

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

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Joint Administration Pending)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER
(A) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS
AND CONTINUED USE OF EXISTING BUSINESS FORMS AND
CHECKS, (B) AUTHORIZING THE CONTINUED USE OF EXISTING
CASH MANAGEMENT SYSTEM, AND (C) GRANTING LIMITED RELIEF
FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)**

The above-captioned debtors and debtors-in-possession (the “Debtors”) by and through their proposed undersigned counsel, hereby submit this *Motion of the Debtors for Entry of an Order (a) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (b) Authorizing the Continued Use of Existing Cash Management System, and (c) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b)* (the “Motion”). In support of the Motion, the Debtors rely on the *Declaration of Richard Christopher in Support of the Debtors’ Petitions and First Day Pleadings* (the “First Day Declaration”),² filed contemporaneously with this Motion, and respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended*

¹ 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.

² Except where otherwise indicated, capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.



Standing Order of Reference from the United States District Court for the District of Delaware dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.³

2. The statutory predicates for the relief sought herein are sections 105(a), 345, 363, 364 and 553 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended or modified, the “Bankruptcy Code”); rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2015-2(a) and (b) of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

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

GENERAL BACKGROUND

4. On the date hereof (the “Petition Date”), the Debtors commenced the above captioned cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Court.

5. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

6. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

7. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors’ businesses and capital

³ Pursuant to rule 9013-1(f) of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors hereby confirm their consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

structure is set forth in detail in the First Day Declaration filed contemporaneously with this Motion and incorporated herein by reference.

A. Background Related to the Cash Management System

8. Prior to the commencement of these Chapter 11 Cases, and in the ordinary course of their business, the Debtors maintain four (4) bank accounts (the “Bank Accounts”) at Silicon Valley Bank (“SVB”) to manage the funds they hold to operate their business. A list of the Bank Accounts is attached hereto as **Exhibit 1**. The Bank Accounts are part of a carefully constructed cash management system (the “Cash Management System”) that ensures the Debtors’ ability to efficiently monitor and control their cash position and disburse funds to satisfy their obligations. Each of the Bank Accounts is held in the name of Debtor InVivo Therapeutics Corporation.

9. As of the Petition Date, substantially all of the Debtors’ cash activities are managed through one (1) operating account (ending in 4583) (the “Operating Account”). All cash and other receipts are deposited directly into the Operating Account. The Operating Account is used for all daily banking activities, including to pay vendors and fund all payroll obligations. Disbursements are made in the form of ACH payments, checks, credit card payments and wire transfers.

10. The Debtors also maintain (a) one (1) sweep account (ending in 0747) (the “Sweep Account”), which provides the Debtors with overnight flexibility to move funds around to satisfy operational needs; (b) one (1) investment account (ending in 1145), which holds the Debtors’ longer term investments; and (c) one (1) security deposit account (ending in 0116), which backs the Debtors’ corporate credit card expenditures.

11. The Debtors perform a reconciliation of all of the deposits and debits in the Cash Management System which have been historically reviewed daily and reconciled monthly. The Debtors also make book entries as necessary for each wire transfer between their accounts.

B. Company Credit Cards

12. As part of the Cash Management System and in addition to the Debtors' Bank Accounts, the Debtors also have two (2) credit cards with SVB (ending in 3512 and 4552) (the "Company Credit Cards") with a combined total credit limit of \$30,000.00. The Company Credit Cards are used to pay general business expenses incurred by the Debtors. The expenses incurred on the Company Credit Cards are essential to the operation of the Debtors' business. The Debtors typically charge approximately \$2,500.00 per month on the Company Credit Cards.

13. As of the Petition Date, the Debtors estimate that they have \$1,300.00 unpaid obligations on the Company Credit Cards. By this Motion, the Debtors seek authority to continue using the Company Credit Cards in the ordinary course of business consistent with prepetition practices.

C. Existing Business Forms and Checks

14. In the ordinary course of business, the Debtors use checks with the Debtors' name printed thereon. In addition, the Debtors maintain pre-printed correspondence and business forms, including, but not limited to, letterhead, envelopes, promotional materials, internal administrative forms and other business forms (collectively, along with the Debtors' checks, the "Business Forms"). To minimize administrative expense and delay, the Debtors request authority to continue to use their Business Forms substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' "Debtors-In-Possession" status.

RELIEF REQUESTED

15. By this Motion, the Debtors seek an order, substantially in the form attached hereto as **Exhibits A** and **B**: (a) authorizing the maintenance of their Bank Accounts and Company Credit Cards and continued use of existing Business Forms; (b) authorizing but not directing the continued use of their existing Cash Management System; and (c) providing any

additional relief required in order to effectuate the foregoing.

16. The Debtors also request the right, in their discretion, to (i) pay any Bank Account related fees, and (ii) to close or otherwise modify the terms of certain of the Bank Accounts and open new debtor-in-possession accounts as may be necessary to facilitate their Chapter 11 Cases and operations.

BASIS FOR RELIEF REQUESTED

A. Cash Management System

17. The Debtors believe that the Bank Accounts, Company Credit Cards and related Cash Management System mechanisms are well-suited to the Debtors' business needs and operations. To require the Debtors to close the Bank Accounts and reestablish new accounts would not result in greater administrative controls and would require considerable time and expense to the Debtors' estates. Moreover, permitting the Debtors to continue using their existing Bank Accounts is essential to a smooth and orderly transition of the Debtors into chapter 11 and to avoid disruption of their business and operations, including the disruption that could result if checks written but not negotiated or cashed prior to the Petition Date were dishonored.

18. Moreover, the continued use of a cash management system employed in the ordinary course of a debtor's prepetition business has been approved as a routine matter in a number of other cases in this district. *See, e.g., In re Allena Pharmaceuticals, Inc.*, Case No. 22-10842 (KBO) (Bankr. D. Del. Sept. 26, 2023); *In re American Eagle Delaware Holding Company LLC*, Case No. 22-10028 (JKS) (Bankr. D. Del. Feb. 10, 2022); *In re BHCosmetics Holdings, LLC*, Case No. 22-10050 (CSS) (Bankr. D. Del. Feb. 7, 2022); *In re Alto Maipo Delaware LLC*, Case No. 21-11507 (KBO) (Bankr. D. Del. Dec. 17, 2021); *In re Sharity*

Ministries, Inc., Case No. 21-11001 (JTD) (Bankr. D. Del. Aug. 10, 2021); *In re Alex and Ani, LLC*, Case No. 21-10918 (CTG) (Bankr. D. Del. July 14, 2021); *In re The Collected Group, LLC*, Case No. 21-10663 (LSS) (Bankr. D. Del. Apr. 28, 2021); *In re Mallinckrodt PLC.*, Case No. 21-12522 (JTD) (Bankr. D. Del. Nov. 19, 2020); *In re SFP Franchise Corp.*, Case No. 20-10134 (JTD) (Bankr. D. Del. Feb. 13, 2020); *In re HRI Holding Corp.*, Case No. 19-12415 (MFW) (Bankr. D. Del. Dec. 5, 2019); *In re EdgeMarc Energy Holdings, LLC*, Case No. 19-11104 (BLS) (Bankr. D. Del. June 13, 2019); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019). Courts have recognized that strict enforcement of the bank account closure requirements in certain cases does not serve the rehabilitative purposes of chapter 11. Accordingly, cases in this district have waived such requirements and replaced them with alternative procedures that provide the same protections. *See, e.g., In re Exide Technologies*, Case No. 02-11125 (Bankr. D. Del. April 17, 2002) (permitting debtors to maintain existing bank accounts and cash management system); *In re W.R. Grace & Co.*, Case No. 01-01139 (Bankr. D. Del. April 2, 2001) (same); *In re USG Corp.*, Case No. 01-02094 (Bankr. D. Del. June 27, 2001) (same); *In re Waccamaw's HomePlace*, Case No. 01-00181 (Bankr. D. Del. Jan. 17, 2001) (same).

