

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)

(Joint Administration Pending)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION TAX  
AND FEE OBLIGATIONS AND (II) AUTHORIZING FINANCIAL INSTITUTIONS  
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) by and through their proposed undersigned counsel, hereby submit this *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Tax and Fee Obligations and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* (the “Motion”). In support of the Motion, the Debtors rely on the *Declaration of Richard Christopher in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”),<sup>2</sup> and 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. This matter is a core proceeding within the meaning of 28 U.S.C.

<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> Except where otherwise indicated, capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



§ 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.<sup>3</sup>

2. The statutory predicates for the relief sought herein are sections 105(a), 363, 507(a), and 541(d) of title 11 of the United States Code (as amended or modified, the “Bankruptcy Code”), rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 1015-1.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

### **GENERAL BACKGROUND**

4. On the date hereof (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.

5. The Debtors continue to operate their businesses 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 these Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set forth in detail in the First Day Declaration filed contemporaneously with this Motion and incorporated herein by reference.

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<sup>3</sup> Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedures for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm 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.

### **THE DEBTORS' TAXES**

7. In the ordinary course of business, the Debtors incur or collect and remit various franchise and personal property taxes, as well as other fees and assessments (collectively, the “Taxes and Fees”) to various federal, state and local governments (collectively, the “Government Authorities”).

8. The Debtors are required to pay federal and state income, franchise, personal property, excise and similar taxes in certain jurisdictions. Franchise taxes and excise taxes, as they may be referred to in different jurisdictions, are generally assessed by state and local Government Authorities against the Debtors for the privilege of doing business within a particular jurisdiction. Franchise and excise taxes may be a flat fee or based on net operating income, gross receipts, or capital employed. Certain states will refuse to qualify a company to do business in a state if franchise and excise taxes have not been paid. Most jurisdictions assess franchise and excise taxes on an annual basis, in arrears, but some jurisdictions require estimated franchise and excise taxes to be remitted on a quarterly basis if the estimated franchise taxes exceed a certain threshold. Moreover, certain jurisdictions assess both franchise and excise taxes and income taxes, while others assess either franchise and excise taxes or income taxes depending on which results in the higher tax.

9. The Debtors pay personal property taxes twice yearly and franchise taxes annually.

10. In their last fiscal year, the Debtors remitted approximately \$3,000.00 to the Government Authorities for Taxes and Fees. As of Petition Date, the Debtors estimate that certain Taxes and Fees in the amount of \$1,100.00 have accrued.<sup>4</sup> To the best of the Debtors’

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<sup>4</sup> This estimate does not include any potential prepetition liabilities related to the Taxes and Fees that may later come due as the result of an audit.

knowledge, the Taxes and Fees generally consist of current tax and fee obligations and do not constitute any catch-up payments.

### **RELIEF REQUESTED**

11. By this Motion, the Debtors request entry of an order, substantially in the form attached hereto as **Exhibits A** and **B**, (a) authorizing the Debtors to pay unpaid prepetition Taxes and Fees owed to the Government Authorities for the period covering January 1, 2023 through the Petition Date, as more fully described herein and (b) authorizing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests for the payment of the Taxes and Fees. Such relief will be without prejudice to the Debtors' rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate.<sup>5</sup>

### **BASIS FOR RELIEF**

#### **A. The Court Should Authorize the Debtors' Payment of Taxes and Fees**

12. The relief requested herein may be granted on any number of grounds. First, Taxes and Fees likely are entitled to priority status pursuant to Bankruptcy Code section 507(a)(8). Second, it is possible that the Government Authorities might sue the Debtors' directors and officers for certain unpaid Taxes and Fees, unnecessarily distracting them from the Debtors' efforts in these Chapter 11 Cases. Third, Bankruptcy Code section 363 gives the Debtors authority to remit payment on account of such Taxes and Fees in the ordinary course of business. Lastly, payment of the Taxes and Fees is appropriate under Bankruptcy Code section 105.

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<sup>5</sup> Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any taxes that may be due to the Government Authorities.

