

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

Hearing Date: June 11, 2024 at 2:00 p.m. (ET)

Obj. Deadline: May 14, 2024 at 4:00 p.m. (ET)

**MOTION TO EXTEND THE TIME PERIOD WITHIN WHICH THE DEBTORS  
MAY FILE NOTICES TO REMOVE ACTIONS PURSUANT TO 28 U.S.C. § 1452 AND  
RULES 9027 AND 9006 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their undersigned counsel, hereby submit this *Motion to Extend the Time Period within which the Debtors May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.<sup>2</sup>

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: InVivo Therapeutics Corporation (6670) and InVivo Therapeutics Holdings Corp. (8166). The Debtors’ mailing address is 1500 District Avenue, Burlington, MA 01803.

<sup>2</sup> Pursuant to Local Rule 9013-1(f), the Debtors hereby confirms their consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.



2. The legal bases for the relief sought herein are 28 U.S.C. § 1452 of the United States Code and rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **BACKGROUND**

1. On February 1, 2024 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

2. The Debtors continue to operate their business and manage their properties as debtors-in-possession, pursuant to Bankruptcy Code sections 1107(a) and 1108. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in the Chapter 11 Cases.

3. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors’ business and capital structure is set forth in the *Declaration of Richard Christopher in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [D.I. 3] (the “First Day Declaration”), which is incorporated herein by reference.

### **RELIEF REQUESTED**

4. Pursuant to Bankruptcy Rule 9027(a)(2), the time period by which the Debtors may file notices of removal will expire on May 1, 2024<sup>3</sup> (the “Removal Deadline”).<sup>4</sup> By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Bankruptcy Rule 9006(b), extending the Removal Deadline for a period of ninety (90) days

---

<sup>3</sup> Bankruptcy Rule 9027(a)(2) provides that the time period will expire ninety (90) days from the Petition Date.

<sup>4</sup> Pursuant to Local Rule 9006-2, this deadline shall automatically be extended until the Court acts on the Motion, without the necessity for the entry of a bridge order.

through and including July 30, 2024, with respect to civil actions pending as of the Petition Date.

5. The Debtor requests that the proposed July 30, 2024 deadline to file notices of removal apply to all matters pending as of the Petition Date as specified in Bankruptcy Rule 9027(a)(2)(A), (B) and (C) (the “Prepetition Actions”) in addition to any and all matters initiated after the Petition Date as specified in Bankruptcy Rule 9027(a)(3) (the “Postpetition Actions,” and together with the Prepetition Actions, the “Actions”).

6. The Debtors further request that the order approving this Motion be without prejudice to (a) any position the Debtors or any of their successors may take regarding whether Bankruptcy Code section 362 applies to stay any given Action and (b) the right of the Debtors or any of their successors to seek further extensions of the period in which Actions may be removed pursuant to Bankruptcy Rule 9027.

#### **BASIS FOR RELIEF**

7. Section 1452 of title 28 of the United States Code and Bankruptcy Rule 9027 govern the removal of pending civil actions. Specifically, 28 U.S.C. § 1452(a) provides:

A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit’s police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C. § 1452(a).

8. Bankruptcy Rule 9027(a)(2) sets forth the time period for filing notices to remove claims or causes of actions and provides, in pertinent part:

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed

under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

Fed. R. Bankr. P. 9027(a)(2).

9. Bankruptcy Rule 9006(b)(1) further provides that the Court may extend unexpired time periods, such as the Debtor's Removal Deadline, without notice:

when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

Fed. R. Bankr. P. 9006(b)(1).

10. The Court is authorized to grant the relief requested and extend the Removal Deadline. *See, e.g., Pacor, Inc. v. Higgins*, 743 F.2d 984, 996 n.17 (3d Cir. 1984); *Caperton v. A.T. Massey Coal Co.*, 251 B.R. 322, 325 (S.D. W. Va. 2000) (Bankruptcy Rule 9006 authorizes the enlargement of time periods for removing actions under Bankruptcy Rule 9027); *In re World Fin. Servs. Ctr., Inc.*, 81 B.R. 33, 39 (Bankr. S.D. Cal. 1987) (Bankruptcy Rule 9006 was designed to give bankruptcy judges the authority to enlarge the removal periods under Bankruptcy Rule 9027(a)); *Raff v. Gordon*, 58 B.R. 988, 990 (E.D. Pa. 1986) (Bankruptcy Rule 9006 authorizes the court to grant extensions of time to file a notice of removal). Moreover, such relief routinely is granted by the Court without need for a hearing.

11. Either or both Debtors may become a party to an Action in various state or federal courts. The extension is appropriate because, since the Petition Date, the Debtors have been consumed not only with their transition into chapter 11, but with maximizing value for all creditors

and stakeholders by negotiating with several constituencies in the Chapter 11 Cases, and by handling numerous typical and atypical bankruptcy issues, including the sale of substantially all of their assets.

12. More specifically, the extension is appropriate because the Debtors have expended considerable time and effort by:

- a. handling numerous operational issues, including responding to questions and concerns from creditors, commercial counterparties, financial institutions, and vendors;
- b. preparing, filing, and amending the Debtors' schedules and statements of financial affairs;
- c. preparing for and attending the section 341 meeting of creditors;
- d. obtaining approval for the Debtors' retention and employment of estate professionals;
- e. preparing and filing the motion to establish the Bar Dates;
- f. undertaking a fair and open marketing process for the sale of substantially all of the Debtors' assets;
- g. formulating a proposed plan of liquidation and drafting its related disclosure statement; and
- h. addressing various solicitation issues in connection with the proposed plan of liquidation.

13. At present, it is premature for the Debtors to make a determination as to the benefits and burdens relating to the removal of any Actions. Accordingly, the Debtors believe it is prudent to seek an extension of the Removal Deadline to protect their rights and the rights of any of their successors to remove any Actions. The Debtors submit that the relief requested herein is in the best interests of the Debtors, their estate, their creditors, and stakeholders. The extension sought will afford the Debtors or any of their successors the opportunity to make fully informed decisions

with respect to the removal of any Action and will ensure that the Debtors do not forfeit valuable rights under 28 U.S.C. § 1452.

**NOTICE AND NO PRIOR REQUEST**

14. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the U.S. Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the twenty (20) largest unsecured claims as set forth in the list filed with the Debtors' petition; (c) the Internal Revenue Service; (d) the United States Attorney's Office for the District of Delaware; (e) the United States Securities and Exchange Commission; (f) the United States Food and Drug Administration; (g) all parties to any Actions pending in other federal and state courts; and (h) all parties who have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

15. No previous request for the relief sought in this Motion has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the proposed order (i) granting the relief requested by the Motion and extending the Removal Deadline through and including July 30, 2024 and (ii) granting such other and further relief as is just and proper.

Dated: April 30, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Joshua B. Brooks

Matthew B. McGuire (No. 4366)

Joshua B. Brooks (No. 6765)

George A. Williams III (No. 6964)

919 Market Street, Suite 1800

Wilmington, Delaware 19801

Telephone: (302) 467-4400

Facsimile: (302) 467-4450

Email: mcguire@lrclaw.com

brooks@lrclaw.com

williams@lrclaw.com

*Counsel for the Debtors and Debtors-In-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

**Hearing Date: June 11, 2024 at 2:00 p.m. (ET)**

**Obj. Deadline: May 14, 2024 at 4:00 p.m. (ET)**

**NOTICE OF MOTION**

TO: The following parties: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors' creditors holding the twenty (20) largest unsecured claims as set forth in the list filed with the Debtors' petition; (c) the Internal Revenue Service; (d) the United States Attorney's Office for the District of Delaware; (e) the United States Securities and Exchange Commission; (f) the United States Food and Drug Administration; (g) all parties who have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002.

**PLEASE TAKE NOTICE** that on the date hereof, InVivo Therapeutics Corporation and its affiliated debtor and debtor-in-possession (the "Debtors") filed the *Motion to Further Extend the Time Period within which the Debtors May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **May 14, 2024 at 4:00 p.m. (ET)**. At the same time, you must also serve a copy of the objection upon the following parties so as to be received no later than **May 14, 2024, at 4:00 P.M. (ET)**: (i) counsel for the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Matthew B. McGuire (mcguire@lrclaw.com) and Joshua B. Brooks, Esq. (brooks@lrclaw.com); and (ii) Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Joseph Cudia, Esq., joseph.cudia@usdoj.gov).

A HEARING ON THE MOTION WILL BE HELD ON JUNE 11, 2024 AT 2:00 P.M. (ET) BEFORE THE HONORABLE MARY F. WALRATH, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 4, WILMINGTON, DELAWARE 19801.

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: InVivo Therapeutics Corporation (6670) and InVivo Therapeutics Holdings Corp. (8166). The Debtors' mailing address is 1500 District Avenue, Burlington, MA 01803.



IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 30, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Joshua B. Brooks

Matthew B. McGuire (No. 4366)

Joshua B. Brooks (No. 6765)

George A. Williams III (No. 6964)

919 Market Street, Suite 1800

Wilmington, Delaware 19801

Telephone: (302) 467-4400

Facsimile: (302) 467-4450

Email: mcguire@lrclaw.com

brooks@lrclaw.com

williams@lrclaw.com

*Counsel for the Debtors and Debtors-In-Possession*

## **EXHIBIT A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

Ref. No. \_\_\_\_

**ORDER GRANTING THE DEBTORS' MOTION TO EXTEND THE TIME PERIOD  
WITHIN WHICH THE DEBTORS MAY FILE NOTICES TO REMOVE ACTIONS  
PURSUANT TO 28 U.S.C. § 1452 AND RULES 9027 AND 9006 OF THE  
FEDERAL RULES OF BANKRUPTCY PROCEDURE**

Upon the Debtors' *Motion to Extend the Time Period within which the Debtors May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* (the "Motion");<sup>2</sup> and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that the relief requested by the Motion is necessary and appropriate and in the best interests of the Debtors' estates and their creditors; and good and sufficient cause appearing therefor;

---

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: InVivo Therapeutics Corporation (6670) and InVivo Therapeutics Holdings Corp. (8166). The Debtors' mailing address is 1500 District Avenue, Burlington, MA 01803.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. Pursuant to Bankruptcy Rule 9006, the Debtors' Removal Deadline is extended through and including July 30, 2024.
3. This Order is entered without prejudice to (a) any position that the Debtors or any of their successors may take regarding whether Bankruptcy Code section 362 applies to stay any civil action or (b) the rights of the Debtors or any of their successors to seek further extensions of the time within which to file notices of removal of any Action and related proceedings.
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE