

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:** April 30, 2024 at 2:00 p.m. (ET)

**Obj. Deadline:** April 22, 2024 at 4:00 p.m. (ET)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING  
THE DISCLOSURE STATEMENT ON AN INTERIM BASIS; (II) SCHEDULING  
A COMBINED HEARING ON FINAL APPROVAL OF THE DISCLOSURE  
STATEMENT AND PLAN CONFIRMATION AND DEADLINES RELATED  
THERE TO; (III) APPROVING THE SOLICITATION, NOTICE AND  
TABULATION PROCEDURES AND THE FORMS RELATED THERETO;  
AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors-in-possession (the “Debtors”), by and through their undersigned counsel, hereby submit this motion (the “Motion”) for entry of an order (the “Interim Approval and Procedures Order”) (i) approving the *Disclosure Statement for the Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* dated April 8, 2024 (including all exhibits thereto and as amended, supplemented or otherwise modified from time to time, the “Disclosure Statement”) on an interim basis; (ii) scheduling a combined hearing (the “Confirmation Hearing”) to consider (a) approval of the Disclosure Statement on a final basis and (b) confirmation of the *Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* dated April 8, 2024 (including all exhibits

<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.



thereto and as amended, supplemented, or otherwise modified from time to time, the “Plan”),<sup>2</sup> both of which have been filed contemporaneously with this Motion; (iii) approving the solicitation, notice and tabulation procedures related to solicitation of votes on the Plan and the forms related thereto; and (iv) granting related relief. In support of this Motion, the Debtors respectfully represent 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 as of 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>3</sup> Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105, 502, 1123(a), 1124, 1125, 1126, and 1128 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 2002, 3003, 3016, 3017, 3018, 3020, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and rules 2002-1 and 3017-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

### **GENERAL BACKGROUND**

3. On February 1, 2024 (the “Petition Date”), the Debtors commenced the above-

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan or the Disclosure Statement, as applicable.

<sup>3</sup> Pursuant to Local Rule 9013-1(f), the Debtors hereby confirms their consent to entry of a final order by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the Court.

4. 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* (the “First Day Declaration”), which is incorporated herein by reference.

5. Additional information regarding the sale and marketing process conducted by the Debtors during the Chapter 11 Cases (the “Sale Process”) is set forth in the Disclosure Statement, which is incorporated herein by reference.

6. On March 11, 2024, the Debtors filed the *Motion of the Debtors for Entry of an Order (A) Establishing Bar Dates for Filing Proofs of Claim, (B) Approving the Form and Manner for Filing Proofs of Claim; and (C) Approving Notice Thereof* [D.I. 108] (the “Bar Date Motion”). On March 26, 2024, the Court entered an order granting the Bar Date Motion [D.I. 124] (the “Bar Date Order”). Pursuant to the Bar Date Order, the Court established April 19, 2024 at 4:00 p.m. (prevailing Eastern Time) (the “General/Admin Bar Date”) as the deadline for each person or entity asserting (i) a claim against the Debtors that arose (or was deemed to have arisen) before the Petition Date and/or (ii) any right to payment constituting a cost or expense of administration of the Chapter 11 Cases under Bankruptcy Code sections 503(b) and 507(a)(2) against the Debtors that arose, accrued, or otherwise became due and payable or may have arisen, accrued or otherwise become due and payable at any time during the period from the Petition Date through and including March 31, 2024, except as otherwise set forth in the Bar Date Order, to file proofs of claim or administrative claims against the Debtors. Additionally, the Court established July 30, 2024 at 4:00 p.m. (prevailing Eastern Time) (the “Governmental Bar Date” and together with the

General/Admin Bar Date, the “Bar Dates”) as the deadline for all governmental units holding claims (whether secured, unsecured priority or unsecured non-priority) that arose (or are deemed to have arisen) before the Petition Date to file proofs of claim.

7. On February 15, 2024, the Debtors filed their Schedules of Assets and Liabilities [D.I. 60 & 62] and Statement of Financial Affairs [D.I. 61 & 63] (as amended or modified and together as, the “Schedules and Statements”). On March 7, 2024, the meeting of creditors was held pursuant to Bankruptcy Code section 341(a).

### **THE PLAN AND DISCLOSURE STATEMENT**

8. Contemporaneously with this Motion, the Debtors filed the Plan and the Disclosure Statement. The Plan is a liquidating plan within the purview of Local Rule 3017-2. In general, the Plan provides for, among other things, (i) the vesting of all Available Cash and Retained Causes of Action (including Avoidance Actions) in the Liquidation Trust, for the purpose of distribution to holders of Claims; (ii) the designation of a Liquidation Trustee to, among other things, wind down the Debtors’ affairs, prosecute, continue or settle certain Retained Causes of Action, pay and reconcile Claims, and administer the Plan and Liquidation Trust in an efficacious manner; and (iii) 100 percent recoveries for holders of Allowed Administrative Claims, Secured Tax Claims, Priority Tax Claims, Other Secured Claims, General Unsecured Claims and ARE Subordinated Claims.

9. In accordance with Bankruptcy Code section 1126, the Plan contemplates classifying holders of Claims and Interests into certain Classes for all purposes, including with respect to voting rights, if any, as follows<sup>4</sup>:

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<sup>4</sup> In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified and, thus, are excluded from the Classes of Claims and Interests set forth in Article II of the Plan.

CLASS	CLAIM/INTEREST	STATUS	VOTING RIGHTS
N/A	Administrative Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
N/A	Priority Tax Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
1	Secured Tax Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
2	Other Secured Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
3	Other Priority Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
4	General Unsecured Claims	Impaired	Entitled to Vote
5	ARE Subordinated Claims	Impaired	Entitled to Vote
6	Interests	Impaired	Entitled to Vote

10. As set forth above, Class 4 (General Unsecured Claims), Class 5 (ARE Subordinated Claims) and Class 6 (Interests) are the classes of holders of Claims and Interests that are entitled to vote on the Plan (the “Voting Classes”). All other holders of Claims are not entitled to vote on the Plan because each such holder holds a Claim that is unimpaired under the Plan and deemed to accept the Plan (the “Non-Voting Classes”).

11. To the extent Claims or Interests in a Voting Class are subject to an objection other than a “reduce and allow” objection that is filed with the Court on or prior to ten (10) days before the Voting Deadline (as defined herein), the holder of such Claims shall not be entitled to vote to accept or reject the Plan unless one or more of the following has occurred no later than two (2) days prior to the Voting Deadline (each, a “Resolution Event”):

- (a) an order of the Bankruptcy Court is entered allowing such Claim or Interest pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
- (b) an order of the Bankruptcy Court is entered temporarily allowing such Claim or Interest *for voting purposes only* pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
- (c) a stipulation or other agreement is executed between the holder of such

Claim or Interest and the Debtors resolving the objection and allowing such Claim or Interest in an agreed upon amount; or

(d) the pending objection is voluntarily withdrawn by the objecting party.

12. The Debtors respectfully submit that the Disclosure Statement complies with all aspects of Bankruptcy Code section 1125; however, by this Motion, the Debtors seek only interim approval of the adequacy of the Disclosure Statement. At the Confirmation Hearing, the Debtors will seek final approval of the adequacy of the Disclosure Statement (as well as confirmation of the Plan).

### **RELIEF REQUESTED**

13. By this Motion, the Debtors respectfully request entry of the proposed Interim Approval and Procedures Order, substantially in the form attached hereto as **Exhibit 1** (i) granting interim approval of the Disclosure Statement solely to permit the Debtors to solicit votes to accept or reject the Plan, with final approval of the Disclosure Statement combined with the hearing on confirmation of the Plan as contemplated by Local Rule 3017-2; (ii) fixing the dates and deadlines related to solicitation and confirmation of the Plan as set forth in the Confirmation Schedule (defined below); (iii) approving certain solicitation, notice and tabulation procedures (the “Solicitation Procedures”) with respect to confirmation of the Plan; (iv) approving the form of the ballots and the notices in connection therewith; and (v) granting other related relief.

14. A summary of the key dates that the Debtors seek to establish, subject to the Court’s availability, by the Interim Approval and Procedures Order are as follows (the “Confirmation Schedule”):

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
<b>Record Date</b>	<b>April 26, 2024 at 4:00 p.m. (prevailing Eastern Time)</b> (or such other date the Interim Approval and Procedures Order is entered)
<b>Deadline to Serve the Notices and the Solicitation Package</b>	<b>April 30, 2024</b> (or within 2 business days following entry of the Interim Approval and Procedures Order)
<b>Deadline to file Claims Objections for Voting Purposes Only and to file Rule 3018 Motions</b>	<b>May 22, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
<b>Deadline to File Plan Supplement</b>	<b>May 22, 2024</b>
<b>Voting Deadline</b>	<b>May 29, 2024 at 5:00 p.m. (prevailing Eastern Time)</b>
<b>Deadline to Object to final approval of the Disclosure Statement and Confirmation of the Plan</b>	<b>May 29, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
<b>Deadline for Debtors to Respond to 3018 Motions</b>	<b>May 29, 2024</b>
<b>Deadline for Debtor to File Voting Report (which shall also include a list of those who opted out of the third party releases)</b>	<b>June 3, 2024</b>
<b>Deadline for Debtor to File Confirmation Brief and/or Reply to any Plan or Disclosure Statement Objections, Supporting Declarations and the Proposed Form of Order Approving the Disclosure Statement and Confirming the Plan</b>	<b>June 6, 2024</b>
<b>Combined Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan, and to Rule on Claims Objections and 3018 Motions</b>	<b>June 11, 2024 at 2:00 p.m. (prevailing Eastern Time)</b>

### **BASIS FOR RELIEF REQUESTED**

#### **A. Interim Approval of the Disclosure Statement is Appropriate**

15. The Debtors submit that the Disclosure Statement contains adequate information as defined in section 1125 of the Bankruptcy Code. Accordingly, the Debtors request that the Court approve the Disclosure Statement (a) on an interim basis to permit the Debtors to use it in the

solicitation process as described herein; and (b) on a final basis at the Confirmation Hearing as part of the order confirming the Plan.

16. Pursuant to section 1125 of the Bankruptcy Code, the proponent of a chapter 11 plan must provide “adequate information” regarding that plan to holders of impaired claims and interests entitled to vote on the plan. Specifically, section 1125(a)(1) of the Bankruptcy Code states, in relevant part:

“adequate information” means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan . . . in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information . . .

