with the pending automatic Lonza assignment to Inno whereupon Sentynl requested that the Lonza contract instead

be assigned to Sentynl); *see also* Exhibit B to the Sentynl Reply (providing for such communication).

36. Notwithstanding Sentynl's silence, but in furtherance of its "reasonable efforts" obligation in Section 3.7 of the Sublicense Agreement, the Debtors built into the terms of the Inno APA the imposition of an obligation on Inno to "negotiate in good faith" with Sentynl to "supply, by Purchaser to the Zokinvy Buyer [Senytnl] … Zokinvy Product under Purchaser's rights under the Existing Manufacturing Contracts," which specifically included Lonza and Corden. *See* Inno APA, Section 7.12.

37. "Reasonable is defined as what is 'fair, proper, or moderate under the circumstances; sensible.'" *Matter of Fansteel, Inc*., 2017 WL 1929489, at * 3 (Bankr. S.D. Iowa May 9, 2017)(citing *Black's Law Dictionary*, (10th ed. 2014)). It was expressly contemplated in the Sublicense Agreement that Sentynl's plan might include engagement of other third-party manufacturers to replace Lonza and Corden. *See* Sublicense Agreement, Section 7.2.

38. The Debtors did not assign the Lonza and Corden contracts to Inno without repeatedly putting Sentynl on notice that the assignments would occur. In May of 2024, just weeks after the Sentynl APA was approved by the Court, the Debtors filed the Possible Assumption Notice. *See* Docket No. 313. Months later, in August of 2024, the Debtors then put Sentynl on notice that the Lonza and Corden contracts were being assigned to Inno as the purchaser of the Debtors' remaining assets, with such assignment effective after the expiration of the Retained Agreement Term. *See* Docket Nos. 489, 490. *At no point did Sentynl object*.

39. And ultimately, in the Inno APA, noticed to Sentynl in early August of 2024, the Debtors negotiated the obligation of Inno, for Sentynl's benefit, to negotiate in good faith with Sentynl a "supply by [Inno] to [Sentynl] of [Zokinvy] under Inno's rights under the [Retained

Agreements] after [November 3, 2024]." *See* Inno APA, Docket No. 490, Section 7.12. Sentynl made no complaint about this negotiated avenue for obtaining Zokinvy manufacturing via Inno. It was only on October 15, 2024, long after this Court entered the Inno Sale Order on August 21, 2024 that approved the "automatic assignment" of the Lonza and Corden contracts to Inno, that Sentynl reached out to the post-effective date Debtors expressing concern about the Lonza (but not yet the Corden) assignment. But once this Court approved of the Inno assignments, and the Inno sale closed on September 3, 2024, all without a word of complaint from Sentynl, the reasonable efforts were put in place.

40. The Liquidating Trustee and the Plan Administrator came into existence on September 30, 2024, after this Court's order approving such assignment (with such assignment to automatically vest on November 3, 2024) and with no legal way for the Liquidating Trustee to stop the assignment, other than a motion for reconsideration of what the Court approved in its Inno Sale Order, an act which would have been a direct breach of the Inno APA. Because the record reflects more than reasonable efforts were made to inform Sentynl of the pending Lonza and Corden assignments, because Sentynl failed to object, and because the Debtors' grafted into the Inno APA an obligation by Inno to work in good faith with Sentynl to provide any desired product to Sentynl under the Lonza and Corden relationships, this Court can rule, on a summary judgment basis, based on the record, that the estate met any reasonable efforts obligation in Section 3.7 with respect to the assignment of the Lonza and Corden contracts, and that Sentynl's Administrative Claim must therefore be dismissed.[8]