19. Indeed, courts in this district have noted that an integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). The United States Court of Appeals for the Third Circuit has agreed, emphasizing that requiring a debtor to maintain separate accounts “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also*

Southmark Corp. v. Grosz (In re Southmark Corp.), 49 F.3d 1111, 1114 (5th Cir. 1995) (stating a cash management system allows a debtor “to administer more efficiently and effectively its financial operations and assets”).

20. Further, Bankruptcy Code section 105(a) empowers the Court to “issue any order, process, or judgment that is necessary to carry out the provisions of this title” and Bankruptcy Code section 363(c)(1) authorizes the debtor-in-possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. §§ 105(a) and 363(c)(1). The purpose of these sections is to provide a debtor-in-possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997).

21. The Debtors’ Cash Management System constitutes a customary and essential business practice that was created and implemented by the management of the Debtors in the exercise of their business judgment. Moreover, the Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtors in size and complexity.

22. Indeed, the Cash Management System is a practical mechanism that allows the Debtors to transfer their funds for the payment of their obligations that decrease the burdens on the Debtors, and that provides several important benefits, including the ability to: (a) control and monitor corporate funds; (b) ensure cash availability; and (c) reduce administrative expenses by facilitating the movement of funds and the development of timely and accurate balance and presentment information. All of the benefits discussed with respect to maintaining the Debtors’ existing Cash Management System will assist the Debtors in their efforts to maintain their operations pending the disposition of their assets and confirmation of a chapter 11 plan, making

the relief requested herein appropriate under Bankruptcy Code section 105(a).

B. The Debtors Should be Permitted to Maintain Bank Accounts

23. Likewise, the Debtors should be authorized to continue to fund their business and operations by payments made from the Bank Accounts listed on **Exhibit 1** to this Motion and should be exempt from certain of the Operating Guidelines for Chapter 11 Cases (the “Guidelines”)⁴ established by the United States Trustee for the District of Delaware. One provision of the Guidelines requires a chapter 11 debtor-in-possession to open new bank accounts and close all existing accounts. This requirement, designed to provide a clear line of demarcation between prepetition and postpetition claims and payments, helps to protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. The Guidelines also require that the new bank accounts only be opened in certain financial institutions designated as authorized depositories by the United States Trustee.

24. As part of the requested relief, the Debtors also seek a waiver of the requirement to establish specific bank accounts for any tax payments. The Debtors believe that tax obligations, if any, can be paid most efficiently out of the existing Bank Accounts, that the United States Trustee can adequately monitor the flow of funds into, among, and out of the Bank Accounts, and that the creation of new debtor-in-possession accounts designated solely for tax obligations would be unnecessary and inefficient.

⁴ The Guidelines were issued in order to assist the U.S. Trustee in supervising the administration of chapter 11 cases. Such Guidelines require chapter 11 debtors to, among other things, unless the Court requires otherwise:

- a. Close all existing bank accounts and open new accounts which must be designated debtor-in-possession bank accounts;
- b. Establish and maintain separate debtor-in-possession accounts for the payment of taxes and separate debtor-in-possession accounts for cash collateral; and
- c. Obtain and utilize new checks for all debtor-in-possession accounts which bear the designation “Debtor-in-Possession” and contain certain other information related to the chapter 11 case.

25. The Debtors hereby request authority to maintain the Bank Accounts and utilize such accounts pursuant to the existing Cash Management System described above. The Debtors do not believe that allowing them to do so will prejudice any party-in-interest or their estates. If the relief requested herein is granted, the Debtors will not pay any debts incurred on their behalf before the Petition Date unless specifically authorized by this Court.

26. Moreover, if the Debtors were forced to close their Bank Accounts, the Debtors expect that there would be disruption and confusion that would negatively impact their operations. For instance, funds may be deposited into the wrong account, misapplied, held in limbo, or otherwise delayed, thus negatively affecting the Debtors' relationships with parties, who are necessary to the Debtors' efforts, and who already may be burdened by the filing of these Chapter 11 Cases. As a result, the Debtors submit that maintenance of the existing Bank Accounts and Cash Management System is warranted.

