

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: November 12, 2024 at 2:00 p.m. (ET)

Obj. Deadline: November 5, 2024 at 4:00 p.m. (ET)

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

The Liquidation Trustee of the InVivo Therapeutics Liquidation Trust (the “Liquidation Trustee”), by and through its undersigned counsel, hereby submits the *Liquidation Trustee’s Motion to Further Extend the Time Period Within Which the Liquidation Trustee May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* (the “Motion”). In support of the Motion, the Liquidation Trustee respectfully states as follows:

**JURISDICTION AND VENUE**

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

<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.



a final order consistent with Article III of the United States Constitution.<sup>2</sup>

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

### **BACKGROUND**

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

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* [D.I. 3] (the “First Day Declaration”), which is incorporated herein by reference.

5. On April 30, 2024, the Debtors filed the *Motion to Extend the Time Period Within Which the Debtors May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy procedure* [D.I. 173]. On June 7, 2024, the Court entered the *Order Granting the Debtors’ Motion to Extend the Time Period Within Which the Debtors May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* [D.I. 212].

6. On June 20, 2024, the Court entered its *Findings of Fact, Conclusions of Law, and Order (I) Confirming Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo*

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<sup>2</sup> Pursuant to Local Rule 9013-1(f), the Liquidation Trustee hereby confirms its 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.

*Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code and (II) Approving the Disclosure Statement on a Final Basis* [D.I. 246] (the “Confirmation Order”).<sup>3</sup> The Plan became effective on July 12, 2024 and created the InVivo Therapeutics Liquidation Trust (the “Trust”), which serves to, among other things, reconcile claims asserted against the Debtors, liquidate the Liquidation Trust Assets, and effectuate the wind down of the Debtors.

7. On July 25, 2024, the Liquidation Trustee filed the *Liquidation Trustee’s Motion to Further Extend the Time Period Within Which the Liquidation Trustee May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* [D.I. 284]. On August 12, 2024, the Court entered the *Order Granting the Liquidation Trustee’s Motion to Further Extend the Time Period Within Which the Liquidation Trustee May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* [D.I. 301], which set October 28, 2024, as the current removal deadline (the “Removal Deadline”).

### **RELIEF REQUESTED**

8. By this Motion, the Liquidation Trustee seeks entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Bankruptcy Rule 9006(b), extending the Removal Deadline for a period of approximately ninety (90) days through and including January 27, 2025, with respect to civil actions pending as of the Petition Date.<sup>4</sup>

9. The Liquidation Trustee requests that the proposed January 27, 2025 deadline to file notices of removal apply to all matters pending as of the Petition Date as specified in

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<sup>3</sup> All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Confirmation Order or Plan, as appropriate.

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

Bankruptcy Rule 9027(a)(2)(A), (B) and (C) (the “Prepetition Actions”) in addition to any and all matters initiated after the Petition Date as specified in Bankruptcy Rule 9027(a)(3) (the “Postpetition Actions,” and together with the Prepetition Actions, the “Actions”).

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

### **BASIS FOR RELIEF**

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

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

28 U.S.C. § 1452(a).

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

If the claim or cause of action in a civil action is pending when a case under the Code is commenced, a notice of removal may be filed only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

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

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

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

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

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

15. Either or both Debtors may become a party to an Action in various state or federal courts. The Liquidation Trustee continues to execute its duties and manage responsibilities within its purview, as provided by the Confirmation Order, the Plan and related documents. Indeed, the Liquidation Trustee and its counsel continue to engage various parties with respect to the disposition of the Liquidation Trust Assets and to reconcile claims asserted against the Debtors’

estates while overseeing the funding of and disbursements from the reserve accounts established pursuant to the Plan and effectuating the wind down the Debtors.

16. More specifically, the extension of the Removal Deadline is appropriate because the Liquidation Trustee has expended considerable time and effort since the previous deadline by:

- a. handling numerous operational issues, including responding to questions and concerns from creditors, commercial counterparties, financial institutions, and vendors; and
- b. assessing and reconciling claims asserted against the Debtors' estates.

17. The Liquidation Trustee has not yet determined whether it is necessary or beneficial to remove any Actions. Accordingly, the Liquidation Trustee believes it is prudent to seek an extension of the Removal Deadline to protect its rights and the rights of any of its successors to remove any Actions. The Liquidation Trustee submits that the relief requested herein is in the best interests of the Trust and its beneficiaries. The extension sought will afford the Liquidation Trustee or any of its successors the opportunity to make fully informed decisions with respect to the removal of any Action and will ensure that the Liquidation Trustee does not forfeit valuable rights under 28 U.S.C. § 1452.

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

18. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) all parties to any Actions pending in other federal and state courts; and (c) all parties who have requested notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested in this Motion, the Liquidation Trustee respectfully submits that no further or other notice is necessary.

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

WHEREFORE, the Liquidation Trustee respectfully requests that the Court enter the proposed order (i) granting the relief requested by the Motion, extending the Removal Deadline through and including January 27, 2025, and (ii) granting such other and further relief as is just and proper.

Dated: November 25, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Joshua B. Brooks

Matthew B. McGuire (No. 4366)  
Joshua B. Brooks (No. 6765)  
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*Counsel for the InVivo Therapeutics Liquidation Trust*

**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: November 12, 2024 at 2:00 p.m. (ET)**

**Obj. Deadline: November 5, 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) all parties to any Actions pending in other federal and state courts; and (c) 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 Liquidation Trustee filed the *Liquidation Trustee's Motion to Further Extend the Time Period Within Which the Liquidation Trustee May File Notices to Remove Actions Pursuant to 28 U.S.C. § 1452 and Rules 9027 and 9006 of the Federal Rules of Bankruptcy Procedure* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the relief requested in the Motion must be filed with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **November 5, 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 **November 5, 2024, at 4:00 P.M. (ET)**: (i) counsel for the InVivo Therapeutics Liquidation Trust, 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 for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Joseph Cudia, Esq., joseph.cudia@usdoj.gov).

A HEARING ON THE MOTION WILL BE HELD ON **NOVEMBER 12, 2024 AT 2:00 P.M. ET** BEFORE THE HONORABLE MARY F. WALRATH, OF THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, WILMINGTON, DELAWARE 19801.

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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.



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: October 25, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Joshua B. Brooks

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*Counsel for the InVivo Therapeutics Liquidation Trust*

# **EXHIBIT A**

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

In re:

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

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

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

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

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

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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 such terms in the Motion.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED.
2. Pursuant to Bankruptcy Rule 9006, the Removal Deadline is extended through and including January 27, 2025.
3. This Order is entered without prejudice to (a) any position that the Liquidation Trustee or any of its successors may take regarding whether Bankruptcy Code section 362 applies to stay any civil action or (b) the rights of the Liquidation Trustee or any of its successors to seek further extensions of the time within which to file notices of removal of any Action and related proceedings.
4. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

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

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UNITED STATES BANKRUPTCY JUDGE