11 U.S.C. § 1125(a)(1).

17. The primary purpose of a disclosure statement is to provide all material information that creditors and interest holders affected by a proposed plan need to make an informed decision regarding the plan. *See, e.g., Century Glove, Inc. v. First Am. Bank of N.Y.*, 860 F.2d 94, 100 (3d Cir. 1988) (“[Section] 1125 seeks to guarantee a minimum amount of information to the creditor asked for its vote.”); *In re Monnier Bros.*, 755 F.2d 1336, 1341 (8th Cir. 1985); *In re Phoenix Petroleum Co.*, 278 B.R. 385, 392 (Bankr. E.D. Pa. 2001); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill. 1987). Congress intended that informed judgments would be needed to both negotiate the terms of, and vote on, a plan. *Century Glove*, 860 F.2d at 100.

18. Bankruptcy courts have broad discretion in determining whether a disclosure



statement contains adequate information based on the unique facts and circumstances of each case. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) (“From the legislative history of § 1125 we discern that adequate information will be determined by the facts and circumstances of each case.”); *Lisanti v. Lubetkin (In re Lisanti Foods, Inc.)*, 329 B.R. 491, 507 (D.N.J. 2005), *aff’d*, 241 Fed. App’x. 1 (3d Cir. Aug. 2, 2007) (“Section 1125 affords the Court substantial discretion in considering the adequacy of a disclosure statement.”); *In re Phoenix Petroleum Co.*, 278 B.R. at 393 (“The general language of the statute and its surrounding legislative history make clear that the determination of what is adequate information is subjective and made on a case by case basis. This determination is largely within the discretion of the bankruptcy court.”) (internal quotations omitted).

19. In making a determination about the adequacy of the information, courts will typically look at whether the disclosure statement contains information such as:

- a. the circumstances that gave rise to the filing of the bankruptcy petition;
- b. a description of the available assets and their value;
- c. the anticipated future of the debtor;
- d. the source of the information provided in the disclosure statement;
- e. the condition and performance of the debtor while in chapter 11;
- f. claims against the debtor’s estate;
- g. a liquidation analysis setting forth the estimated return that creditors would receive if the debtor’s case was converted to a case under chapter 7 of the Bankruptcy Code;
- h. the accounting and valuation methods used to produce the financial information in the disclosure statement;
- i. the future management of the debtor, including the amount of

compensation to be paid to any insiders, directors and/or officers of the debtor;

- j. a summary of the chapter 11 plan;
- k. an estimate of all administrative expenses, including attorneys' fees and accountants' fees;
- l. the collectability of any accounts receivable;
- m. any financial information, including financial valuations or *pro forma* projections that would be relevant to creditors' determinations of whether to accept or reject the plan;
- n. the risks to creditors and interest holders under the plan;
- o. the actual or projected value that can be obtained from avoidable transfers;
- p. the existence, likelihood and possible success of nonbankruptcy litigation; and
- q. the tax consequences of the plan.

*See In re Scioto Valley Mortgage Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988); *see also In re Source Enters.*, 2007 Bankr. LEXIS 4770, \*7-8 (Bankr. S.D.N.Y. July 31, 2007) (using similar list of factors); *In re Phoenix Petroleum*, 278 B.R. at 393 (citing similar factors that courts have used to determine the adequacy of information contained in disclosure statements, while cautioning that “no one list of categories will apply in every case”).

20. Here, the Disclosure Statement contains adequate, if not ample, information to allow the holders of Claims and Interests to make an informed judgment regarding the Plan. The Disclosure Statement is the product of the Debtors' extensive review and analysis of their business, assets and liabilities, and circumstances leading to the Chapter 11 Cases. Additionally, the Disclosure Statement contains detailed information regarding: (i) the terms of the Plan, including a summary of the classifications and treatment of all Classes of Claims and Interests; (ii) the

treatment of holders of Allowed Claims and Allowed Interests; (iii) the effect of the Plan on holders of Claims and Interests and other parties in interest thereunder; (iv) the Claims asserted against the Debtors and the estimated amount of Claims that will ultimately be Allowed; (v) certain risk factors to consider that may affect the Plan; (vi) certain tax issues related to the Plan and distributions; and (vii) the means for implementation of the Plan. Accordingly, the Debtors believe that the Disclosure Statement complies with all aspects of Bankruptcy Code section 1125 and contains more than sufficient information for a hypothetical reasonable creditor or investor to make an informed judgment about the Plan. Thus, the Debtors submit that the Disclosure Statement should be approved on an interim basis. At the Confirmation Hearing, the Debtors will seek final approval of the adequacy of the Disclosure Statement and confirmation of the Plan.

**B. A Combined Hearing Is Appropriate in These Circumstances**

21. Section 1128 of the Bankruptcy Code provides that “[a]fter notice, the court shall hold a hearing on confirmation of a plan” and that “[a] party in interest may object to confirmation of a plan.” 11 U.S.C. § 1128; *see also* Fed. R. Bankr. P. 3017(c).<sup>5</sup> Section 105 of the Bankruptcy Code expressly authorizes the Court to issue any order that “provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan” where the Court deems a combined hearing to be “appropriate to ensure that the case is handled expeditiously and economically . . . .” *See* 11 U.S.C. § 105(d)(2)(B)(vi); *see also In re Gulf Coast Oil Corp.*, 404 B.R. 407, 425 (Bankr. S.D. Tex. 2009) (“Section 1125(f) authorizes combined plans and disclosure statements in small business cases and § 105(d) authorizes the court to combine them in other cases.”); *In re Luminent Mortgage Capital Inc.*, Case No. 08-21389 (Bankr. D. Md.

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<sup>5</sup> Bankruptcy Rule 3017(c) provides that “[o]n or before approval of the disclosure statement, the court . . . may fix a date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c).

May 15, 2009). Local Rule 3017-2(a) sets forth the conditions under which a combined hearing is ordinarily permissible.

22. Pursuant to this authority, courts in this District have combined hearings on approval of disclosure statements and confirmation of plans in chapter 11 cases that were neither small business cases nor prepackaged cases. *See, e.g., In re Legacy FSRD, Inc. (f/k/a Fast Radius Inc.)*, Case No. 22-11051 (JKS) (Bankr. D. Del. Jan. 13, 2023); *In re NewAge, Inc.*, Case No. 22-10819 (LSS) (Bankr. D. Del. Jan. 6, 2023); *In re Kettner Investments, LLC*, Case No. 20-12366 (KBO) (Bankr. D. Del. Jan. 5, 2022); *In re Impresa Holdings Acquisition Corporation*, Case No. 20-12399 (BLS) (Bankr. D. Del. March 22, 2021); *In re Ninepoint Medical, Inc.*, Case No. 20-12618 (KBO) (Bankr. D. Del. Nov. 16, 2020); *In re FIC Restaurants, Inc.*, Case No. 20-12807 (CSS) (Bankr. D. Del. Nov. 4, 2020); *In re Superior Air Charter, LLC*, Case No. 20-11007 (CSS) (Bankr. D. Del. July 20, 2020); *In re SFP Franchise Corporation*, Case No. 20-10134 (JTD) (Bankr. D. Del. June 24, 2020); *In re EdgeMarc Holdings, LLC*, Case No. 19-11104 (JTD) (Bankr. D. Del. May 8, 2020); *In re Pernix Sleep, Inc.*, Case No. 19-10323 (CSS) (Bankr. D. Del. June 20, 2019); *In re RMBR Liquidation Inc. (f/k/a Things Remembered, Inc.)*, Case No. 19-10234 (KG) (Bankr. D. Del. June 12, 2019); *In re Orexigen Therapeutics, Inc.*, Case No. 18-10518 (KG) (Bankr. D. Del. May 17, 2019).

23. Consistent with the foregoing authority, the Debtors respectfully request that the Court consolidate the hearing to consider approval of the Disclosure Statement and confirmation of the Plan at the single Confirmation Hearing. The Debtors submit that Local Rule 3017-2 applies because the Debtors sought to sell substantially all of its assets pursuant to a sale under Bankruptcy Code section 363 and any remaining assets will be liquidated under the Plan. *See* Del. Bankr. L.R. 3017-2(a). Moreover, the Plan complies with Bankruptcy Code section 1129(a)(9) and does not

seek non-consensual releases/injunctions with respect to claims creditors may hold against non-debtor parties. *Id.*

24. Additionally, the Debtors submit that a combined hearing will streamline and expedite the confirmation process, which will inure directly to the benefit of the Debtors' estates and creditors by hastening the implementation of the Plan and limiting the amount of time the Debtors remain in chapter 11. A combined hearing will spare the Debtors from additional administrative expense associated with a two-stage process and promote judicial efficiency and economy.

**C. The Court Should Approve the Setting of Certain Dates Related to Confirmation of the Plan**

25. The Debtors request that the Court approve the setting of certain dates described herein in accordance with Bankruptcy Code section 1126(c), Bankruptcy Rules 3017 and 3018 and Local Rule 3017-2.

***The Record Date***

26. Bankruptcy Rule 3017(d) provides that for purposes of seeking confirmation of a plan, "creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record on the date the order approving the disclosure statement is entered or another date fixed by the court, for cause, after notice and a hearing." Fed. R. Bankr. P. 3017(d). Bankruptcy Rule 3018(a) contains a similar provision regarding determination of the record date for voting purposes.

27. In order to comply with the Bankruptcy Code and to ensure there is no confusion over who is entitled to vote on the Plan, the Debtors require the establishment of a record date. The Debtors propose that the Court establish the date that the Court enters the Interim Approval and Procedures Order as the record date (the "Record Date") for such purposes. The proposed

Record Date is after the Debtors filed their Schedules and Statements and after the Court-approved Bar Date (April 19, 2024). To avoid potential confusion, the Debtors believe that one record date should be established for all holders of Claims and Interests entitled to vote on the Plan.

### ***The Voting Deadline***

28. Bankruptcy Rule 3017(c) provides, in relevant part, “[o]n or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan . . . .” Fed. R. Bankr. P. 3017(c). The Debtors request that the Court establish May 29, 2024 at 5:00 p.m. (prevailing Eastern Time) as the voting deadline (the “Voting Deadline”), which is less than ten (10) calendar days before the proposed Confirmation Hearing. The Debtors believe that this timeframe will provide holders of claims or interests in the Voting Classes with adequate time to consider the Solicitation Package (defined below) and respond by casting their ballots. The Voting Deadline is prominently displayed on the Confirmation Hearing Notice (defined below).