27. Subject to Bankruptcy Code section 553, all banks that maintain the Bank Accounts should be prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds deposited in the Bank Accounts on account of, or by reason of, any claim (as defined in Bankruptcy Code section 101(5)) of any such bank against the Debtors that arose before the Petition Date, absent further order of the Court.

C. The Debtors Should be Permitted to Continue Using Existing Business Forms

28. Local Rule 2015-2(a)⁵ requires the debtor to obtain court approval to continue to

⁵ Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation "Debtor-in-Possession" and use its existing bank accounts. However, once the debtor's existing checks have been used, the debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all such checks.

Moreover, courts in this district have allowed debtors to use their existing prepetition forms without the "Debtor-In-Possession" label. See *In re Trans World Airlines, Inc.*, Case No. 01-0056 (PJW) (January 10, 2001); *In re*

use its existing Business Forms without imprinting “DIP” or “Debtor-In-Possession” thereon. Accordingly, and in an abundance of caution, the Debtors request that this Court authorize them to use all correspondence and Business Forms existing immediately before the Petition Date without reference to the Debtors’ status as “debtors-in-possession.” As of the Petition Date, the Debtors had a large stock of Business Forms that they used in the ordinary course of business. Reprinting their Business Forms to indicate that the Debtors are “Debtors-In-Possession” would impose an unnecessary burden and expense on the Debtors. There is little doubt that the parties with whom the Debtors do business shortly will become aware that they are chapter 11 debtors-in-possession.

D. Waiver of the Requirements of Bankruptcy Code Section 345(b) is Appropriate

29. The Debtors request that the Court waive the requirements of Bankruptcy Code section 345(b) on an interim basis and permit the Debtors to maintain their deposits in the Bank Accounts in accordance with existing deposit practices until such time as they obtain this Court’s approval to deviate from the guidelines imposed under Bankruptcy Code section 345(b) on a final basis. The Debtors’ existing deposit practices are significantly less burdensome and more appropriately tailored to their business needs than the practices otherwise required under the Bankruptcy Code and by the U.S. Trustee Guidelines. Accordingly, the Debtors submit that strict compliance with Bankruptcy Code section 345 and the U.S. Trustee Guidelines would be overly burdensome and restrict the Debtors’ banking options to the detriment of their estates and creditors.

30. Bankruptcy Code section 345 governs a debtor’s deposits during its bankruptcy case and authorizes deposits of money as “will yield the maximum reasonable net return on such

AmeriServe Food Distribution, Inc., Case No. 00-358 (PJW) (February 2, 2000); *In re Zenith Electronics Corp.*, Case No. 99-2711 (MFW) (August 23, 1999).

money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” Bankruptcy Code section 345(b) requires debtors to obtain from the entity with which such money is deposited, a bond in favor of the United States and secured by the undertaking of an adequate corporate surety. 11 U.S.C. § 345(b). In the alternative, the estate may require that the entity deposit government securities in accordance with 31 U.S.C. § 9303.

31. Maintaining deposits in strict compliance with the requirements of Bankruptcy Code section 345(b) would, in some cases, be inconsistent with the requirement of section 345(a) that deposits be maintained in a manner that “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). It is for this reason that in 1994, Congress amended Bankruptcy Code section 345 to allow the requirements of subsection (b) to be waived or modified if a court so orders “for cause.” 11 U.S.C. § 345(b). As the legislative history indicates, Congress believed that strict application of Bankruptcy Code section 345(b) could “needlessly handcuff larger, more sophisticated debtors.” 140 Cong. Rec. H 10,767 (October 4, 1994). Three of the Debtors’ Bank Accounts are maintained for operational purposes. At times, the individual balance in the Bank Accounts may exceed the current limits of governmental insurance. Therefore, these accounts may be subject to the bonding or collateralization requirements of Bankruptcy Code section 345(b) and the U.S. Trustee Guidelines unless those requirements are waived. 11 U.S.C. § 345(b).