[8] As of August 21, 2024, the date this Court approved the assignment of the Lonza contract to Inno, Sentynl was unable to contract with Lonza to manufacture Zokinvy because of the exclusivity provision in the Lonza contract that Inno, as the purchaser of that contract, became the beneficiary of. Although not pertinent to this Motion, which focuses solely on the Debtors' efforts before September 3, 2024, and asserts that these constituted reasonable efforts, the Liquidating Trustee did spring into action on and after October 15, 2024, the date that Sentynl informed the Liquidating Trustee that it needed a way to get Lonza product. The Liquidating Trustee thereupon worked tirelessly to reach a Settlement Agreement with Inno, attached to the Nahas Decl. as Exhibit E, which secured Sentynl's ability

III. If the Court does not Expunge Sentynl's Claim in its Entirety Under Points I or II above, a Partial Summary Judgment Should Nevertheless be Entered on this Contested Matter Expunging that Portion of Sentynl's Claim Related to the Corden Contract on Grounds of: (i) Failure to file the Claim by the Bar Date or Even to Amend it by the Current Date, (ii) Waiver, and (iii) Laches.

41. Should the Court find that notwithstanding Point I, above, Commercialization in Section 3.7 does include Manufacturing, and that notwithstanding Point II, above, those "reasonable efforts" that are evidenced by the public record of these proceedings through September 3, 2024 do not in and of themselves constitute sufficient "reasonable efforts" to grant summary judgment without consideration of further evidence, then, of course, an evidentiary hearing will be necessary to present fulsome evidence as to all additional reasonable efforts by the Debtors, the Plan Administrator, and the Liquidating Trustee. But such hearing should be simplified insofar as summary judgment should be granted in part, striking any claims of Sentynl related to the Corden contract. This is because Sentynl failed to file an administrative claim with respect to damages arising related to the Corden contract by the Administrative Claims Bar Date, and in fact, has never filed an administrative claim on such basis.[9] The claim should also be stricken on grounds of laches and waiver, and therefore any evidentiary hearing should be limited to the estate's reasonable efforts in connection with the assignment of the Lonza contract.

A. *No Allegations of Problems with the Corden Contract Were Included in Sentynl's Administrative Claim and the Claim Cannot Now be Amended to Include Them*

to receive Lonza's spray dispersion services through Inno. Not only reasonable efforts, but reasonable efforts which succeeded.

[9] Sentynl as of this writing still has not filed an Administrative Claim respecting any damages relating to the November 3 automatic assignment of the Corden contract to Inno, nor has it even attempted to amend its administrative claim filed on November 1, 2024 to include claims relating to the Corden contract. And no time prior to the automatic assignment of the Corden contract did it advise anyone representing the Debtors or the estate that there was any problem with respect to the repeatedly noticed assignment of the Corden contract. (*See* Paras. 30-35, above.)

42. The post-effective date Debtors had no reason to believe Corden was an issue. Sentynl specifically raised issues with Lonza and IQVIA and clearly knew how to address those particular concerns. Both Lonza and Corden manufacturing contracts were "Retained Agreements" and therefore subject to identical treatment. Moreover, as of the Administrative Claims Bar Date, Sentynl had not secured any new manufacturing agreements with Lonza or Corden and knew that both contracts had been assigned to Inno. All requisite facts were known to Sentynl to identify both Lonza and Corden as issues in its Administrative Claim.

43. Pursuant to this Court's Confirmation Order, the Administrative Claims Bar Date passed on October 30, 2024,[10] before Sentynl raised any arguments as to the Corden assignment. And even if Sentynl were to attempt to file an amended claim today: "Amendments do not vitiate the role of bar dates: indeed, courts that authorize amendments must ensure that corrections or adjustments do not set forth wholly new grounds of liability." *In re Northstar Offshore Grp., LLC*, 2024 WL 2888494, at *6 (Bankr. S.D. Tex. June 7, 2024)(citing *In re Kolstad*, 928 F.2d 171, 175 (5th Cir. 1991)); *see also In re Brown*, 159 B.R. 710, 714 (Bankr. D.N.J. 1993) (citing *In re AM International, Inc.*, 67 B.R. 79, 81 (N.D. Ill. 1986) ("Amendments after the bar date, however, must be scrutinized carefully to ensure that they are truly amending the timely filed claim and not asserting a new claim")). A primary concern for a court is whether "the opposing party would have reasonably anticipated that the claim might be amended." *In re Brown*, 159 B.R. at 714 (citing *In re Miss Glamour Coat Co.*, 1980 WL 1668 (S.D.N.Y. 1980)).