### ***The Objection Deadline***

29. The Debtors request that the Court direct the manner in which objections to final approval of the Disclosure Statement and confirmation of the Plan shall be made. Pursuant to Bankruptcy Rule 3020(b)(1), objections to confirmation of a plan must be filed and served “within a time fixed by the court.” Pursuant to Bankruptcy Rule 2002(b), a debtor is required to provide no less than twenty-eight (28) days’ notice to all holders of claims or equity interests of the time fixed for filing objections to the combined hearing on final approval of a disclosure statement and confirmation of a chapter 11 plan. *See* Fed. R. Bankr. P. 2002(b). As a result, the Debtors request that the Court establish May 29, 2024 at 4:00 p.m. (prevailing Eastern Time) as the deadline (the “Objection Deadline”) by which objections to final approval of the Disclosure Statement and

Confirmation of the Plan or requests for modifications to the Plan, if any, must be filed and served.

30. The Debtors further request that objections to final approval of the Disclosure Statement, Confirmation of the Plan or proposed modifications to the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules and Local Rules;
- c. state the name and address of the objecting party and the amount and nature of the Claim or Interest of such entity;
- d. state with particularity the basis and nature of any objection to the Disclosure Statement, the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and
- e. be filed, together with a proof of service, with the Court and served on the notice parties identified in the Confirmation Hearing Notice on or prior to the Objection Deadline.

***The Deadline to File a Voting Report***

31. The Debtors intend to prepare and file with the Court a voting report (the “Voting Report”) by June 3, 2024.

***The Deadline to File a Confirmation Brief and/or Reply to any Plan and Disclosure Statement Objection***

32. The Debtors also request that they (and other parties in support of the Plan) be permitted to file a brief in support of confirmation of the Plan and/or a reply to any objections to the final approval of the Disclosure Statement and Confirmation of the Plan no later than June 6, 2024.

***The Confirmation Hearing***

33. In accordance with Bankruptcy Rule 3017(c), Bankruptcy Code section 1128 (requiring a confirmation hearing with respect to any chapter 11 plan) and Local Rule 3017-2 (permitting combined disclosure statement and confirmation hearings), the Debtors request that the Confirmation Hearing be scheduled on June 11, 2024 at 2:00 p.m. (prevailing Eastern Time)

or such other date thereafter at the Court's earliest convenience. Pursuant to Local Rule 3017-2, the Debtors certify that notice of the Confirmation Hearing (the "Confirmation Hearing Notice") complies with Bankruptcy Rule 2002(b), and that the Confirmation Hearing is not less than seven (7) days after the deadline to Object to final approval of the Disclosure Statement and confirmation of the Plan.

**D. The Court Should Approve the Solicitation, Notice and Tabulation Procedures**

34. In order to seek confirmation of the Plan in an effective manner that is consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and due process, the Debtors seek approval of the solicitation, notice and tabulation procedures described herein (the "Solicitation Procedures"). The Debtors believe the Solicitation Procedures are well-designed and specifically tailored to effectively permit parties in interest to make an informed judgment regarding the Plan and for the Voting Classes to determine whether to vote to accept or reject the Plan. To the extent that circumstances require further modifications of, or amendments to, the Solicitation Procedures, the Debtors reserve their right to supplement or amend the Solicitation Procedures to further facilitate the solicitation of the Plan.

35. The Debtors propose to distribute the Solicitation Package required by Bankruptcy Rule 3017(d) to the Voting Classes in the form and manner described below.

36. Except as otherwise indicated, upon entry of the Interim Approval and Procedures Order, the Debtors propose that the following materials (collectively, the "Solicitation Package") be distributed by or on behalf of the Debtors to each record and beneficial holder of a Claim in the Voting Classes:

- a. a cover letter describing the contents of the Solicitation Package;
- b. the Disclosure Statement, the Plan and all exhibits thereto (on a flash drive in PDF format);



- c. the Interim Approval and Procedures Order;
- d. the Confirmation Hearing Notice;
- e. the Ballot, including voting instructions;
- f. a pre-addressed return envelope; and
- g. such other materials as the Court may direct.

37. All other parties in interest will receive a copy of the Confirmation Hearing Notice, substantially in the form attached to the Interim Approval and Procedures Order as **Exhibit A**. The Confirmation Hearing Notice provides, among other things, (i) notice of the filing of the Disclosure Statement and Plan, (ii) notice of the interim approval of the Disclosure Statement, (iii) information regarding the Confirmation Hearing, and (iv) directions for filing objections to final approval of the Disclosure Statement and confirmation of the Plan by the Objection Deadline. In an effort to conserve resources, the Debtors propose that they do not mail printed copies of the Disclosure Statement, the Interim Approval and Procedures Order, and the Plan (collectively, the “Plan Documents”) to those parties receiving the Confirmation Hearing Notice. Instead, as set forth in the Confirmation Hearing Notice, the Debtors propose to provide directions therein for such parties to obtain (i) electronic copies of the Plan Documents via download from the website maintained by the Debtors’ noticing, claims and administrative agent, Kurtzman Carson Consultants LLC (the “Balloting Agent” or “KCC”), at <https://www.kccllc.net/invivo>, and (ii) a print copy of the Plan Documents free of charge (but only to the extent so requested of KCC by telephone, letter or email) to be delivered by KCC to the requesting party by first class mail.<sup>6</sup>

38. KCC will act as Balloting Agent in connection with the solicitation of any chapter

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<sup>6</sup> If, however, the Court declines to authorize distribution of the Plan Documents as requested herein, the Debtors requests, in the alternative, that they be authorized to include a flash drive containing the Plan Documents with the Confirmation Hearing Notice to be served by regular first-class mail.

11 plan. KCC will assist the Debtors in:

- a. serving the Notices and distributing the Solicitation Package;
- b. receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan;
- c. responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballot, the Solicitation Procedures, and matters related thereto, including, without limitation, the procedures and requirements for voting on the Plan;
- d. soliciting votes to accept or reject the Plan; and
- e. if necessary, contacting holders of Claims and Interests regarding the Plan.

39. Through KCC, the Debtors intend to serve the Notices and the Solicitation Package within two (2) business days of the entry of the Interim Approval and Procedures Order (the “Service Date”), which is at least twenty-eight (28) days before the deadline for the Voting Class to vote on the Plan.

40. The Debtors submit that service of the Notices and the Solicitation Package on or before the Service Date will provide the requisite information to holders of Claims and Interests in compliance with Bankruptcy Rule 3017(d). *See* Fed. R. Bankr. P. 3017(d) (after approval of the disclosure statement, except to the extent the Court orders otherwise, the debtor must transmit the plan, the approved disclosure statement, notice of the time within which to file acceptances and rejections of the plan, and any other information that the court may direct to creditors and equity security holders).

**E. The Court Should Approve the Form of the Confirmation Hearing Notice**

41. Bankruptcy Rule 2002(b) requires the Debtors to provide notice to all holders of claims or equity interests of the time fixed for filing objections to the combined hearing on final approval of a disclosure statement and confirmation of a chapter 11 plan. Fed. R. Bankr.

P. 2002(b). To satisfy this requirement, the Debtors intend to send to all holders of Claims and Interests a copy of the Confirmation Hearing Notice. In accordance with Bankruptcy Rules 2002 and 3017(d), the Confirmation Hearing Notice shall contain, among other things:

- a. the time, date and place for the Confirmation Hearing;
- b. the Objection Deadline and the manner in which objections shall be filed;
- c. a disclosure regarding the release, exculpation and injunction provisions of Article VIII of the Plan; and
- d. instructions on how to obtain electronic or print copies of any of the Plan Documents.

42. The Debtors respectfully request that the Court find that the Confirmation Hearing Notice complies with the requirements of Bankruptcy Rules 2002(b) and (d). The Debtors further request that the Court determine that the Confirmation Hearing Notice contains sufficient disclosure regarding the release, exculpation, and injunction provisions contained in Article VIII of the Plan. In addition to mailing the Confirmation Hearing Notice, the Debtors will post the Confirmation Hearing Notice electronically on the website dedicated to these Chapter 11 Cases,

**F. The Court Should Approve the Form of the Ballots**

43. Bankruptcy Rules 3017(d) and 3018(c) provide that the ballots for accepting or rejecting a plan under Chapter 11 should conform substantially to Official Form No. 314. The Debtors propose to distribute to holders of Claims and Interests in the Voting Classes the ballots substantially in the forms attached to the Interim Approval and Procedures Order as **Exhibits B-1, B-2 and B-3** (the “**Ballots**”). The Ballots are based on Official Form No. 314 but have been modified to address the particular aspects of the Chapter 11 Cases and to include certain additional information that the Debtors believe is relevant and appropriate for the holders of Claims and Interests entitled to vote.

44. In order to properly submit a Ballot, parties must fully complete and execute the

Ballot and return it by first class mail, over-night courier or hand-delivery to KCC so as to be received on or before the Voting Deadline. Alternatively, parties may submit the Ballot via electronic online transmission solely through the customized online balloting portal (the “Balloting Portal”) on the Debtors’ case website, <https://www.kccllc.net/invivo>, and clicking on the link for balloting on or before the Voting Deadline. Holders of Claims or Interests submitting a Ballot via the Balloting Portal shall not submit a ballot by mail. Ballots otherwise sent by facsimile, telecopy, or electronic submissions (except via the Balloting Portal) will **not** be accepted. Only properly completed, executed and timely submitted Ballots will be accepted. To that end, the Debtors request that the following Ballots **not** be counted in tabulating votes cast to accept or reject the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim or Interest; (b) any Ballot submitted by a party that does not hold a Claim or Interest in the Classes that are entitled to vote; (c) any unsigned Ballot; and (d) any Ballot not marked to either accept or reject the Plan.

45. As noted above, the solicitation process shall be conducted by the Debtors’ administrative agent, KCC. Pursuant to the Solicitation Procedures, KCC will distribute the Ballots, as part of the Solicitation Package, to all holders of Class 4 (General Unsecured Claims), Class 5 (ARE Subordinated Claims) and Class 6 (Interests). All other Classes are unimpaired and conclusively deemed to have accepted the Plan. As such, holders of Claims in Classes 1, 2, and 3 will receive only the Confirmation Hearing Notice.

### **NOTICE**

46. The Debtors have provided notice of this Motion to the following or in lieu thereof, 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 list filed with the Debtors' petition; (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. In addition, pursuant to Local Rule 3017-2(b)(i), notice of this Motion shall also be placed the website maintained by KCC for the Debtors' Chapter 11 Cases, <https://www.kccllc.net/invivo>. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter the Interim Approval and Procedures Order and grant such other and further relief as the Court deems just and proper.