32. As discussed above, the Bank Accounts are maintained at SVB, a division of First Citizens Bank, which is a party to the Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”). Both SVB and First

Citizens Bank are insured by the FDIC. Further, the Debtors have begun the process of closing their sole investment account and will work with the U.S. Trustee to resolve any concerns through the completion of that process.

33. To the extent that any Bank Accounts do not strictly comply with section 345 of the Bankruptcy Code, the Debtors submit that cause exists to grant a limited waiver of any such noncompliance as set forth herein on an interim basis given that all funds are deposited at a financially-stable banking institution. Courts may waive compliance with the Bankruptcy Code section 345 and the U.S. Trustee Guidelines for “cause.” In determining whether “cause” exists for a waiver, the Court should consider the “totality of circumstances,” including the following factors:

- (a) The sophistication of the debtor’s business;
- (b) The size of the debtor’s business operations;
- (c) The amount of the investments involved;
- (d) The bank ratings (Moody’s and Standard and Poor’s) of the financial institutions where debtor-in-possession funds are held;
- (e) The complexity of the case;
- (f) The safeguards in place within the debtor’s own business of insuring the safety of the funds;
- (g) The debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) The benefit to the debtor;
- (i) The harm, if any, to the estate; and
- (j) The reasonableness of the debtor’s request for relief from [Bankruptcy Code section] 345(b) requirements in light of the overall circumstances of the case.

In re Serv. Merch. Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

34. Here, “cause” exists because, among other things: (a) Silicon Valley Bank, as a division of First Citizens Bank, is a highly rated, reputable bank that is subject to supervision by national banking regulators; (b) the Debtors have internal safeguards in place to ensure the safety of the funds and also retains the right to close accounts with the bank and establish new bank accounts as needed; and (c) requiring the Debtors to transfer the funds to a designated authorized depository would place a needless administrative burden on the Debtors that would unnecessarily divert the attention of the Debtors’ management away from the critical aspects of these Chapter 11 Cases. On balance, the benefits of a waiver would far outweigh any potential harm to the estate from noncompliance with section 345(b).

35. The Debtors believe it would be in the best interests of the estates’ creditors to continue following the existing deposit practices, notwithstanding the requirements of Bankruptcy Code section 345(b) and the U.S. Trustee Guidelines. The Debtors further submit that the Debtors’ deposit practices are commercially reasonable and appropriate, and consistent with the intent of Bankruptcy Code section 345.

36. This Court has consistently waived the strict requirements of Bankruptcy Code section 345(b) and the U.S. Trustee Guidelines on an interim basis. *See, e.g., In re Sharity Ministries, Inc.*, Case No. 21-11001 (JTD) (Bankr. D. Del. Aug. 10, 2021) (authorizing the debtors’ continued use of existing bank accounts); *In re Things Remembered, Inc.*, Case No. 19-10234 (KG) (Bankr. D. Del. Feb. 26, 2019) (same); *In re ATD Corp.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 24, 2018) (same); *In re VER Techs. Holdco LLC*, Case No. 18-10834 (KG) (Bankr. D. Del. May 4, 2018) (same); *In re EV Energy Partners, L.P.*, Case No. 18-10814 (CSS) (Bankr. D. Del. Apr. 25, 2018) (same); *In re PES Holdings, LLC*, Case No. 18-10122 (KG)

(Bankr. D. Del. Jan. 23, 2018) (same). The Debtors submit that cause for a similar waiver exists in this case.

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

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

38. Specifically, Bankruptcy Rule 6003 provides:

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

Fed. R. Bankr. P. 6003(b).

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

40. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Rule 6004(h) of the Bankruptcy Rules, “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the

expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004. As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors’ operations, going-concern value, and their efforts to pursue a sale of their assets and liabilities.