*i. The Taxes and Fees Likely Are Entitled to Priority Status Under Bankruptcy Code Section 507(a)(8)*

13. Some, if not all, of the Taxes and Fees are entitled to priority payment status pursuant to Bankruptcy Code section 507(a)(8). *See* 11 U.S.C. § 507(a)(8)(A) (taxes measured on gross income); 11 U.S.C. § 507(a)(8)(C) (debtor’s liability in connection with “trust fund” taxes); and 11 U.S.C. § 507(a)(8)(E) (excise taxes). For bankruptcy purposes, a tax is characterized as “(a) an involuntary pecuniary burden, regardless of name, laid upon the individual or property; (b) imposed by, or under authority of the legislature; (c) for the public purposes, including the purposes of defraying expenses of government or undertakings authorized by it; and (d) under the police or taxing power of the state.” *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995) (citation omitted).

14. Substantially all of the Taxes and Fees are involuntary pecuniary burdens imposed by the authority of a federal, state or local legislature under its police or taxing power. Regardless of their statutory characterization as “fees” or “charges,” many, if not all, of the claims in respect of Taxes and Fees may well qualify for priority under Bankruptcy Code section 507(a)(8) and, as such, must be paid in full before any general unsecured obligations of a debtor may be satisfied.

15. Specifically, under any chapter 11 plan, these priority Taxes and Fees must be paid in full and in regular cash installments over a five-year period from the date of the order for relief. *See* 11 U.S.C. § 1129(a)(9)(C)(i)-(ii). Additionally, such Taxes and Fees must be paid in the order of priority no less favorable than the treatment given to the most favored general unsecured claims. *See* 11 U.S.C. § 1129(a)(9)(C)(iii). Finally, any chapter 11 plan must provide the same treatment for those Taxes and Fees that constitute secured claims that, were they unsecured, would have been priority tax claims under Bankruptcy Code section 507(a)(8). *See*

11 U.S.C. § 1129(a)(9)(D). Thus, in most cases, the payment of Taxes and Fees that are entitled to such priority in the ordinary course of the Debtors' businesses only affects the timing of the payment and does not prejudice the rights of other creditors of the Debtors.

***ii. Certain Taxes and Fees Are Not Property of the Estate***

16. Certain of the Taxes and Fees are not property of the Debtors' estates pursuant to Bankruptcy Code section 541(d), which provides, in relevant part, that "[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." 11 U.S.C. § 541(d).

17. To the extent the Debtors may collect taxes from third parties, such funds may constitute so-called "trust fund" taxes that the Debtors are required to remit to the applicable Government Authorities. *See, e.g., EBS Pension LLC v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) (noting that property held in trust, whether constructively or expressly, does not become part of the estate when the debtor files its bankruptcy petition), *reconsideration denied*, 2001 Bankr. LEXIS 1333 (Bankr. D. Del. Oct. 11, 2001); *see also Al Copeland Enters., Inc. v. Texas (In re Al Copeland Enters., Inc.)*, 991 F.2d 233, 236-40 (5th Cir. 1993) (sales tax required by state law to be collected from customers is a "trust fund" tax); *Shank v. Washington State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (same); *DeChiaro v. New York State Tax Comm'n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same). To the extent these "trust fund" taxes are collected and held by the Debtors, they are not property of the Debtors' estates under Bankruptcy Code section 541(d). *See Begier v. IRS*, 496 U.S. 53, 59 (1990) (holding that prepetition payment of trust fund taxes is not an

avoidable preference because such funds are not property of the debtor's estate); *see also In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (excise and withholding taxes are trust fund taxes), *aff'd*, 1987 U.S. Dist. LEXIS 16856 (E.D. Pa. May 12, 1987); *In re Tap, Inc.*, 52 B.R. 271, 278 (Bankr. D. Mass. 1985) (withholding taxes are trust fund taxes); 5 Collier on Bankruptcy, ¶541.11[4], at 541-67 to 541-68 (15th ed. rev. 2001).

18. Because taxes held in trust do not constitute property of the Debtors' estates, these amounts will not otherwise be available to the Debtors' estates or their creditors. Thus, the payment or remittance of trust fund Taxes and Fees to the applicable Government Authorities will not adversely affect the Debtors' estates or creditor and the requested relief is warranted.

***iii. The Payment of the Taxes and Fees Is Necessary to Avoid Possible  
Distraction for the Debtors' Officers and Directors***

19. Many federal, state and local Government Authorities have enacted laws providing that certain Taxes and Fees constitute trust fund taxes, and officers and directors of the collecting debtor entity may be held personally liable for nonpayment of such Taxes and Fees. *See, e.g., Conway v. U.S.A.*, 647 F.3d 228, 236 (5th Cir. 2010) (holding CEO personally liable for failure to ensure that company paid over to IRS pre-petition excise taxes that were withheld from airline passengers); John F. Olson, *et al.*, DIRECTOR & OFFICER LIABILITY: INDEMNIFICATION AND INSURANCE § 3.04, at 3-20.27 (rel.10-1999) ("some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation, regardless of cause"). To the extent any of the Debtors' accrued Taxes and Fees were unpaid as of the Petition Date, the Debtors' officers and directors may be subject to lawsuits in such jurisdictions during these Chapter 11 Cases. Such potential lawsuits would prove extremely distracting for (a) the Debtors, (b) the named officers and directors whose attention to the Debtors' Chapter 11 Cases is required, and (c) this Court, which might be asked to entertain

various motions seeking injunctions with respect to the potential state court actions. Thus, it is in the best interests of the Debtors' estates to eliminate the possibility of the foregoing distraction.

**iv. Bankruptcy Code Section 363(b)(1) Permits the Payment of the Taxes and Fees**

20. Courts also have authorized debtors to pay certain taxes and fees under Bankruptcy Code section 363(b)(1), which provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re FV Steel & Wire Co.*, Case No. 04-22421 (Bankr. E.D. Wis. Feb. 26, 2004) (authorizing the continuation of customer programs and the payment of prepetition claims under Bankruptcy Code section 363); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to Bankruptcy Code section 363(b)); *In re UAL Corp.*, Case No. 02-48191 (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under Bankruptcy Code section 363 as an out-of-the-ordinary-course transaction). To use property in the ordinary course of business, “the debtor must articulate some business justification, other than the mere appeasement of major creditors.” *Ionosphere Clubs*, 98 B.R. at 175. As discussed herein, the Debtors’ failure to pay Taxes and Fees could have a material adverse impact on their ability to operate in the ordinary course of business.

**v. Bankruptcy Code Section 105(a) Permits Payment of Taxes and Fees**

21. Finally, Bankruptcy Code section 105(a) empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the



debtor is not a novel concept.” *Ionosphere Clubs*, 98 B.R. at 175.

22. Numerous courts have used Bankruptcy Code section 105’s equitable powers under the “necessity of payment doctrine” to authorize payment of a debtor’s prepetition obligations in order to preserve and maximize the value of the debtor’s estate. *See, e.g., Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286, 311-312 (1882) (recognizing the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824-845 (D. Del. 1999) (noting that in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

23. For these reasons, authorizing the Debtors to pay, in their sole discretion, the prepetition Taxes and Fees will help the Debtors avoid serious disruption to their operations that would result from the nonpayment of such Taxes and Fees, including the distraction and adverse effect on morale that could result from liability for nonpayment imposed upon the Debtors’ directors and officers. Furthermore, nonpayment of these obligations may cause Government Authorities to take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in applicable jurisdictions, and seeking to lift the automatic stay, all of which could disrupt the Debtors’ day-to-day operations and these Chapter 11 Cases, impose significant costs on the Debtors’ estates and destroy the going-concern value of the Debtors’ businesses.