Dated: April 8, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Matthew B. McGuire

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  
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[williams@lrclaw.com](mailto:williams@lrclaw.com)

*Counsel to 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: April 30, 2024 at 2:00 p.m. (ET)**

**Obj. Deadline: April 22, 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, the above-captioned Debtors and Debtors-in-Possession filed the *Motion of the Debtors for Entry of an Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation Deadlines Related Thereto; (III) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief* (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 **April 22, 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 **April 22, 2024, at 4:00 P.M. (ET)**: (i) counsel to 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 F. Cudia, Esq. (joseph.cudia@usdoj.gov).

A HEARING ON THE MOTION WILL BE HELD ON APRIL 30, 2024 AT 2:00 P.M. (ET) BEFORE THE HONORABLE MARY F. WALRATH, IN THE UNITED STATES

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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.

BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM NO. 4, WILMINGTON, DELAWARE 19801.

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 8, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Matthew B. McGuire

Matthew B. McGuire (No. 4366)

Joshua B. Brooks (No. 6765)

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*Counsel to the Debtors and Debtors-in-Possession*

# **EXHIBIT 1**



**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 (I) APPROVING THE DISCLOSURE STATEMENT ON AN INTERIM  
BASIS; (II) SCHEDULING A COMBINED HEARING ON FINAL APPROVAL  
OF THE DISCLOSURE STATEMENT AND PLAN CONFIRMATION  
AND DEADLINES RELATED THERETO; (III) APPROVING THE  
SOLICITATION, NOTICE AND TABULATION PROCEDURES AND THE  
FORMS RELATED THERETO; AND (IV) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Entry of an Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation and Deadlines Related Thereto; (III) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief* (the “Motion”);<sup>2</sup> and based on the record in the Chapter 11 Cases; 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 as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that 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 the Court having found that the relief requested

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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 meanings ascribed to them in the Motion.

in the Motion is in the best interests of the Debtors' estates, creditors and other parties in interest; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY FOUND THAT:

A. The Debtors have all necessary authority to propose and prosecute the Plan and the Disclosure Statement.

B. The Debtors have provided adequate notice of the Motion, and the time fixed for filing objections thereto, and no other or further notice need be provided with respect to the Motion.

C. The period, set forth below, during which the Debtors may solicit votes to accept or reject the Plan is a reasonable and adequate period of time under the circumstances for creditors entitled to vote to make an informed decision to accept or reject the Plan, including to make an informed decision to object to the Plan.

D. The notice substantially in the form attached hereto as **Exhibit A** (the "Confirmation Hearing Notice") and the procedures set forth below for providing such notice to known and unknown creditors and interest holders of the time, date and place of the combined hearing to consider final approval of the Disclosure Statement and confirmation of the Plan (the "Confirmation Hearing"), and the contents of the Confirmation Hearing Notice comply with Bankruptcy Rules 2002, 3017 and Local Rule 3017-2 and constitute sufficient notice to all interested parties.

E. The Confirmation Hearing Notice and the procedures set forth below for providing

such notice to holders of Claims and Interests comply with the requirements of the Bankruptcy Code and is appropriate.

F. The procedures for solicitation and tabulation of votes to accept or reject the Plan (as more fully set out in the Motion and in this Order below) provide for a fair and equitable process and are consistent with Bankruptcy Code section 1126. The form of the Ballots attached hereto as **Exhibits B-1, B-2** and **B-3** are sufficiently consistent with Official Form No. 314, adequately addresses the particular needs of the Chapter 11 Cases, and is appropriate for the Voting Classes to vote to accept or reject the Plan.

**NOW THEREFOR, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Disclosure Statement is approved on an interim basis under Bankruptcy Code section 1125, Bankruptcy Rule 3017 and Local Rule 3017-2. Any objections to the adequacy of the information contained in the Disclosure Statement are expressly reserved for consideration at the Confirmation Hearing.
3. The Confirmation Schedule is approved in its entirety as follows:

<b><u>EVENT</u></b>	<b><u>DATE</u></b>
<b>Record Date</b>	<b>April 26, 2024 at 4:00 p.m. (prevailing Eastern Time)</b> (or such other date the Interim Approval and Procedures Order is entered)
<b>Deadline to Serve the Notices and the Solicitation Package</b>	<b>April 30, 2024</b> (or within 2 business days following entry of the Interim Approval and Procedures Order)
<b>Deadline to file Claims Objections for Voting Purposes Only</b>	<b>May 22, 2024</b>

<u>EVENT</u>	<u>DATE</u>
<b>Deadline to file Rule 3018 Motions</b>	<b>May 22, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
<b>Deadline to File Plan Supplement</b>	<b>May 22, 2024</b>
<b>Voting Deadline</b>	<b>May 29, 2024 at 5:00 p.m. (prevailing Eastern Time)</b>
<b>Deadline to Object to final approval of the Disclosure Statement and Confirmation of the Plan</b>	<b>May 29, 2024 at 4:00 p.m. (prevailing Eastern Time)</b>
<b>Deadline for Debtors to Respond to 3018 Motions</b>	<b>May 29, 2024</b>
<b>Deadline for Debtors to File Voting Report (which shall also include a list of those who opted out of the third party releases)</b>	<b>June 3, 2024</b>
<b>Deadline for Debtors to File Confirmation Brief and/or Reply to any Plan or Disclosure Statement Objections, Supporting Declarations and the Proposed Form of Order Approving the Disclosure Statement and Confirming the Plan</b>	<b>June 6, 2024</b>
<b>Combined Hearing on Final Approval of the Disclosure Statement and Confirmation of the Plan, and to Rule on Claims Objections and 3018 Motions</b>	<b>June 11, 2024 at 2:00 p.m. (prevailing Eastern Time)</b>

4. The combined hearing on final approval of the adequacy of the Disclosure Statement and confirmation of the Plan is scheduled for **June 11, 2024 at 2:00 p.m. (prevailing Eastern Time)** (the “Confirmation Hearing”). The deadline to file objections to the adequacy of the Disclosure Statement and confirmation of the Plan is **May 29, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”). The Confirmation Hearing may be continued from time to time by the Court or the Debtors without further notice other than adjournments announced in open court and/or by filing a notice of adjournment on the case docket.

5. The deadline for the Debtors to file the Voting Report is **June 3, 2024**. In addition to reporting the results of the members of the Voting Classes returning a completed ballot, the Voting Report will also reflect which votes were not counted, the reasons why and if the Voting

Deadline was extended.

6. The Deadline for the Debtors (and other parties in support of the Plan) to file a brief in support of confirmation of the Plan and/or a reply to any objections to the final approval of the Disclosure Statement and Confirmation of the Plan, any supporting declarations and the proposed form of order approving the Disclosure Statement and confirming the Plan is **June 6, 2024**.

7. Objections to the adequacy of the Disclosure Statement and confirmation of the Plan, if any, must:

- a. be in writing;
- b. conform to the Bankruptcy Rules and Local Rules;
- c. state the name and address of the objecting party and the amount and nature of the Claim or Interest of such entity;
- d. state with particularity the basis and nature of any objection to the Disclosure Statement, the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and
- e. be filed, together with a proof of service, with the Court and served on the following parties: (i) counsel to the Debtors, 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); (ii) the Office of The United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Joseph F. Cudia, Esq. (joseph.cudia@usdoj.gov).

8. The Confirmation Hearing Notice, in substantially the form attached hereto as **Exhibit A**, complies with the requirements of Bankruptcy Rules 2002(b), 2002(d) and 3017(d) and Local Rule 3017-2 and is approved in all respects. The Confirmation Hearing Notice shall be served upon: (i) holders of claims or interests, whether in Voting Classes or in the Non-Voting Classes, or unclassified, (ii) the Internal Revenue Service, (iii) all state and local taxing authorities

in which the Debtors have tax liabilities, (iv) the United States Attorney for the District of Delaware, (v) all counterparties to executory contracts and leases; (vi) the United States Trustee; (vii) all persons and entities listed on the Debtors' creditor mailing matrix, and (viii) all parties requesting notice pursuant to Bankruptcy Rule 2002 within two (2) business days of the entry of this Order.

9. The Debtors shall serve a copy of this Order, with all exhibits, and a copy of the Plan and Disclosure Statement, with all exhibits, on the parties set forth in subsections (ii), (iii), (iv), (vi), and (viii) of paragraph 8 above.

10. The Debtors shall transmit a package (the "Solicitation Package") containing: (a) a cover letter describing the contents of the Solicitation Package, (b) the Disclosure Statement, the Plan and all exhibits thereto (on a flash drive in PDF format), (b) the Ballot, including voting instructions, (c) the Confirmation Hearing Notice, and (d) this Order and all exhibits thereto (on a flash drive in PDF Format) within two (2) business days following entry of this Order.

11. Only the following holders of Claims or Interests in the Voting Classes are entitled to vote:

- a. holders of Claims or Interests for which Proofs of Claim or Interest have been filed, as reflected on the claims register as of the Record Date;
- b. holders of Claims that are listed in the Debtors' Schedules and Statements, with the exception of those Claims that are scheduled as contingent, unliquidated or disputed (excluding such scheduled Claims that have been superseded by a filed Proof of Claim);
- c. holders whose Claims or Interests arise pursuant to an agreement or settlement with the Debtors, as reflected in a document filed with the Bankruptcy Court, in a final order of the Bankruptcy Court, or in a document executed by the Debtors pursuant to authority granted by the Bankruptcy

Court, in each case regardless of whether a Proof of Claim or Interest has been filed; and

- d. the assignee of any transferred or assigned Claim, only if: (i) transfer or assignment has been fully effectuated pursuant to the procedures dictated by Bankruptcy Rule 3001(e) and (ii) such transfer is reflected on the Claims Register on or before the Record Date.

12. In tabulating votes, the following hierarchy will be used to determine the amount of the Claim or Interest associated with each vote:<sup>3</sup>

- a. the amount of the Claim or Interest settled and/or agreed upon by the Debtors, as reflected in a Bankruptcy Court pleading, stipulation, agreement, or other document filed with the Bankruptcy Court, in a final order of the Bankruptcy Court or in a document executed by the Debtors pursuant to authority granted by the Bankruptcy Court;
- b. the amount of the Claim or Interest Allowed (temporarily or otherwise) pursuant to a Resolution Event in accordance with the Solicitation Procedures;
- c. the amount of the Claim or Interest contained in a Proof of Claim or Interest that has been timely filed; provided that Ballots cast by holders whose Claims are not listed in the Schedules, but that file a Proof of Claim in an unliquidated or unknown amount that are not the subject of an objection, will count for satisfying the numerosity requirement of Bankruptcy Code section 1126(c) and will count as Ballots for Claims in the amount of \$1.00 solely for the purposes of satisfying the dollar amount provisions of section 1126(c) of the Bankruptcy Code;
- d. the amount of the Claim listed in the Schedules; provided, that such Claim is not listed in the Schedules as contingent, unliquidated or disputed, or any combination thereof, and has not been paid; and
- e. in the absence of any of the foregoing, zero.

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<sup>3</sup> Any Ballot cast by a holder of a Proof of Claim in which the amount of the Claim is listed in any currency other than USD will have the dollar amount of the Claim converted to USD, as of the date the Ballot is received by the Balloting Agent (defined below), for the purposes of the dollar amount provisions of section 1126(c) of the Bankruptcy Code.

13. As part of the Solicitation Package, the Debtors shall distribute to creditors entitled to vote on the Plan the ballot based on Official Form No. 314, modified to address the particular circumstances of the Chapter 11 Cases and to include certain additional information that the Debtors believe to be relevant and appropriate for the Voting Classes to vote to accept or reject the Plan. The form of Ballots attached hereto as **Exhibits B-1, B-2 and B-3** are hereby approved.

14. The deadline to submit Ballots to accept or reject the Plan shall be **May 29, 2024 at 5:00 p.m. (prevailing Eastern Time)** (the “Voting Deadline”).

15. Ballots shall be transmitted by mail, as part of the Solicitation Package, to the record holders of claims in the Voting Classes. All other holders of Claims will not be provided with a Ballot because such holders are either unimpaired and presumed to accept the Plan under Bankruptcy Code section 1126(f). Such non-voting holders will receive a copy of the Confirmation Hearing Notice.

16. The procedures set forth in the Motion for effectively submitting a Ballot are hereby approved in their entirety. In order to submit a Ballot, parties must fully complete and execute the Ballot and return it by (a) first class mail, over-night courier or hand-delivery to the Debtors’ noticing, claims and administrative agent, Kurtzman Carson Consultants LLC (the “Balloting Agent”) at the address set forth in the Ballot on or before the Voting Deadline or (b) electronic online transmission solely through the customized online balloting portal (the “Balloting Portal”) on the Debtors’ case website, <https://www.kccllc.net/invivo>, and clicking on the link for balloting on or before the Voting Deadline. The encrypted ballot data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner, and the creditor’s electronic signature shall be deemed to be immediately legally valid and effective. Ballots submitted via the Balloting Portal shall be deemed to contain an original signature. Ballots



otherwise sent by facsimile, telecopy, or electronic submissions (other than those submitted via the Balloting Portal) will **not** be accepted. Only properly completed, executed and timely submitted Ballots will be accepted by the Debtors. The Debtors reserves their right to extend the Voting Deadline at their discretion.

17. The following Ballots shall not be counted in tabulating votes to accept or reject the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim or Interest; (b) any Ballot submitted by a Party that does not hold a Claim or Interest in the Classes that are entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; and (e) any Ballot submitted by any Party not entitled to vote pursuant to the Solicitation Procedures, as applicable.

18. The record date for determining which holders of Claims or Interests are to be served with the Solicitation Package and the Notices shall be the date on which this Order is entered (the “Record Date”).

19. The Debtors shall mail only the Confirmation Hearing Notice to holders of Claims or Interests and all parties requesting notice pursuant to Bankruptcy Rule 2002 and shall not be required to mail any Plan Documents to such entities. Instead, the Debtors are authorized to provide in the Confirmation Hearing Notice directions for such parties to obtain electronic copies of the Plan Documents from the Balloting Agent.

20. To the extent Claims or Interest in the Voting Classes are subject to an objection that is filed with the Court on or prior to May 22, 2024 , which is seven (7) days before the Voting Deadline, the holders of such Claims shall not be entitled to vote to accept or reject the Plan unless one or more of the following has occurred no later than two (2) days prior to the Voting Deadline

(each, a “Resolution Event”):

- a. an order of the Bankruptcy Court is entered allowing such Claim or Interest pursuant to section 502(b) of the Bankruptcy Code, after notice and a hearing;
- b. an order of the Bankruptcy Court is entered temporarily allowing such Claim or Interest *for voting purposes only* pursuant to Bankruptcy Rule 3018(a), after notice and a hearing;
- c. a stipulation or other agreement is executed between the holder of such Claim or Interest and the Debtors resolving the objection and allowing such Claim in an agreed upon amount;
- d. a stipulation or other agreement is executed between the holder of such Claim or Interest and the Debtors temporarily allowing the holder of such Claim or Interest to vote its Claim or Interest in an agreed upon amount; or
- e. the pending objection is voluntarily withdrawn by the objecting party.

21. If a Claim or Interest is the subject of an amended Proof of Claim or Interest, the originally filed Proof of Claim or Interest shall be deemed superseded by the later filed, amended Proof of Claim or Interest, regardless of whether or not the Debtors have objected to the originally filed Proof of Claim or Interest, and only the amended Proof of Claim or Interest shall be used for the purpose of determining voting eligibility in accordance with the provisions herein.

22. Notwithstanding anything to the contrary contained herein, any creditor who has filed or purchased one or more duplicate Claims or Interests within the same Voting Class shall be provided with only one Solicitation Package and one Ballot for voting a single Claim or Interest in such Voting Class, regardless of whether the Debtors have objected to such duplicate Claims or Interests.

23. The Solicitation Procedures set forth herein are hereby approved in their entirety, provided that the Debtors reserve their right to amend or supplement the Solicitation Procedures and related documents to better facilitate the confirmation process. The Debtors will file a notice

of any revisions to the Solicitation Procedures.

24. The Solicitation Procedures for service of the Solicitation Package and the Notices as attached hereto satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

25. The Debtors are authorized to make non-material changes to the Disclosure Statement, Plan, Solicitation Procedures, Notices, Ballot and related pleadings without further order of the Court, including without limitation, changes to correct typographical and grammatical errors and to make conforming changes among the foregoing documents before their distribution.

26. The Debtors are hereby authorized to take any action necessary or appropriate to implement the terms of, and the relief granted in, this Order without seeking further order of the Court.

27. The terms and conditions of this Order shall be immediately effective and enforceable upon entry of this order.

28. 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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THE HONORABLE MARY L. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

## **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. \_\_\_\_

**NOTICE OF (A) INTERIM APPROVAL OF THE DISCLOSURE STATEMENT  
AND (B) COMBINED HEARING TO CONSIDER FINAL APPROVAL OF THE  
DISCLOSURE STATEMENT AND CONFIRMATION OF THE PLAN  
AND THE OBJECTION DEADLINE RELATED THERETO**

**TO ALL PARTIES IN INTEREST, PLEASE TAKE NOTICE THAT:**

1. **Filing of the Disclosure Statement and Plan.** On April 8, 2024, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed the *Disclosure Statement for the Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. [•]] (as amended from time to time and including all exhibits and supplements thereto, the “Disclosure Statement”) and the *Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. [•]] (as may be amended, supplemented or modified, including all exhibits thereto, the “Plan”).<sup>2</sup>
2. **Interim Bankruptcy Court Approval of the Disclosure Statement and the Notice Procedures.** On April [•], 2024, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order [D.I. [•]] (the “Interim Approval and Procedures Order”) approving, among other things, the Disclosure Statement on an interim basis, as required under Local Rule 3017-2 and authorizing the Debtors to provide notice of their intent to seek confirmation of the Plan pursuant to certain procedures set forth therein, including the solicitation of votes to accept or reject the Plan. The Bankruptcy Court’s interim approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court.
3. **The Combined Hearing.** A combined hearing to consider final approval of the Disclosure Statement and confirm the Plan (the “Combined Hearing”) will commence on **June 11, 2024 at 2:00 p.m. (prevailing Eastern Time)** before the Honorable Mary F. Walrath,

<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 but not otherwise defined herein shall have the meanings set forth in the Plan or the Disclosure Statement, as applicable.

United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 Market Street, 5th Floor, Courtroom No. 4, Wilmington, DE 19801. Please be advised that the Combined Hearing may be continued from time to time by the Bankruptcy Court or the Debtors without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the Bankruptcy Court and served on parties entitled to notice under Bankruptcy Rule 2002 and the Local Rules or otherwise. In accordance with the Plan, the Plan may be modified, if necessary, prior to, during, or as a result of the Combined Hearing by further action of the Debtors and without further notice to or action, order, or approval of the Bankruptcy Court or any other Entity.

4. **Objections to Final Approval of the Disclosure Statement and Confirmation of the Plan.** The Bankruptcy Court has established **April 29, 2024 at 4:00 p.m. (prevailing Eastern Time)**, as the last date and time for filing and serving objections to the adequacy of the information in the Disclosure Statement and to confirmation of the Plan (the “Objection Deadline”). Any objection to the final approval of the Disclosure Statement and confirmation of the Plan must (a) be in writing, (b) conform to the Bankruptcy Rules and the Local Rules, (c) state the name and address of the objecting party and the amount and nature of the Claim or Interest of such Entity, (d) state with particularity the basis and nature of any objection to the Disclosure Statement, the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection, and (e) be filed with the Clerk of the Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, DE 19801, and served on the following: (i) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Matthew B. McGuire, Esq. (mcguire@lrclaw.com), Joshua B. Brooks, Esq. (brooks@lrclaw.com), and George A. Williams III, Esq. (williams@lrclaw.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Joseph F. Cudia, Esq. (joseph.cudia@usdoj.gov) with proof of service of such objection filed when and as required under the Local Rules of the Bankruptcy Court.

5. The following chart summarizes the classification and treatment of Claims and Interests under the Plan:

CLAIMS/INTERESTS & DESCRIPTION	ESTIMATED ALLOWED CLAIMS	TREATMENT	ESTIMATED RECOVERY
Administrative Claims (unclassified)	\$[•]	Unimpaired	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash
Priority Tax Claims (unclassified)	\$[•]	Unimpaired	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash
Secured Tax Claims (Class 1)	\$[•]	Unimpaired – Deemed to Accept	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash
Other Secured Claims (Class 2)	\$[•]	Unimpaired – Deemed to Accept	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash
Other Priority Claims (Class 3)	\$[•]	Unimpaired – Deemed to Accept	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash

CLAIMS/INTERESTS & DESCRIPTION	ESTIMATED ALLOWED CLAIMS	TREATMENT	ESTIMATED RECOVERY
General Unsecured Claims (Class 4)	\$[•] <sup>3</sup>	Impaired – Entitled to Vote	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash
ARE Subordinated Claims (Class 5)	N/A	Impaired – Entitled to Vote	Estimated Recovery Percentage: <b>100%</b> Form of Recovery: Cash
Interests (Class 6)	N/A	Impaired – Entitled to Vote	Estimated Recovery Percentage: <b>0%</b> Form of Recovery: None

6. **Voting Procedures.** Holders of Claims in Class 4 (General Unsecured Claims), Class 5 (ARE Subordinated Claims) and Class 6 (Interests) as of **April 26, 2024 at 4:00 p.m. (prevailing Eastern Time)** (the “Record Date”) are entitled to vote to accept or reject the Plan. If you hold such a Claim, you will receive a solicitation package which shall include, among other things, a copy of (i) this Notice, (ii) the Plan (on a disk in PDF format), (iii) the Disclosure Statement (on a disk in PDF format), and (iv) a ballot. Please review the ballot and the instructions included therewith for how to vote on the Plan. Failure to follow the voting instructions may disqualify your vote. Please be advised that the Holders of Claims in Classes 4, 5 and 6 are the only holders of Claims or Interests that are entitled to vote on the Plan.
7. **Voting Deadline.** The deadline to vote on the Plan is **May 29, 2024 at 5:00 pm (prevailing Eastern Time)** (the “Voting Deadline”). The Debtors’ notice, claims and balloting agent, Kurtzman Carson Consultants LLC (the “Balloting Agent” or “KCC”), must receive your ballot with an original signature by the Voting Deadline, otherwise your vote will not be counted. In order for your Ballot to count, you must (1) properly complete, date, and execute the Ballot and (2) deliver the Ballot by (a) first class mail, in the return envelope provided with each Ballot; (b) overnight courier; (c) hand-delivery, or (d) electronic online transmission solely through the customized online balloting portal (the “Balloting Portal”) on the Debtors’ case website, <https://www.kccllc.net/invivo>, and clicking on the link for balloting so that such Ballot is actually received by the Balloting Agent on or before the Voting Deadline.
8. **Directions to Obtain the Plan Documents and Make Inquiries.** If you have not received copies of the Plan, the Disclosure Statement, the Interim Approval and Procedures Order (the “Plan Documents”) and wish to obtain copies of the same, you may do so by: (i) writing to InVivo Claims Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245; and/or (ii) emailing [brooks@lrclaw.com](mailto:brooks@lrclaw.com) with a reference to “Infinity Pharmaceuticals Inc.” in the subject line; (iii) visiting <https://www.kccllc.net/invivo> or (iv) visiting (for a fee) PACER at <http://www.deb.uscourts.gov>. Additionally, if you have any questions regarding this Notice, any of the Plan Documents, or any matters related thereto, including, without limitation, the procedures for objecting to the Plan, please contact the Balloting Agent at

<sup>3</sup> Represents claims scheduled or filed as of [•], 2024, and is subject to change based on claims that may be filed arising from contract rejections and claims reconciliation process.

(888) 802-7206 (Toll-Free) or (781) 575-2087 (International). Please be advised that the Balloting Agent cannot provide you with legal advice, and you should consult with an attorney to provide any legal advice you may need.

9. **Settlement, Release, Exculpation, and Injunction Language in the Plan.** Please be advised that Article VIII of the Plan, as proposed, contains the following exculpation, releases, and injunction provisions.

Article VIII.B Exculpation

**Effective as of the Effective Date, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; provided, however, that the foregoing exculpation shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.**

Article VIII.C Releases by the Debtor

**Pursuant to section 1123(b) of the Bankruptcy Code and to the fullest extent authorized by applicable law, and except as otherwise specifically provided in the Plan, including, without limitation the Retained Causes of Action, for good and valuable consideration, the adequacy of which is hereby confirmed, on and after the Effective Date, each Released Party is expressly, unconditionally, generally and individually and collectively released, and acquitted by the Debtors and their Estates from any and all actions, claims, obligations, rights, suits, judgments, damages, demands, debts, rights, remedies, Causes of Action, and liabilities of any nature whatsoever, or any other claim against any Released Party, asserted on behalf of the Debtors, whether known or unknown, foreseen or unforeseen, matured or unmatured, fixed or contingent, liquidated or unliquidated, existing or hereinafter arising, in law, equity, or otherwise, whether for tort, contract, violations of federal or state securities laws, or otherwise, that the Debtors or their Estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the purchase, sale or rescission of the purchase or sale of, or any other transaction relating to any Security of the Debtors, the Debtors, the Debtors' restructuring efforts, the Chapter 11 Cases, the Plan, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the restructuring of Claims and Interests before or in the Chapter 11 Cases, the negotiation, formulation, or preparation of the Plan or related agreements, instruments or other documents (including, for the avoidance of doubt, providing any legal opinion requested by any Entity regarding any transaction, contract, instrument, document, or other agreement**



contemplated by the Plan or the reliance by any Released Party on the Plan or the Confirmation Order in lieu of such legal opinion), upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; provided, however, that the foregoing releases shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct; and provided further that nothing herein shall act as a release of a direct claim any holder of a Claim or Interest or other Entity may have against any Released Party.

#### Article VIII.D Injunction

Except as otherwise provided in the Plan or the Confirmation Order, as of the Effective Date, all Entities that have held, hold or may hold any Interest in the Debtors or a Claim, Cause of Action, or other debt or liability against the Debtors or against any Released Party that have been released and/or exculpated under the this Plan (the “Released Claims and Interests”) are permanently enjoined from taking any of the following actions against the Debtors, the Estates, the Liquidation Trust, the Liquidation Trustee, the Liquidation Trust Assets, or the Released Parties or their respective predecessors, successors and assigns, subsidiaries, Affiliates, current (as of the Effective Date) directors, officers, principals, shareholders, members, partners, employees, agents, advisory board members, financial advisors, attorneys, accounts, investment bankers, consultants, representatives, and other Professionals solely in their respective capacities as such or any property of the same, on account of such Released Claims and Interests: (i) commencing or continuing, in any manner or in any place, any action or other proceeding; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (iii) creating, perfecting or enforcing any lien or encumbrance; (iv) asserting any right of setoff (other than setoffs exercised prior to the Petition Date), or subrogation of any kind against any debt, liability or obligation on account of or in connection with or with respect to any Released Claims or Interests; and (v) commencing or continuing in any manner or in any place, any action that does not comply with or is inconsistent with this provision; provided, however, that the foregoing injunction shall have no effect on the liability of any person or Entity that results from any act or omission based on or arising out of gross negligence, fraud or willful misconduct.

**YOU ARE ADVISED TO CAREFULLY REVIEW AND CONSIDER THE PLAN, INCLUDING THE RELEASES, EXCULPATION, AND INJUNCTION PROVISIONS, AS YOUR RIGHTS MIGHT BE AFFECTED.**

Dated: April [•], 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ DRAFT

Matthew B. McGuire (No. 4366)

Joshua B. Brooks (No. 6765)

George A. Williams (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 B-1**

**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)

**BALLOT FOR ACCEPTING OR REJECTING THE JOINT PLAN OF LIQUIDATION  
OF INVIVO THERAPEUTICS CORPORATION AND INVIVO THERAPEUTICS  
HOLDINGS CORP. PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**CLASS 4 — GENERAL UNSECURED CLAIMS**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY  
BEFORE COMPLETING THE BALLOT**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY KURTZMAN CARSON  
CONSULTANTS LLC BY MAY 29, 2024 AT 5:00 P.M. PREVAILING  
EASTERN TIME (THE “VOTING DEADLINE”)**

The Debtors have sent this Ballot to you because their records indicate that you are a holder of a Class 4 General Unsecured Claim, and accordingly, you have a right to vote to accept or reject the *Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. [•]] (as may be amended, supplemented or modified, including all exhibits thereto, the “Plan”). Your rights are described in the *Disclosure Statement for the Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* and all exhibits related thereto [D.I. [•]] (as amended from time to time and including all exhibits and supplements thereto, the “Disclosure Statement”). On February 1, 2024, the Bankruptcy Court entered an order [D.I. [•]] (the “Interim Approval and Procedures Order”)<sup>2</sup> approving on an interim basis the adequacy of the Disclosure Statement. At the Confirmation Hearing, the Debtors will seek final approval of the adequacy of the Disclosure Statement, as well as confirmation of the Plan.

Copies of the Disclosure Statement, the Interim Approval and Procedures Order, the Plan and certain other materials contained in the Solicitation Package are included in the packet you are receiving with this Ballot. Additionally, the Solicitation Package may be obtained by (i) writing to InVivo Claims Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El

<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 but not otherwise defined herein shall have the meanings set forth in the Plan, the Disclosure Statement or the Interim Approval and Procedures Order, as applicable.

Segundo CA 90245; and/or (ii) emailing [brooks@lrclaw.com](mailto:brooks@lrclaw.com) with a reference to “InVivo Therapeutics Corporation” in the subject line; (iii) visiting <https://www.kccllc.net/invivo> or (iv) visiting (for a fee) PACER at <http://www.deb.uscourts.gov>. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe you have received this Ballot in error, please contact the Balloting Agent at the address or email address set forth above.

*You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 4 (General Unsecured Claims) under the Plan.*

**If the Balloting Agent does not receive your Ballot on or before the Voting Deadline, May 29, 2024 At 5:00 P.M. prevailing Eastern Time and if the Voting Deadline is not extended, your vote as either an acceptance or rejection of the Plan will not count. If the Bankruptcy Court confirms the Plan, it will bind you regardless of whether you vote.**

**Item 1. Principal Amount of Class 4 General Unsecured Claim.**

The undersigned hereby certifies that as of the Record Date, April 26, 2024, the undersigned was the holder of a Class 4 General Unsecured Claim in the aggregate principal amount against the Debtors as set forth below (insert amount in box below):

\$ _____
----------

**Item 2. Class 4 General Unsecured Claim Vote on the Plan.**

The holder of the Class 4 General Unsecured Claim set forth in Item 1 votes to (please check one):

☐

ACCEPT THE PLAN

☐

REJECT THE PLAN

**ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF A CLAIM BUT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

### Item 3. Certifications

By signing this Ballot, the undersigned certifies to the Bankruptcy Court and to the Debtors:

- a. that either: (i) the Entity is the holder of the Class 4 Claim being voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the Class 4 Claim being voted;
- b. that the Entity has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- c. that the Entity has cast the same vote with respect to all Class 4 Claims that it holds or for which it is the authorized signatory; and
- d. that no other Ballots with respect to the amount of the Class 4 Claim identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Claims, then any such Ballots dated earlier are hereby revoked.

Name of holder: \_\_\_\_\_  
(Print or Type)

Social Security or Federal Tax Identification Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than holder)

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**THE BALLOT MUST BE COMPLETED AND SUBMITTED, ON OR BEFORE THE VOTING DEADLINE, BY THE FOLLOWING APPROVED SUBMISSION METHODS:**

**By first class mail, overnight courier or hand-delivery to:**

InVivo Claims Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

**By electronic online transmission solely through the customized online balloting portal (the “Balloting Portal”) on the Debtors’ case website: <https://www.kccllc.net/invivo>  
Click on the link for balloting**

**BALLOTS OTHERWISE SUBMITTED BY FACSIMILE, TELECOPY, OR ELECTRONIC SUBMISSIONS (OTHER THAN THOSE SUBMITTED VIA THE BALLOTING PORTAL) WILL NOT BE ACCEPTED.**

**YOUR BALLOT MUST BE RECEIVED BY THE VOTING DEADLINE, WHICH IS MAY 29, 2024, AT 5:00 P.M. PREVAILING EASTERN TIME.**

**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions but not otherwise defined in the Ballot or these instructions shall have the meanings set forth in the Plan or the Disclosure Statement, copies of which also accompany the Ballot.
2. The Bankruptcy Court may confirm the Plan and thereby bind you by the terms of the Plan if, among other things, the Plan is confirmed. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) submit the Ballot to the address set forth on the enclosed pre-addressed envelope. The Voting Deadline for the receipt of Ballots by the Balloting Agent is May 29, 2024 at 5:00 p.m. (prevailing Eastern Time). Your completed Ballot must be received by the Balloting Agent on or before the Voting Deadline.
4. You must vote all of your Claims within a particular Class either to accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a holder has multiple Claims within the same Class, the Debtors may, in their discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtors determine otherwise. The method of delivery of Ballots to the Balloting Agent is at the election and risk of each holder of a Claim. Delivery will be deemed made only when the Balloting Agent **actually receives** the originally executed Ballot. If a holder of a Claim chooses effecting delivery by mail, it is recommended, though not required, that holders use an overnight or hand-delivery service to assure timely delivery. No Ballot should be sent to the Debtors or the Debtors' agents (other than the Balloting Agent).
6. Delivery of a Ballot to the Balloting Agent by facsimile, telecopy, or electronic submissions (other than those submitted via the Balloting Portal) will **not** be accepted.
7. If multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the last dated valid Ballot timely received will supersede and revoke any earlier dated Ballots.

8. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, holders of Claims should not surrender certificates or instruments representing or evidencing their Claims, and neither the Debtors nor the Balloting Agent will accept delivery of any such certificates or instruments surrendered together with a Ballot.
9. This Ballot does not constitute, and shall not be deemed to be: (a) a Proof of Claim; or (b) an assertion or admission of a Claim.
10. Please be sure to sign and date your Ballot. If you are signing a Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Balloting Agent, the Debtors, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
11. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim; (b) any Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; and (e) any Ballot submitted by any Entity not entitled to vote pursuant to the Solicitation Procedures.
12. If you believe you have wrongly received a Ballot, you should contact the Balloting Agent by telephone immediately at (888) 802-7206 (Toll-Free) or (949) 209-5035 (International).

**PLEASE SUBMIT YOUR BALLOT PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT THE NOTICE, CLAIMS, AND BALLOTING AGENT AT (888) 802-7206 (TOLL-FREE) OR (949) 209-5035 (INTERNATIONAL).**



## **EXHIBIT B-2**

**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)

**BALLOT FOR ACCEPTING OR REJECTING THE JOINT PLAN OF LIQUIDATION  
OF INVIVO THERAPEUTICS CORPORATION AND INVIVO THERAPEUTICS  
HOLDINGS CORP. PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**CLASS 5 – ARE SUBORDINATED CLAIMS**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY  
BEFORE COMPLETING THE BALLOT**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY KURTZMAN CARSON  
CONSULTANTS LLC BY MAY 29, 2024 AT 5:00 P.M. PREVAILING  
EASTERN TIME (THE “VOTING DEADLINE”)**

The Debtors have sent this Ballot to you because their records indicate that you are a holder of a Class 5 ARE Subordinated Claim, and accordingly, you have a right to vote to accept or reject the *Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. [•]] (as may be amended, supplemented or modified, including all exhibits thereto, the “Plan”). Your rights are described in the *Disclosure Statement for the Joint Plan of Liquidation of InVivo Therapeutics Corporation. and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* and all exhibits related thereto [D.I. [•]] (as amended from time to time and including all exhibits and supplements thereto, the “Disclosure Statement”). On February 1, 2024, the Bankruptcy Court entered an order [D.I. [•]] (the “Interim Approval and Procedures Order”)<sup>2</sup> approving on an interim basis the adequacy of the Disclosure Statement. At the Confirmation Hearing, the Debtors will seek final approval of the adequacy of the Disclosure Statement, as well as confirmation of the Plan.

Copies of the Disclosure Statement, the Interim Approval and Procedures Order, the Plan and certain other materials contained in the Solicitation Package are included in the packet you are receiving with this Ballot. Additionally, the Solicitation Package may be obtained by (i) writing to InVivo Claims Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El

<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 but not otherwise defined herein shall have the meanings set forth in the Plan, the Disclosure Statement or the Interim Approval and Procedures Order, as applicable.

Segundo CA 90245; and/or (ii) emailing [brooks@lrclaw.com](mailto:brooks@lrclaw.com) with a reference to “InVivo Therapeutics Corporation” in the subject line; (iii) visiting <https://www.kccllc.net/invivo> or (iv) visiting (for a fee) PACER at <http://www.deb.uscourts.gov>. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe you have received this Ballot in error, please contact the Balloting Agent at the address or email address set forth above.

*You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Claim. Your Claim has been placed in Class 5 (ARE Subordinated Claims) under the Plan.*

**If the Balloting Agent does not receive your Ballot on or before the Voting Deadline, May 29, 2024 At 5:00 P.M. prevailing Eastern Time and if the Voting Deadline is not extended, your vote as either an acceptance or rejection of the Plan will not count. If the Bankruptcy Court confirms the Plan, it will bind you regardless of whether you vote.**

**Item 1. Principal Amount of Class 5 ARE Subordinated Claim.**

The undersigned hereby certifies that as of the Record Date, April 26, 2024, the undersigned was the holder of a Class 5 ARE Subordinated Claim in the aggregate principal amount against the Debtors as set forth below (insert amount in box below):

\$ _____
----------

**Item 2. Class 5 ARE Subordinated Claim Vote on the Plan.**

The holder of the Class 5 ARE Subordinated Claim set forth in Item 1 votes to (please check one):

☐

ACCEPT THE PLAN

☐

REJECT THE PLAN

**ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF A CLAIM BUT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

### Item 3. Certifications

By signing this Ballot, the undersigned certifies to the Bankruptcy Court and to the Debtors:

- a. that either: (i) the Entity is the holder of the Class 5 Claim being voted; or (ii) the Entity is an authorized signatory for an Entity that is a holder of the Class 5 Claim being voted;
- b. that the Entity has received a copy of the Disclosure Statement and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- c. that the Entity has cast the same vote with respect to all Class 5 Claims that it holds or for which it is the authorized signatory; and
- d. that no other Ballots with respect to the amount of the Class 5 Claim identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Claims, then any such Ballots dated earlier are hereby revoked.

Name of holder: \_\_\_\_\_  
(Print or Type)

Social Security or Federal Tax Identification Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Signatory: \_\_\_\_\_  
(If other than holder)

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date Completed: \_\_\_\_\_

**THE BALLOT MUST BE COMPLETED AND SUBMITTED, ON OR BEFORE THE VOTING DEADLINE, BY THE FOLLOWING APPROVED SUBMISSION METHODS:**

**By first class mail, overnight courier or hand-delivery to:**

InVivo Claims Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

**By electronic online transmission solely through the customized online balloting portal (the “Balloting Portal”) on the Debtors’ case website: <https://www.kccllc.net/invivo>  
Click on the link for balloting**

**BALLOTS OTHERWISE SUBMITTED BY FACSIMILE, TELECOPY, OR ELECTRONIC SUBMISSIONS (OTHER THAN THOSE SUBMITTED VIA THE BALLOTING PORTAL) WILL NOT BE ACCEPTED.**

**YOUR BALLOT MUST BE RECEIVED BY THE VOTING DEADLINE, WHICH IS MAY 29, 2024, AT 5:00 P.M. PREVAILING EASTERN TIME.**

**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Debtors are soliciting the votes of holders of Claims with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions but not otherwise defined in the Ballot or these instructions shall have the meanings set forth in the Plan or the Disclosure Statement, copies of which also accompany the Ballot.
2. The Bankruptcy Court may confirm the Plan and thereby bind you by the terms of the Plan if, among other things, the Plan is confirmed. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) submit the Ballot to the address set forth on the enclosed pre-addressed envelope. The Voting Deadline for the receipt of Ballots by the Balloting Agent is May 29, 2024 at 5:00 p.m. (prevailing Eastern Time). Your completed Ballot must be received by the Balloting Agent on or before the Voting Deadline.
4. You must vote all of your Claims within a particular Class either to accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a holder has multiple Claims within the same Class, the Debtors may, in their discretion, aggregate the Claims of any particular holder within a Class for the purpose of counting votes.
5. If a Ballot is received after the Voting Deadline, it will not be counted unless the Debtors determine otherwise. The method of delivery of Ballots to the Balloting Agent is at the election and risk of each holder of a Claim. Delivery will be deemed made only when the Balloting Agent **actually receives** the originally executed Ballot. If a holder of a Claim chooses effecting delivery by mail, it is recommended, though not required, that holders use an overnight or hand-delivery service to assure timely delivery. No Ballot should be sent to the Debtors or the Debtors' agents (other than the Balloting Agent).
6. Delivery of a Ballot to the Balloting Agent by facsimile, telecopy, or electronic submissions (other than those submitted via the Balloting Portal) will **not** be accepted.
7. If multiple Ballots are received from the same holder of a Claim with respect to the same Claim prior to the Voting Deadline, the last dated valid Ballot timely received will supersede and revoke any earlier dated Ballots.

8. The Ballot is not a letter of transmittal and may not be used for any purpose other than to vote to accept or reject the Plan. Accordingly, at this time, holders of Claims should not surrender certificates or instruments representing or evidencing their Claims, and neither the Debtors nor the Balloting Agent will accept delivery of any such certificates or instruments surrendered together with a Ballot.
9. This Ballot does not constitute, and shall not be deemed to be: (a) a Proof of Claim; or (b) an assertion or admission of a Claim.
10. Please be sure to sign and date your Ballot. If you are signing a Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Balloting Agent, the Debtors, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
11. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Claim; (b) any Ballot cast by a Party that does not hold a Claim in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; and (e) any Ballot submitted by any Entity not entitled to vote pursuant to the Solicitation Procedures.
12. If you believe you have wrongly received a Ballot, you should contact the Balloting Agent by telephone immediately at (888) 802-7206 (Toll-Free) or (949) 209-5035 (International).

**PLEASE SUBMIT YOUR BALLOT PROMPTLY!**

**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT THE NOTICE, CLAIMS, AND BALLOTING AGENT AT (888) 802-7206 (TOLL-FREE) OR (949) 209-5035 (INTERNATIONAL).**

## **EXHIBIT B-3**

**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)

**BALLOT FOR ACCEPTING OR REJECTING THE JOINT PLAN OF LIQUIDATION  
OF INVIVO THERAPEUTICS CORPORATION AND INVIVO THERAPEUTICS  
HOLDINGS CORP. PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

**CLASS 6 – INTERESTS**

**PLEASE READ AND FOLLOW THE ENCLOSED INSTRUCTIONS CAREFULLY  
BEFORE COMPLETING THE BALLOT**

**THIS BALLOT MUST BE ACTUALLY RECEIVED BY KURTZMAN CARSON  
CONSULTANTS LLC BY MAY 29, 2024 AT 5:00 P.M. PREVAILING  
EASTERN TIME (THE “VOTING DEADLINE”)**

The Debtors have sent this Ballot to you because their records indicate that you are a holder of a Class 6 Interest, and accordingly, you have a right to vote to accept or reject the *Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. [•]] (as may be amended, supplemented or modified, including all exhibits thereto, the “Plan”). Your rights are described in the *Disclosure Statement for the Joint Plan of Liquidation of InVivo Therapeutics Corporation. and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* and all exhibits related thereto [D.I. [•]] (as amended from time to time and including all exhibits and supplements thereto, the “Disclosure Statement”). On February 1, 2024, the Bankruptcy Court entered an order [D.I. [•]] (the “Interim Approval and Procedures Order”)<sup>2</sup> approving on an interim basis the adequacy of the Disclosure Statement. At the Confirmation Hearing, the Debtors will seek final approval of the adequacy of the Disclosure Statement, as well as confirmation of the Plan.

Copies of the Disclosure Statement, the Interim Approval and Procedures Order, the Plan and certain other materials contained in the Solicitation Package are included in the packet you are receiving with this Ballot. Additionally, the Solicitation Package may be obtained by (i) writing to InVivo Claims Processing Center, c/o KCC, 222 N. Pacific Coast Highway, Suite 300, El Segundo CA 90245; and/or (ii) emailing [brooks@lrclaw.com](mailto:brooks@lrclaw.com) with a reference to “InVivo Therapeutics

<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 but not otherwise defined herein shall have the meanings set forth in the Plan, the Disclosure Statement or the Interim Approval and Procedures Order, as applicable.



Corporation” in the subject line; (iii) visiting <https://www.kccllc.net/invivo> or (iv) visiting (for a fee) PACER at <http://www.deb.uscourts.gov>. Bankruptcy Court approval of the Disclosure Statement does not indicate approval of the Plan by the Bankruptcy Court. This Ballot may not be used for any purpose other than to vote to accept or reject the Plan. If you believe you have received this Ballot in error, please contact the Balloting Agent at the address or email address set forth above.

*You should review the Disclosure Statement and the Plan before you vote. You may wish to seek legal advice concerning the Plan and the Plan’s classification and treatment of your Interest. Your Interest has been placed in Class 6 (Interests) under the Plan.*

**If the Balloting Agent does not receive your Ballot on or before the Voting Deadline, May 29, 2024 At 5:00 P.M. prevailing Eastern Time and if the Voting Deadline is not extended, your vote as either an acceptance or rejection of the Plan will not count. If the Bankruptcy Court confirms the Plan, it will bind you regardless of whether you vote.**

**Item 1. Amount of Class 6 Interest.**

The undersigned is the holder of an Interest in Class 6 Interests in the aggregate principal amount against the Debtors as set forth below:

\$ _____
----------

**Item 2. Class 6 (Interests) Vote on the Plan.**

The holder of the Class 6 Interest set forth in Item 1 votes to (please check one):

☐ ACCEPT THE PLAN

☐ REJECT THE PLAN

**ANY BALLOT THAT IS EXECUTED BY THE HOLDER OF AN INTEREST BUT THAT INDICATES BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN OR DOES NOT INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN WILL NOT BE COUNTED.**

**Item 3. Certifications**

By signing this Ballot, the undersigned certifies to the Bankruptcy Court and to the Debtor:

- a. that either: (i) the Holder is the holder of the Interest in Class 6 (Interests) being voted; or (ii) the Holder is an authorized signatory for a Holder that is a holder of the Interest in Class 6 (Interests) being voted;

- b. that the Holder has received a copy of the Plan and the Solicitation Package and acknowledges that the solicitation is being made pursuant to the terms and conditions set forth therein;
- c. that the Holder has cast the same vote with respect to all Interests in Class 6 (Interests) that it holds or for which it is the authorized signatory; and
- d. that no other Ballots with respect to the amount of the Interest in Class 6 (Interests) identified in Item 1 have been cast or, if any other Ballots have been cast with respect to such Interests, then any such Ballots dated earlier are hereby revoked.

Name of holder: \_\_\_\_\_  
(Print or Type)

Signature: \_\_\_\_\_  
Name of Signatory: \_\_\_\_\_  
(If other than holder)

Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email Address: \_\_\_\_\_  
Date Completed: \_\_\_\_\_

**THE BALLOT MUST BE COMPLETED AND SUBMITTED, ON OR BEFORE THE VOTING DEADLINE, BY ANY OF THE FOLLOWING APPROVED SUBMISSION METHODS:**

**By first class mail, overnight courier or hand-delivery to:**

InVivo Claims Processing Center  
c/o KCC  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245

**By electronic online transmission solely through the customized online balloting portal (the “Balloting Portal”) on the Debtors’ case website: <https://www.kcellc.net/invivo>  
Click on the link for balloting**

**BALLOTS OTHERWISE SUBMITTED BY FACSIMILE, TELECOPY, OR ANY ELECTRONIC SUBMISSION EXCEPT FOR THE BALLOTING PORTAL WILL NOT BE ACCEPTED.**

**YOUR BALLOT MUST BE SUBMITTED SO AS TO BE ACTUALLY RECEIVED BY THE VOTING DEADLINE, WHICH IS MAY 29, 2024, AT 4:00 P.M. PREVAILING EASTERN TIME.**

**EXCEPT AS EXPRESSLY PERMITTED ABOVE WITH RESPECT TO E-BALLOTS, BALLOTS OTHERWISE SUBMITTED BY FACSIMILE, TELECOPY, ELECTRONIC MAIL, OR OTHER FORM OF ELECTRONIC SUBMISSION WILL NOT BE ACCEPTED.**

**INSTRUCTIONS FOR COMPLETING BALLOTS**

1. The Debtors are soliciting the votes of holders of Interests with respect to the Plan attached as Exhibit A to the Disclosure Statement. Capitalized terms used in the Ballot or in these instructions but not otherwise defined in the Ballot or these instructions shall have the meanings set forth in the Plan or the Disclosure Statement, copies of which also accompany the Ballot.
2. The Bankruptcy Court may confirm the Plan and thereby bind you by the terms of the Plan if, among other things, the Plan is confirmed. Please review the Disclosure Statement for more information.
3. To ensure that your vote is counted, you must: (a) complete the Ballot; (b) indicate your decision either to accept or reject the Plan in the boxes provided in Item 2 of the Ballot; and (c) submit the Ballot to the address set forth on the enclosed pre-addressed envelope. The Voting Deadline for the receipt of Ballots by the Balloting Agent is May 29, 2024 at 5:00 p.m. (prevailing Eastern Time). Your completed Ballot must be received by the Balloting Agent on or before the Voting Deadline.
4. You must vote all of your Interests within a particular Class either to accept or reject the Plan and may not split your vote. Accordingly, a Ballot that partially rejects and partially accepts the Plan will not be counted. Further, if a holder has multiple Interests within the same Class, the Debtors may, in their discretion, aggregate the Interests of any particular holder within a Class for the purpose of counting votes.
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9. This Ballot does not constitute, and shall not be deemed to be: (a) a Proof of Interest; or (b) an assertion or admission of an Interest.
10. Please be sure to sign and date your Ballot. If you are signing a Ballot in your capacity as a trustee, executor, administrator, guardian, attorney in fact, officer of a corporation, or otherwise acting in a fiduciary or representative capacity, you should indicate such capacity when signing and, if requested by the Balloting Agent, the Debtors, or the Bankruptcy Court, must submit proper evidence to the requesting party to so act on behalf of such holder. In addition, please provide your name and mailing address if it is different from that set forth on the attached mailing label or if no such mailing label is attached to the Ballot.
11. The following Ballots shall not be counted in determining the acceptance or rejection of the Plan: (a) any Ballot that is illegible or contains insufficient information to permit the identification of the holder of the Interest; (b) any Ballot cast by a Party that does not hold an Interest in a Class that is entitled to vote on the Plan; (c) any unsigned Ballot; (d) any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan; and (e) any Ballot submitted by any Entity not entitled to vote pursuant to the Solicitation Procedures.
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**IF YOU HAVE ANY QUESTIONS REGARDING THIS BALLOT OR THE VOTING PROCEDURES, PLEASE CONTACT THE BALLOTING AGENT AT (888) 802-7206 (TOLL-FREE) OR (949) 209-5035 (INTERNATIONAL).**