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

NOTICE AND NO PRIOR REQUEST

42. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) each of the Debtors’ creditors holding the twenty (20) largest unsecured claims as set forth in the consolidated list filed with the Debtors’ petitions; (c) the Internal Revenue Service; (d) the United States Attorney’s Office for the District of Delaware; (e) the United States Securities and Exchange Commission; (f) the United States Food and Drug Administration; (g) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002; and (h) each of the banks holding the Bank Accounts set forth in **Exhibit 1** hereto. In light of the nature of the relief requested in this Motion, the Debtors respectfully submit that no further notice is necessary.

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

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and grant the Debtors such other and further relief as is just and proper.

Dated: February 1, 2024
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ Joshua B. Brooks

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

Exhibit 1

List of Bank Accounts

List of Bank Accounts

Bank Name	Address	Account Type	Last Four of Bank Account #
Silicon Valley Bank	3003 Tasman Drive Santa Clara, CA 95054	Operating	4583
Silicon Valley Bank	3003 Tasman Drive Santa Clara, CA 95054	Investment	1145
Silicon Valley Bank	3003 Tasman Drive Santa Clara, CA 95054	Sweep	0747
Silicon Valley Bank	3003 Tasman Drive Santa Clara, CA 95054	Security Deposit for Corporate Credit Cards	0116

EXHIBIT A

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

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

Ref. No. ____

INTERIM ORDER (A) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS, (B) AUTHORIZING THE CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, AND (C) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

Upon the *Motion of the Debtors for Entry of an Order (A) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (B) Authorizing the Continued Use of Existing Cash Management System, and (C) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b)* (the "Motion")² and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and good and sufficient cause appearing therefor;

¹ 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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion will be held on _____, 2024, at _____ .m. (prevailing Eastern Time). Any objections or responses to entry of a final order on the Motion must be filed on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2024, and served on the following parties: (i) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, Delaware 19801, Attn: Joseph Cudia, Esq., (joseph.cudia@usdoj.gov); (ii) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19801, Attn: Matthew B. McGuire, Esq. (mcguire@lrclaw.com) and Joshua B. Brooks, Esq. (brooks@lrclaw.com); and (iii) counsel to any statutory committee appointed in these chapter 11 cases. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.
3. The Debtors are authorized, but not directed, to maintain and use their existing Cash Management System, as more fully set forth in the Motion, subject to modifications herein.
4. The Debtors are authorized to maintain and use the existing Bank Accounts listed on **Exhibit 1** attached hereto in the name and with the account numbers existing immediately prior to the Petition Date and shall not be required to establish a specific new bank account for tax payments.
5. The Debtors shall retain the authority to close or otherwise modify certain of their Bank Accounts and open new debtor-in-possession accounts, or otherwise make changes to their Cash Management System as it deems necessary to facilitate the administration of these chapter 11 cases and the Debtors' operations. The Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts as the Debtors may deem necessary and appropriate in their

sole discretion; provided, however, that the Debtors shall give notice within fifteen (15) days of opening or closing any account to the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) and to any statutory committees appointed in these Chapter 11 Cases; provided, further, however, that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

6. The Debtors are authorized to deposit funds in and withdraw funds from their Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debits and to treat the Bank Accounts for all purposes as debtor-in-possession accounts.

7. The Debtors are authorized, but not directed, to continue using the Company Credit Card in the ordinary course of business consistent with prepetition practices. All prepetition charges and fees are authorized to be paid in an amount not to exceed \$1,300.00.

8. The Debtors are authorized to continue to use their pre-printed checks, correspondence, and business forms and checks, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors’ debtor-in-possession status, provided that once the Debtors’ existing checks have been used, the Debtors shall, when reordering checks, require the designation “Debtor In Possession” and the corresponding bankruptcy case number on all checks; provided further that, with respect to checks which the Debtors or their agents print themselves, the Debtors or their agents shall begin printing the “Debtor In Possession” legend on such items within ten (10) days of the date of entry of this Order.

9. The banks listed on Exhibit 1 attached hereto are hereby authorized and directed to continue to service and administer the Bank Accounts of the Debtors as debtors-in-possession without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks, drafts, wires, or ACH transfers drawn on the Bank Accounts by the holders or makers thereof, provided that nothing contained herein shall authorize any such bank to honor any check issued or dated prior to the date of the commencement of this case, except as otherwise provided by further order of this Court. In no event shall any of the Banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts that is drawn against uncollected funds.

