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Lending Fund I, LP*

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

In re:

EIGER BIOPHARMACEUTICALS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-80040 (SGJ)

(Joint Administration Requested)

CONSOLIDATED LIMITED OBJECTIONS TO CERTAIN FIRST DAY MOTIONS

Innovatus Life Sciences Lending Fund I, LP (“Innovatus”) submits these consolidated limited objections to certain first day motions filed by the Debtors, as follows:

INTRODUCTION

Innovatus is the Debtors’ only secured lender and recognizes the Debtors’ need for certain relief in the early stages of their chapter 11 cases, but files these limited objections out of an abundance of caution and to preserve its rights, claims, and remedies in these cases.

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 94036.



Innovatus notes at the outset, that the Debtors have requested emergency relief pursuant to Bankruptcy Rule 6003 to make at least \$5.2 million in payments on prepetition claims.² This is more than the Debtors' total trade and related debt as of the Petition Date, which the Debtors disclosed as \$4,678,506 in their cash collateral motion. *See* Docket No. 16, ¶ 12.

However, the Debtors have requested authority to spend approximately \$3.1 million in the first four weeks of their cases. Innovatus objects to the Debtors' proposed \$3.1 million interim cash collateral budget and questions whether emergency relief to pay up to \$5.2 million is truly necessary to avoid immediate and irreparable harm. *See* Bankr. R. 6003.

Innovatus continues to review the first day motions and reserves the right to raise additional objections to any requested relief.

A. Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Continue to Operate Their Cash Management System and Maintain Existing Bank Accounts (II) Honor Certain Obligations Relating Thereto; and (III) Granting a Waiver of Certain Deposit and Investment Requirements In 11 U.S.C. § 345(b) and the UST Guidelines [Docket No. 4] (the "Cash Management Motion").

1. Innovatus acknowledges the Debtors should generally be able to continue managing their cash in the same manner as prior to the Petition Date to avoid any unnecessary disruption in operations. However, the Cash Management Motion does not adequately preserve Innovatus's rights as a secured creditor with a lien on the Debtors' cash collateral.

2. Without limitation, the Debtors propose that they can take many actions, such as closing their bank accounts, opening new bank accounts, and even entering into new deposit control agreements, by merely providing notice to Innovatus. *See* Docket No. 4-1, ¶ 9. Innovatus objects to this relief that threatens its liens on cash collateral. The Debtors should not be able to move Innovatus's cash collateral to newly opened bank accounts, much less enter into

² \$3,205,000 (Customer Programs Motion) + \$1,787,000 (Trade Claims Motion) + \$244,000 (Wages Motion) = \$5,236,000.

new deposit control agreements, without Innovatus's express advance consent. Any order approving the Cash Management Motion must preserve Innovatus's liens and interests in all of the Debtors' cash, deposit and investment accounts, accounts receivable, and their proceeds.

3. Similarly, the Debtors should not be able to make payments to their banks, other creditors, or pursuant to Intercompany Transactions (as defined in the Cash Management Motion) without Innovatus's consent or Court authorization pursuant to an approved budget and cash collateral order.

B. Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Honor and Continue Certain Customer Programs and Customer Obligations in the Ordinary Course of Business, and (II) Authorizing Banks to Honor and Process Checks and Electronic Transfer Requests Related Thereto [Docket No. 17] (the "Customer Programs Motion").

4. The Debtors have requested authority to pay over \$3 million on account of prepetition obligations under their Customer Programs (as defined in the Customer Programs Motion). Innovatus notes this amount is approximately half of all projected revenues from the Debtors' sale of its only revenue producing treatment during the course of their bankruptcy cases.

5. Although the Debtors request both interim and final relief, they do not specify the Customer Program payments during the interim period that are necessary to avoid immediate and irreparable harm. *See* Fed. R. Bankr. P. 6003. The Court should not grant interim relief without proof of these necessary payments and their exact amount. Any payments on the Customer Program obligations should be pursuant to an approved budget and interim cash collateral order.

6. Innovatus will work in good faith with the Debtors to confirm which Customer Program obligations must be paid to preserve ongoing operations and assist with the expeditious sale of the Debtors' assets.

C. Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) 503(b)(9) Claimants, (B) Lien Claimants, (C) Critical Vendors, and (D) Foreign Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders [Docket No. 10] (the "Trade Claims Motion").

7. The Debtors have requested authority to pay \$1,787,000 on account of prepetition obligations to Trade Claimants (as defined in the Trade Claims Motion).

8. The Debtors do not request interim relief and do not specify the Trade Claims that must be paid during the interim period to avoid immediate and irreparable harm. *See* Fed. R. Bankr. P. 6003. The Court should only grant interim relief upon proof of the necessary payments and their exact amount. Any payments on Trade Claims should be pursuant to an approved budget and interim cash collateral order. Innovatus should also receive any matrix or schedule of information regarding payments on Trade Claims

9. Innovatus will work in good faith with the Debtors to confirm which Trade Claims must be paid to preserve ongoing operations and assist with the expeditious sale of the Debtors' assets.

D. Debtors' Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to Pay Certain Taxes and Fees [Docket No. 11] (the "Tax Motion").

10. Pursuant to the Tax Motion, the Debtors generally request authority to pay any prepetition Taxes and Fees to the Taxing Authorities (all as defined in the Tax Motion) in the Debtors' sole discretion. Once again, the Debtors' proposal does not properly consider Innovatus's interest in the Debtors' assets, including cash collateral.

11. Innovatus objects to the Debtors' payment of any Taxes and Fees without Innovatus's consent or Court authorization pursuant to an approved budget and interim cash collateral order. Although certain Taxes and Fees may be priority or secured claims, they are not necessarily entitled to satisfaction from Innovatus's collateral.

12. Innovatus will work in good faith with the Debtors to ensure that Taxes and Fees are paid to the extent necessary to preserve ongoing operations and assist with the expeditious sale of the Debtors' assets.

E. Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, and Employee Benefits and (B) Continue the Postpetition Maintenance of Employee Benefit Programs, Policies, and Procedures in the Ordinary Course [Docket No. 8] (the "Wages Motion").

13. Pursuant to the Wages Motion, the Debtors generally request authority to pay any prepetition obligations to their employees and to continue satisfying such obligations in the ordinary course during the bankruptcy cases. Innovatus does not object to the Debtors satisfying these obligations to the extent necessary to preserve the Debtors' workforce and enable the sale of the Debtors' assets. But once again, any payments on these obligations should be pursuant to an approved budget and interim cash collateral order.

14. Innovatus further notes that, following the closing of the sale of the Debtors' Zokinvy related assets, the Debtors should significantly reduce their work force and only retain those employees and independent contractors that are essential to the liquidation and wind down of the Debtors' business.

F. Debtors' Emergency Motion for Entry of An Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, and (III) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests [Docket No. 5] (the "Utilities Motion").

15. Innovatus does not object to the proposed adequate assurance procedures in the Utilities Motion, but requests clarification that any payments to utilities or additional deposits must be pursuant to an approved budget, and any deposit (or other refund) returned to the Debtors is subject to Innovatus's lien on the Debtors' cash.

G. Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Continue Their Prepetition Insurance Coverage and Satisfy Prepetition Obligations Related Thereto and (B) Renew, Supplement, and Enter Into New Insurance Policies, and (II) Granting Related Relief [Docket No. 6] (the "Insurance Motion").

16. Innovatus does not object to the proposed maintenance of Insurance Obligations, but requests clarification that any payments must be pursuant to an approved budget and interim authorization for use of cash collateral. Any modification of the Debtors' insurance coverage must preserve Innovatus's rights as a secured creditor with lien on the Debtors' assets and all proceeds thereof, including insurance proceeds.

17. Innovatus also notes that the Debtors should make every effort to reduce their insurance costs based on their scaled back operations and sale of assets.

CONCLUSION AND RESERVATION OF RIGHTS

18. Innovatus will attempt to resolve these limited objections in advance of the first day hearing and negotiate agreed forms of orders.

19. Innovatus files this Objection without limitation or waiver of any rights, claims, or defenses against the Debtors, their creditors, or other parties asserting liens against any of the Debtors' assets.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties eligible to receive service via CM/ECF.

/s/ Jay R. Bender

OF COUNSEL