44. Even using the case law regarding consideration of an amended claim (even though there isn't one), the question for the Court is whether the amendment seeks to file effectively a

[10] It was extended by the Liquidating Trustee, at Sentynl's request, but only for Sentynl, through November 1, 2024. Even with the extension, the Administrative Claim filed by Sentynl raised not a scintilla of a problem with the assignment of the Corden contract, which was automatically effectuated two days later, i.e., on November 3, 2024.

new claim that could not have been foreseen and the degree of prejudice caused by the delay. *See In re Kolstad*, 928 F.2d 171, 175, fn. 7 (5th Cir. 1991). Typically, courts "place[] [the] greatest weight on whether any prejudice would result to other parties from allowing the amendments." *In re Brown*, 159 B.R. at 716. The considerations courts consider in determining the "prejudice" that would occur are "the size of the late claim in relation to the estate, whether a disclosure statement or plan has been filed or confirmed with knowledge of the existence of the claim, the disruptive effect that the late filing would have on a plan close to completion or upon the economic model upon which the plan was formulated and negotiated." *In re Keene*, 188 B.R. 903, 910 (Bankr. S.D.N.Y. 1995). In this case, each of the *Keene* factors are present: (i) the size of the claim is massive, dwarfing the assets of the estate by a factor of nearly three, (ii) a disclosure statement and plan were filed, and approved and confirmed, respectively, (iii) Sentynl had notice of the very short list of contracts contained in Schedule 3.7 of its Sublicense Agreement (Corden was one of eight), and a 6-month period to address any problems with respect to same or at least alert the estate representatives of any problems with respect to same; and (iv) the claim is entirely disruptive to the "economic model" upon which the plan was formulated and negotiated, e.g., unsecured creditors were told that they would be paid in full and equityholders were told that they would receive a significant distribution.

B. *The Doctrine of Laches Prevents Sentynl from Now Asserting that It Suffered Damages with respect to the Assignment of the Corden Contract*

45. "Laches is an equitable remedy that prevents asserting a claim due to the lapse of time." *Thorne v. Union Pac. Corp.*, 290 F. Supp 3d 365, 643 (W.D. Tex 2017), *aff'd*, 742 F. App'x 875 (5th Cir. 2018)(citing *In re Episcopal Sch. of Dallas, Inc.*, 2017 WL 4533800, at * 10 (Tex. App. Dallas Oct. 11, 2017)). "The Supreme Court of Texas has described the doctrine as one that applies to 'antiquated' and 'stale' demands involving a 'long and unreasonable acquiescence of

adverse rights.'" *Id.* (citing *McMasters v. Mills*, 30 Tex. 591, 595-96 (Tex. 1868)). "To invoke the doctrine, the movant must show both (1) an unreasonable delay by the opposing party in asserting its rights; and (2) the moving party's good faith and detrimental change in position because of the delay." *Id.* (citing *In re Laibe Corp.*, 307 S.W.3d 314, 318 (Tex. 2010)). The facts here support application of the equitable remedy of laches. Sentynl had the opportunity to include issues regarding Corden in the Administrative Claim as it did for Lonza and IQVIA. All of the information was available to Sentynl at the time it filed its Administrative Claim, which was two days prior to the known automatic assignment of the Corden contracts to Inno. But Sentynl failed to assert any rights with respect to the Corden contract until they expired on the Administrative Claims Bar Date, and in fact failed to raise any concerns with Corden until months later. Moreover, the Liquidating Trustee, who is tasked with maximizing value and minimizing costs for the stakeholders, made a cost benefit analysis, following the bar date, on how best to approach the Administrative Claim from the estate's perspective. The Liquidating Trustee concluded that rather than spend estate funds on costly litigation, by objecting to the Administrative Claim, he would endeavor to resolve the two claims raised by Sentynl – which related solely to the IQVIA and Lonza contracts. He therefore proceeded to spend hundreds of thousands of estate funds on professional fees to negotiate and resolve both issues via the Settlement Agreement entered into on December 18, 2024. *See* Nahas Decl., Exhibit E. Sentynl agrees that the Liquidating Trustee's efforts were successful as to the IQVIA contract, *see* Sentynl Reply at ¶ 7, fn. 16 ("the IQVIA issue is, by and large, resolved"), and the Liquidating Trustee submits that they were also undoubtedly successful as to the Lonza contract, although Sentynl disagrees. Sentynl received the benefit of these efforts to the detriment of the estate's funds. However, had the Liquidating Trustee known that there was an entirely separate third contract where Sentynl believed it was going to be

gravely harmed, and about which it was similarly going to blame the estate for its own failure to obtain its own contract, or an alternate source supply during the 6-month period provided for doing so, he likely would have proceeded directly to litigation and saved the hundreds of thousands of dollars in professional fees that were spent in assisting Sentynl to reach the December 18th settlement with Inno.

46. The delay by Sentynl in asserting any rights or claims with respect to the assignment of the Corden contract was (i) unreasonable and (ii) the Liquidating Trustee proceeded in good faith and suffered a detrimental change in reliance on that. *See Thorne*, 290 F. Supp 3d at 643. As a result, partial summary judgment should be entered expunging any claim related to the Corden contract.

C. *Sentynl Waived any Claim that it Suffered Damages from the Automatic Assignment of the Corden Contract*

47. "Waiver, according to the generally accepted definition, is the voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed." *In re Kizelnik*, 190 B.R. 171, 180 (Bankr. S.D.N.Y. 1995); *see also Pitts By & Through Pitts v. Am. Sec. Life Ins. Co.*, 931 F.2d 351, 357 (5th Cir. 1991) ("Waiver is the voluntary or intentional relinquishment of a known right"). "The essential elements of the equitable doctrine of waiver are an existing right, benefit, or advantage; knowledge, actual ***or constructive*** of the existence of such right, benefit or advantage; and an actual intention to relinquish it or an adequate substitution for such intention." *Id.* (emphasis added). In the Fifth Circuit, constructive knowledge arises when "facts and circumstances [are] so out of common that any ordinary intelligent man would naturally be moved to make further inquiry about them." *Schaffer v. United States*, 221 F.2d 17, 22 (5th Cir. 1955). "A waiver functions to preclude a subsequent assertion of the right waived or any claim based

thereon." *Pitts By & Through Pitts v. Am. Sec. Life Ins. Co.*, 931 F.2d. at 357. Ironically, it behooves the estate that the admissions in the Sentynl Reply form the basis of the record for Sentynl waiving any claim related to Corden. In the Sentynl Reply at ¶¶ 20-21, Sentynl specifically notes that "all commercial manufacturing *must* be performed in *full* compliance of GMP requirements. The requirements are set by the FDA and similar regulatory authorities around the world; they are not a liability management practice . . . [and] [f]or the commercial manufacture of Zokinvy®, Sentynl is required to Qualify CDMOs on the front-end . . . as part of the GMP process." Then, in describing stage 2 of the manufacturing process in ¶ 22 of the Sentynl Reply, Sentynl states that "***Corden is the only facility currently Qualified to manufacture the Drug substance.***"

48. Sentynl, a sophisticated pharmaceutical company, certainly knew or should have known all of this when it entered into the Sentynl APA, and again when it was noticed countless times that the Corden contracts were being assigned to Inno, when the Court approved that automatic assignment, and again when the actual assignment of the Corden contracts to Inno was happening two days after Sentynl filed its administrative claim. The LT submits that the fact Sentynl failed to take action, where by its own admission the circumstances were both readily apparent and critical, constitutes a waiver by at least constructive if not actual knowledge.

49. Whether by virtue of missing the Administrative Claims Bar Date, the doctrine of waiver, or the equitable principle of laches, Sentynl's claims with respect to any damage suffered in connection with assignment of the Corden contract as approved by this Court should be rejected by this Court as time barred, or waived, and to the extent that an evidentiary hearing goes forward as scheduled on May 28-29, 2025, the proofs should be limited to those claims raised regarding the assignment of the Lonza contract as contained in the Administrative Claim.

RESERVATION OF RIGHTS

50. The Liquidating Trustee expressly reserves the right to amend, modify or supplement this Motion in any way and on any other applicable substantive or non-substantive ground(s).

NOTICE

51. The Liquidating Trustee shall provide notice of this Motion by serving a copy of such upon (1) Sentynl, (2) the U.S. Trustee for the Northern District of Texas, (3) Inno, (4) Lonza; (5) Corden; and (6) the Progeria Research Foundation. No other or further notice is needed in light of the nature of the relief requested.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests the entry of an order substantially in the form of the proposed order submitted herewith, granting Summary Judgment on Point I, Point II, and/or Point III of this Motion.

[*Remainder of page intentionally left blank]*

Dated: April 21, 2025

/s/ S. Margie Venus

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Counsel for the Liquidating Trustee

Certificate of Conference

This is to certify that based on the pleadings and numerous discussions between counsel for Sentynl Therapeutics, Inc. and counsel for the Liquidating Trustee, it is self-evident that this Motion is opposed.

/s/ Warren J. Martin Jr.
Warren J. Martin Jr.

Certificate of Service

I hereby certify that on April 21, 2025, I caused a copy of the foregoing redacted document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of Texas, and upon the following via electronic mail:

(I) Sentynl Therapeutics, Inc. and Eiger InnoTherapeutics, Inc and their respective counsel, and counsel for the United States Trsutee, who will all receive both the redacted as well as an unredacted version:

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/s/ S. Margie Venus
S. Margie Venus

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

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

ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION FOR SUMMARY JUDGMENT ON CONTESTED MATTER, EXPUNGING ADMINISTRATIVE CLAIM OF SENTYNL THERAPEUTICS, INC.

Upon the motion (the "Motion")[2] of Dundon Advisers, LLC, c/o Joshua Nahas, in its capacity as liquidating trustee (the "Liquidating Trustee" or "Movant"), appointed pursuant to the

[1] The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are: Eiger BioPharmaceuticals, Inc. (1591); EBPI Merger Inc. (9986); EB Pharma LLC (8352); Eiger BioPharmaceuticals Europe Limited (N/A); and EigerBio Europe Limited (N/A). The Debtors' service address is 2100 Ross Ave., Dallas, Texas 75201.

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

Fifth Amended Joint Plan of Liquidation of Eiger Biopharmaceuticals, Inc. and its Debtor Affiliates, for an order granting summary judgment expunging the administrative claim filed by Sentynl Therapeutics, Inc. ("Sentynl"); and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein pursuant to 28 U.S.C. § 7056; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. Summary judgment is hereby entered on the administrative claim filed by Sentynl (the "Administrative Claim") pursuant to the *Motion for Allowance of Administrative Expense Claim* [Docket No. 729] whereby the Administrative Claim is expunged in full for the reasons stated on the record;

OR, ALTERNATIVELY,

2. Partial summary judgment is hereby entered on the Administrative Claim, expunging any and all portions of the Administrative Claim relating to the assignment of any contracts with Corden Pharma Colorado (or any affiliate), for the reasons stated on the record.

End of Order

Submitted by:

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