24. Courts in numerous other chapter 11 cases have entered orders granting relief similar to the relief requested herein. *See, e.g., In re Allena Pharmaceuticals, Inc.*, Case No. 22-10842 (KBO) (Bankr. D. Del. Sept. 26, 2023); *In re Agway Farm & Home Supply, LLC*, Case No. 22-10602 (JKS) (Bankr. D. Del. Aug. 3, 2022); *In re Enjoy Technology, Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. July 20, 2022); *In re CCX, Inc.*, Case No. 22-10252 (JTD) (Bankr. D. Del. Apr. 20, 2022); *In re American Eagle Delaware Holding Company LLC*, Case No. 22-10028 (JKS) (Bankr. D. Del. Feb. 9, 2022); *In re Riverbed Technology, Inc.*, Case No. 21-11503 (CTG) (Bankr. D. Del. Nov. 18, 2021); *In re Gulf Coast Health Care, LLC*, Case No. 21-11336 (KBO) (Bankr. D. Del. Nov. 12, 2021); *In re The Collected Group, LLC*, Case No. 21-10663 (LSS) (Bankr. D. Del. Apr. 28, 2021); *In re SFP Franchise Corporation*, Case No. 20-10134 (JTD) (Bankr. D. Del. Feb. 13, 2020); *In re HRI Holding Corp.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Dec. 5, 2019); *In re EdgeMarc Energy Holdings, LLC*, Case No. 19-11104 (BLS) (Bankr. D. Del. June 13, 2019); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Mar. 22, 2019); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019); *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC) (Bankr. D. Del. Jan. 22, 2019); *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 3, 2018).

**B. Cause Exists to Authorize and Direct the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers**

25. The Debtors further request that the Debtors' banks be authorized, when requested by the Debtors in their sole discretion, to process, honor and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay all prepetition Taxes and Fees, whether those checks or electronic fund transfers were presented prior to or after the Petition Date, and to make other transfers provided that sufficient funds are available in the

applicable account to make such payments. The Debtors represent that each of these checks and transfers can be readily identified as relating directly to the authorized payment of prepetition Taxes and Fees. Accordingly, the Debtors believe checks and transfers, other than those relating to authorized payments, will not inadvertently be honored.

26. Nothing in this Motion should be construed as impairing the Debtors' rights to contest the validity, amount or priority of any Taxes and Fees that may be owed to or asserted by any of the Government Authorities, and the Debtors expressly reserve all of their rights with respect thereto.

27. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

**BANKRUPTCY RULE 6003 SATISFIED AND**  
**REQUEST FOR WAIVER OF STAY**

28. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

29. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a Motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a Motion to pay all or part of a claim that arose before the filing of the petition, but not a Motion under Rule 4001.

Fed. R. Bankr. P. 6003.

30. The Third Circuit Court of Appeals has interpreted language similar to that used

in Bankruptcy Rule 6003 in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 Fed. Appx. 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle County*, 40 F.3d 645, 655 (3d Cir. 1994).

31. As discussed above, if the Taxes and Fees are not paid, the Government Authorities may assert that the Debtors' directors and officers are personally liable if the Debtors fail to meet their obligations to remit such Taxes and Fees. Furthermore, the Government Authorities could initiate audits for failure to pay the Taxes and Fees, file liens, prevent the Debtors from conducting business in applicable jurisdictions and/or seek to lift the automatic stay. Thus, if the relief requested in this Motion is not granted, the Debtors potentially would have to devote resources to respond to a government audit, defend their directors and officers or take some other action, all of which would cause the Debtors' estates immediate and irreparable harm by disrupting the Debtors' operations, these Chapter 11 Cases and the value of the Debtors' estates. Moreover, the Government Authorities will assess substantial, irreversible penalties for failure to pay certain Taxes and Fees, which will have to be paid in cash and in full as priority claims, and can also create or perfect liens for failure to pay any Taxes or Fees. Accordingly, the Debtors respectfully submit they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and seek authority to pay prepetition Taxes and Fees as set forth in this Motion.

32. The Debtors further seek a waiver of any stay of the effectiveness of the order

approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors’ operations and going-concern value.

33. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rule 6003 and 6004(h).

### **NOTICE AND NO PRIOR REQUEST**

34. 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 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 consolidated list filed with the Debtors’ petitions; (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 these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and (h) the Government Authorities listed on “**Exhibit 1**” hereto. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

35. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and in the First Day Declaration, the Debtors respectfully request that this Court enter an order, substantially in the form attached hereto, (a) authorizing the Debtors to pay unpaid Taxes and Fees owed to certain Government

Authorities; (b) authorizing and directing financial institutions to receive, process, honor, and pay all related checks and electronic payment requests for payment of the Taxes and Fees; and (c) granting such other and further relief as is just and proper.

Dated: February 1, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Joshua B. Brooks

Matthew B. McGuire (No. 4366)

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

# **Exhibit 1**

**List of Taxing Authorities**

<b>Taxing Authority</b>	<b>Type of Tax</b>
City of Cambridge, Massachusetts	Personal Property Tax
Internal Revenue Service	Income Tax
Massachusetts Department of Revenue	Business Use Tax, Corporate Excise
Rhode Island Division of Taxation	Income Tax
State of Delaware, Division of Corporations	Franchise Tax



**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. \_\_\_\_

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION TAX AND FEE OBLIGATIONS AND (II) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Tax and Fee Obligations and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* (the “Motion”)<sup>2</sup> and upon the First Day Declaration; and it appearing that this Court has 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 it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter an order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the 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 in the best interests of the Debtors’ estates; and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein on an interim basis.

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<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 same meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, in their sole discretion to remit and pay to the Government Authorities up to a total of \$1,100 in certain prepetition Taxes and Fees.

3. The final hearing (the “Final Hearing”) on the Motion will be held on \_\_\_\_\_, 2024 at \_\_\_\_\_ .m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2024 and served on the following parties: (i) the Office of the United States Trustee, Attn: Joseph Cudia, Esq.(joseph.cudia@usdoj.gov), J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, Delaware 19801; (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 Attn: Matthew B. McGuire, Esq. (mcguire@lrclaw.com) and Joshua B. Brooks, Esq. (brooks@lrclaw.com); and (iii) counsel to any statutory committee appointed in these Chapter 11 Cases. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

4. The Debtors are authorized, but not directed, to remit and pay Taxes and Fees to the Government Authorities in the ordinary course of business.

5. Notwithstanding the relief granted herein and any action taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity, amount or priority of any claim against the Debtors or a waiver of the Debtors’ rights to subsequently dispute any such claims.

6. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition

Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. Rule 6003 of the Bankruptcy Rules has been satisfied.

9. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2024  
Wilmington, Delaware

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

**EXHIBIT B**

**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. Nos. \_\_\_\_ & \_\_\_\_

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN  
PREPETITION TAX AND FEE OBLIGATIONS AND (II) AUTHORIZING FINANCIAL  
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the *Motion of the Debtors for Entry of an Order (I) Authorizing the Debtors to Pay Certain Prepetition Tax and Fee Obligations and (II) Authorizing Financial Institutions to Honor and Process Related Checks and Transfers* (the “Motion”)<sup>2</sup> and upon the First Day Declaration; and it appearing that this Court has 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 it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter an order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the 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 in the best interests of the Debtors’ estates; and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.

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<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 same meanings ascribed to them in the Motion.

2. The Debtors are authorized, but not directed, in their sole discretion to remit and pay to the Government Authorities up to a total of \$1,100 in certain prepetition Taxes and Fees.

3. The Debtors are authorized, but not directed, to remit and pay Taxes and Fees to the Government Authorities in the ordinary course of business.

4. Notwithstanding the relief granted herein and any action taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity, amount or priority of any claim against the Debtors or a waiver of the Debtors' rights to subsequently dispute any such claims.

5. All applicable banks and other financial institutions are hereby authorized to receive, process, honor, and pay any and all checks and funds transfers evidencing amounts paid by the Debtors pursuant to the Motion, whether presented or issued prior to or after the Petition Date. Such banks and financial institutions are authorized to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. Rule 6003 of the Bankruptcy Rules has been satisfied.

8. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2024  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE