

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 AN ORDER MODIFYING THE  
REQUIREMENTS FOR THE LIST OF EQUITY SECURITY HOLDERS AND  
MODIFYING THE NOTICE REQUIREMENTS FOR EQUITY SECURITY HOLDERS**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their proposed undersigned counsel, hereby submits the *Motion of the Debtors for Entry of an Order Modifying the Requirements for the List of Equity Security Holders and Modifying the Notice Requirements for Equity Security Holders* (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”) and respectfully states 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. § 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 of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) 9013-1(f), 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.



2. The legal predicates for the relief sought herein are sections 105(a) of title 11 of chapter 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended or modified, the “Bankruptcy Code”); rules 1007(a)(3) and 2002(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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

### **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.

### **RELIEF REQUESTED**

7. By this Motion, and pursuant to Bankruptcy Code section 105(a) and Bankruptcy Rules 1007(a)(3) and 2002(d), the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, modifying the Debtors’ requirements for the list of equity security holders and modifying the Debtors’ notice requirements for equity security holders.

**BASIS FOR RELIEF**

**A. Cause Exists to Modify the Debtors’ Requirements for the List of Equity Security Holders and to Modify the Debtors’ Notice Requirements for Equity Security Holders**

8. Under Bankruptcy Rule 1007(a)(3), “unless the court orders otherwise,” a debtor must file a list of equity security holders within fourteen (14) days following the Petition Date. Under Bankruptcy Rule 2002(d), “unless otherwise ordered by the Court,” a debtor is required to give notice to all equity security holders of:

- (1) the order for relief;
- (2) any meeting of equity security holders held pursuant to §341 of the Code;
- (3) the hearing on the proposed sale of all or substantially all of the debtor’s assets;
- (4) the hearing on the dismissal or conversion of a case to another chapter;
- (5) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement;
- (6) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and
- (7) the time fixed to accept or reject a proposed modification of a plan.

Fed. R. Bankr. P. 2002(d). The Court, however, has authority to modify or limit the filing and notice requirements under the express provisions of both rules. Fed. R. Bankr. R. 2002(d); Fed. R. Bankr. R. 1007(a)(3); *see also* 11 U.S.C. § 105(a) (“The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”).

9. The Debtors’ common stock is listed on the Nasdaq Capital Market under the ticker symbol “NVIV.”

10. As of the Petition Date, the Debtors have 3,105,446 shares of publicly held common stock.<sup>3</sup> Given the number of shares outstanding and because the Debtors’ stock has been actively traded, beneficial ownership of such common stock is widely dispersed and subject to change.<sup>4</sup>

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<sup>3</sup> As of December 31, 2023, the Debtors had 2,380,394 outstanding warrants to purchase common stock.

<sup>4</sup> By way of example, approximately 400,000 of the Debtors’ shares have traded between the January 1, 2024 and the date hereof. Monitoring the Beneficial Owners (current and future) in light of such trading volume would be all but

As such, the Debtors have only maintained a list of its equity security holders of record and have not maintained a list of its beneficial holders (the “Beneficial Holders”). The Debtors have disclosed each of their equity security holders of record in its list of equity security holders prepared in accordance with Bankruptcy Rule 1007(a)(3) that was filed with the petitions. However, the Debtors submit that preparing a list of Beneficial Holders—those who hold the Debtors’ stock through transfer agents, banks, brokers, intermediaries, and other nominees—would be burdensome, time consuming and expensive. It is estimated that there are over 13,000 Beneficial Holders. Specifically, to obtain the list of Beneficial Holders, the Debtors would have to request their transfer agent, Continental Stock Transfer & Trust Company (the “Transfer Agent”), contact all registered holders, banks, brokers, intermediaries and other nominees (collectively, the “Nominees”) that hold stock in “street name” for the beneficial holders of the stock, as applicable, and request that all such Nominees review their books and records to identify the identity of the applicable Beneficial Holder(s). Beneficial Holders would then have an opportunity to object to the release of their identities, in which case the Nominees would not be permitted to disclose their identities, even upon a written request by the Debtors.

11. Importantly, even if such information is ultimately obtained, it would only represent a snapshot of equity security holders as of a particular point in time—therefore providing little utility, especially when balanced against the cost and burden of accumulating such information. In addition, if a beneficial holder holds the Debtors’ stock in “street name” with a Nominee, such Nominee, upon information and belief, may have procedures in place to provide notices from the Chapter 11 Cases to the beneficial holder.

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impossible. See NVIV HISTORICAL DATA, <https://www.nasdaq.com/market-activity/stocks/nviv/historical> (last visited January 31, 2024).

12. In short, obtaining a list of the Beneficial Holders with last known addressees for each such holder, and providing notice to all such parties, would be a burdensome and expensive process, and would serve little or no beneficial purpose in light of the fact that transfer agents and brokerage firms have processes in place that would ensure that each beneficial holder obtains requisite notice. The Debtors therefore request that it be determined that its list of equity security holders filed with its petition is satisfactory, with no further need to be supplemented to include the Beneficial Holders.

13. Moreover, because the Debtors filed with their petition and will serve the notices required under Bankruptcy Rule 2002(d) on the list of the Debtors' equity security holders of record, the Chapter 11 Cases are subject to reporting with the Securities and Exchange Commission and the financial press, and the details and status of the Chapter 11 Cases will be publicly available on the Debtors' Chapter 11 case website at [www.kccllc.net/invivo](http://www.kccllc.net/invivo) (the "Case Website") established by the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC (the "Claims Agent"), the Debtors' equity security holders will be aware of the Chapter 11 Cases and their status. The Debtors are confident that these publications will reach the Beneficial Holders.

14. The Debtors therefore request that the requirements to provide notice directly to all equity security holders be modified such that the Debtors are authorized to provide notice to the Beneficial Holders in the manner set forth herein. Specifically, in lieu of providing notice to each of the Beneficial Holders, the Debtors propose to provide such notice by: (i) publishing the notice of commencement of these Chapter 11 Cases (the "Notice of Commencement") on the Case Website; (ii) serving by first class mail, the Notice of Commencement and all other notices required to be served under Bankruptcy Rule 2002(d) on the Transfer Agent and all of the

Nominees that hold stock in “street name” for the Beneficial Holders of the equity interest, as applicable; and (iii) serving by first class mail any other items that should later be determined to be necessary to be served on Equity Security Holders on the Transfer Agents and Nominees that hold stock in “street name” for the Beneficial Interest Holders, as applicable. The Debtors already provided notice of these Chapter 11 Cases to its equity holders, including Beneficial Holders, by filing a Form 8-K with the Securities and Exchange Commission (the “SEC”) within hours of filing its petition, notifying its investors and other parties in interest of the commencement of the Chapter 11 Cases. *See* InVivo Therapeutics Holding Corp., *Form 8-K*, UNITED STATES SECURITIES AND EXCHANGE COMMISSION (February 1, 2024), [https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/1292519/000110465924009146/tm244807d1\\_8k.htm](https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/1292519/000110465924009146/tm244807d1_8k.htm). Although such a result is uncertain, if it is determined that Beneficial Holders are entitled to distributions from the Debtors’ estates, the Beneficial Holders will be provided with a notice of the Debtors’ bar date and will have an opportunity to file proofs of interest. Therefore, the Beneficial Holders will not be prejudiced by the relief requested herein.

15. Courts in this District have granted similar relief to that requested herein in other chapter 11 cases. *See, e.g., Infinity Pharmaceuticals, Inc.*, Case No. 23-11640 (BLS) (Bankr. D. Del. Oct. 2, 2023); *In re Allena Pharmaceuticals, Inc.*, Case No. 22-10842 (KBO) (Bankr. D. Del. Sept. 26, 2022) (modifying and limiting the service requirements for beneficial holders under Bankruptcy Rule 2002(d)); *In re Clarus Therapeutics Holdings, Inc.*, Case No. 22-10845 (MFW) (Bankr. D. Del. Sept. 7, 2022) (same); *In re Enjoy Tech., Inc.*, Case No. 22-10580 (JKS) (Bankr. D. Del. July 1, 2022) (same); *In re AAC Holdings, Inc.*, Case No. 20-11648 (JTD) (Bankr. D. Del. June 23, 2020) (same); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. Apr. 11, 2019) (modifying and limiting the service requirements under Bankruptcy Rule 2002(d)); *In*

*re Ciber, Inc.*, Case No. 17-10772 (BLS) (Bankr. D. Del. Apr. 28, 2017) (same); *In re Molycorp, Inc.*, Case No. 15-11357 (CSS) (Bankr. D. Del. June 26, 2015) (same).<sup>5</sup>

16. In light of the foregoing, the Debtors submit that ample cause exists for the Court to modify the requirements of Bankruptcy Rule 1007(a)(3) to not require Beneficial Holders to be included on the Debtors' list of equity holders and to modify the requirements of Bankruptcy Rule 2002(d) to send notices to Beneficial Holders as the requirement relates to the equity security holders of the Debtors.

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

17. 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 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; and (g) all parties who have requested notice in these 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.

18. The Debtors previously have not sought the relief requested herein from the Court or any other court.

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<sup>5</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' counsel.

WHEREFORE, the Debtors respectfully request that the Court enter the proposed form of order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: February 1, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Joshua B. Brooks

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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 MODIFYING THE REQUIREMENTS FOR THE LIST OF  
EQUITY SECURITY HOLDERS AND MODIFYING THE NOTICE  
REQUIREMENTS FOR EQUITY SECURITY HOLDERS**

Upon the *Motion of the Debtors for Entry of an Order Modifying the Requirements for the List of Equity Security Holders and Modifying the Notice Requirements for Equity Security Holders* (the “Motion”),<sup>2</sup> of the above captioned debtors and debtors-in-possession (the “Debtors”); and upon the First Day Declaration; and the Court having jurisdiction to consider the 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 it appearing 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 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’ estate; and

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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 used herein, but not otherwise defined, shall have the meanings ascribed to them in the Motion.

sufficient cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is hereby granted as set forth herein.
2. The requirement under Bankruptcy Rule 1007(a)(3) to file the list of equity security holders is hereby modified, such that, to the extent not already completed, the Debtors shall only be required to file a list of all equity security holders of record, and will not be required to include the Beneficial Holders therein.
3. The requirements under Bankruptcy Rule 2002(d) to give notice to the Debtors' equity security holders is hereby modified, such that, the Debtors are only required to provide service to Beneficial Holders as follows and such notice shall be considered sufficient by the completion of the following steps, to the extent that they have not already been completed: (i) publishing the notice of commencement of these Chapter 11 Cases (the "Notice of Commencement") on the Case Website; (ii) serving by first class mail, the Notice of Commencement and all other notices required to be served under Bankruptcy Rule 2002(d) on the Transfer Agent and all of the Nominees that hold stock in "street name" for the Beneficial Holders of the equity interest, as applicable; and (iii) serving by first class mail any other items that should later be determined to be necessary to be served on equity security holders on the Transfer Agent and Nominees that hold stock in "street name" for the Beneficial Interest Holders, as applicable.
4. If it is determined that equity security holders are entitled to distributions from the Debtors' estates, the Beneficial Holders will be provided with a notice of the Debtors' bar date and will have an opportunity to file proofs of interest.
5. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Order.

6. Notwithstanding any applicable Bankruptcy Rule, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

7. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and enforcement of this Order.

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

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UNITED STATES BANKRUPTCY JUDGE