10. The Debtors may continue to pay, and the banks may continue to charge and collect, all customary and usual prepetition and postpetition fees arising from or related to the Bank Accounts, consistent with prepetition practice.

11. Subject to Bankruptcy Code section 553, all banks that maintain the Bank Accounts are prohibited from offsetting, affecting, freezing, or otherwise impeding the Debtors' use of any funds in the Bank Accounts on account of, or by reason of, any claim (as defined in Bankruptcy Code section 101(5) of any such bank against any of the Debtors that arose before the Petition Date, absent further order of this Court.

12. Nothing contained herein shall permit any bank to terminate any services that comprise the Cash Management System without thirty (30) days prior written notice (or other such period as may be specified in any agreement between the Debtors and such bank) to the Debtors, the U.S. Trustee, and any statutory committee appointed in these Chapter 11 Cases.

13. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain detailed records in the ordinary course of business with respect to all transfers so that all transactions (including any intercompany transactions) may be readily

ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

14. The Debtors are hereby granted an extension of time to comply with section 345(b) of the Bankruptcy Code is hereby extended for a period of thirty (30) days (the “Extension Period”), provided, however, that such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period or a final waiver of the requirements of section 345(b) in these Chapter 11 Cases.

15. For banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository agreement with the U.S. Trustee, as soon as practicable after entry of this Order, the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors’ employer identification numbers, and (c) identify each of their Bank Accounts held at such banks as being held by a debtor-in-possession.

16. For any bank at which the Debtors hold a Bank Account that is not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause such banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty days of the date of this Interim Order. The U.S. Trustee’s rights to seek further relief from this Court in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

17. Notwithstanding the Debtors’ use of their consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930 (a)(6) based on the disbursements of each Debtor regardless of which Debtor pays such disbursements.

18. Nothing herein authorizes the Debtors to make transfers or loans to non-debtor affiliates absent further order of the Court.

19. Bankruptcy Rule 6003 has been satisfied.

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

21. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

Dated: _____, 2024
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

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

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

Ref. Nos. ___ & ___

FINAL ORDER (A) AUTHORIZING THE MAINTENANCE OF BANK ACCOUNTS AND CONTINUED USE OF EXISTING BUSINESS FORMS AND CHECKS, (B) AUTHORIZING THE CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, AND (C) GRANTING LIMITED RELIEF FROM THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 345(b)

Upon the *Motion of the Debtors for Entry of an Order (A) Authorizing the Maintenance of Bank Accounts and Continued Use of Existing Business Forms and Checks, (B) Authorizing the Continued Use of Existing Cash Management System, and (C) Granting Limited Relief from the Requirements of Bankruptcy Code Section 345(b)* (the “Motion”)² and upon the First Day Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and it appearing that the relief requested by the Motion is in the best interests of the Debtor’s estate; and good and sufficient cause appearing therefor;

¹ 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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and use their existing Cash Management System, as more fully set forth in the Motion, subject to modifications herein.
3. The Debtors are authorized to maintain and use the existing Bank Accounts listed on **Exhibit 1** attached hereto in the name and with the account numbers existing immediately prior to the Petition Date and shall not be required to establish a specific new bank account for tax payments.
4. The Debtors shall retain the authority to close or otherwise modify certain of their Bank Accounts and open new debtor-in-possession accounts, or otherwise make changes to their Cash Management System as the Debtors deem necessary to facilitate administration of these Chapter 11 Cases and the Debtors' operations. The Debtors are authorized to open any new Bank Accounts or close any existing Bank Accounts as the Debtors may deem necessary and appropriate in their sole discretion; provided, however, that the Debtors give notice within fifteen (15) days of opening or closing any account to the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") and to any statutory committee appointed in these Chapter 11 Cases; provided, further, however, that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the U.S. Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.
5. The Debtors are authorized to deposit funds in and withdraw funds from their Bank Accounts by all usual means, subject to the same access rights and limitations existing prior to the Petition Date, including, but not limited to, checks, wire transfers, automated clearinghouse transfers, electronic funds transfers, and other debits and to treat the Bank Accounts for all purposes as debtor-in-possession accounts.

6. The Debtors are authorized, but not directed, to continue using the Company Credit Cards and pay any undisputed prepetition amounts in connection therewith in the ordinary course of business consistent with prepetition practices. All prepetition charges and fees are authorized to be paid in an amount not to exceed \$1,300.00.

7. The Debtors are authorized to continue to use their pre-printed checks, correspondence, and business forms and checks, including, but not limited to, purchase orders, letterhead, envelopes, promotional materials, and other business forms, substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors' debtor-in-possession status, provided that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor In Possession" and the corresponding bankruptcy case number on all checks; provided further that, with respect to checks which the Debtors or their agents print themselves, the Debtors or their agents shall begin printing the "Debtor In Possession" legend on such items within ten (10) days of the date of entry of this Order.

8. The banks listed on Exhibit 1 (the "Banks") attached hereto are hereby authorized and directed to continue to service and administer the Bank Accounts of the Debtors as a debtors-in-possession without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks, drafts, wires, or ACH transfers drawn on the Bank Accounts by the holders or makers thereof, provided that nothing contained herein shall authorize any such bank to honor any check issued or dated prior to the date of the commencement of this case, except as otherwise provided by further order of this Court. In no event shall any of the Banks be required to honor overdrafts or to pay any check, wire or other debit against any of the Bank Accounts that is drawn against uncollected funds.

9. The Debtors are authorized to request the Banks, and the Banks are authorized to

accept and honor, all representations from the Debtors, as to which checks, drafts, wires, or ACH transfers should be honored or dishonored whether the Banks believe the payment is or is not consistent with the order(s) of this Court and governing law, and whether such checks, drafts, wires or ACH transfers are dated or made prior to, on or subsequent to the Petition Date. The Banks have no duty to inquire as to whether such payments are authorized by an order of this Court.

10. Notwithstanding any provision of this Order to the contrary, the Banks will not be liable to any party on account of (a) following the Debtors' instructions or representations as to any check or other item that may be honored or as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) an innocent mistake made despite implementation of reasonable item handling procedures.

11. The Debtors may continue to pay, and the Banks may continue to charge, collect, and debit all undisputed prepetition and postpetition fees (such obligations, the "Cash Management Claims") arising from or related to the Bank Accounts, consistent with prepetition practice. Any postpetition Cash Management Claims shall have administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code.

12. The Banks shall not terminate any services that comprise the Cash Management System without thirty (30) days prior written notice (or such other period as may be specified in any agreement between the Debtors and such bank) to the Debtors.

13. In connection with the ongoing utilization of the Cash Management System, the Debtors shall continue to maintain detailed records in the ordinary course of business with respect to all transfers so that all transactions (including any intercompany transactions) may be readily ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

14. To the extent applicable, the Debtors are hereby granted an extension of time to comply with section 345(b) of the Bankruptcy Code is hereby extended for a period of forty-five (45) days from the date of this Order (the “Extension Period”), provided, however, that such extension is without prejudice to the Debtors’ right to request a further extension of the Extension Period of the waiver of the requirements of section 345(b) in these Chapter 11 Cases.

15. To the extent not already completed, for banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository agreement with the U.S. Trustee, as soon as practicable after entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors’ employer identification numbers, and (c) identify each Bank Account held at such banks as being held by a debtor-in-possession in a bankruptcy case.

16. Notwithstanding the Debtors’ use of their consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor regardless of which Debtor pays such disbursements.

17. Nothing herein authorizes the Debtors to make transfers or loans to non-debtor affiliates absent further order of the Court.

18. Bankruptcy Rule 6003 has been satisfied.

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

20. This Court shall retain jurisdiction to hear and determine all matters arising from or relating to the interpretation or implementation of this Order.

Dated: _____, 2024
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE