

**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. 105

**ORDER GRANTING MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER  
AUTHORIZING THE EMPLOYMENT AND RETENTION OF PROFESSIONALS  
UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

Upon consideration of the *Motion of the Debtors for Entry of an Order Authorizing the Employment and Retention of Professionals Utilized in the Ordinary Course of Business* (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 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 the Court having found 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 for the relief set forth in this Order; **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Pursuant to Bankruptcy Code sections 105, 327, 328, 330, and 331, to the extent deemed necessary or appropriate by the Debtors, the Debtors are authorized, but not directed, in

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: InVivo Therapeutics Corporation (6670) and InVivo Therapeutics Holdings Corp. (8166). The Debtors’ mailing address is 1500 District Avenue, Burlington, MA 01803.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the same meanings ascribed to them in the Motion.



their sole discretion, to retain the OCPs listed on **Exhibit 1** attached to this Order in the ordinary course of business without the need to file individual retention applications for each such professional; *provided, however*, that as a condition of such employment, each OCP shall comply with the OCP Procedures detailed herein. To the extent that the Debtors promptly retain such professionals listed on Exhibit 1, such retentions shall be *nunc pro tunc* to the Petition Date.

3. The following OCP Procedures are hereby approved:

- a. Within five (5) business days after the date of entry of this Order, the Debtors shall serve this Order upon each OCP. Thereafter, within thirty (30) days after the later of (i) entry of this Order and (ii) the date on which the OCP commences postpetition services for the Debtors, each OCP shall provide to the Debtors: (i) a declaration (the "OCP Declaration"), substantially in the form attached hereto as **Exhibit 2**, certifying that the professional does not represent or hold any interest adverse to the Debtors or their estates with respect to the matter on which the professional is to be employed; and (ii) a completed retention questionnaire (the "OCP Questionnaire") substantially in the form attached hereto as **Exhibit 3**;
- b. The Debtors shall then file the OCP Declaration and the OCP Questionnaire with the Court and serve them on: (i) the Office of the United States Trustee for the District of Delaware, Attn: Joseph Cudia, Esq. (joseph.cudia@usdoj.gov) (the "U.S. Trustee") and (ii) counsel for any statutory committee appointed in the Chapter 11 Cases (collectively, the "Notice Parties"). The Notice Parties shall then have fourteen (14) days following service to file an objection, if any, to the retention (which fourteen-day period may be extended with the consent of the Debtors). If after fourteen (14) days no objection is filed, the retention of such professional shall be deemed approved and the professional may be paid in accordance with paragraph (c) below, *nunc pro tunc* to the Petition Date, or, if later, the date on which the OCP commenced post-petition services for the Debtors. A professional shall not be paid any amounts until such professional has been approved under the OCP Procedures;
- c. After the retention of a professional has been approved in accordance with paragraph (b) above, the Debtors shall be permitted to pay the professional (without a prior application to the Court) one hundred percent (100%) of the fees and disbursements incurred, following submission to and approval

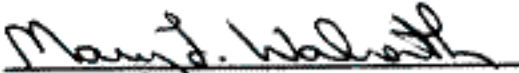
by the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and disbursements actually incurred, subject to the Aggregate Cap, in each case inclusive of the reasonable and necessary expenses of the professional.

- d. If an OCP's fees and expenses exceed the Aggregate Cap, as applicable, (i) the Debtors may pay such fees and expenses upon agreement by the Notice Parties, such agreement to be evidenced by the filing of a notice of increased cap amount, which will be deemed upon the filing of such notice, without further action by the Court, or (ii) absent such agreement, such OCP shall file a monthly fee application (a "Monthly Fee Application") that applies for compensation and reimbursement of the full amount of its fees and expenses in compliance with sections 330 and 331 of the Bankruptcy Code, as well as the applicable provisions of the Bankruptcy Rules, and the Local Rules, and any other procedures and orders of the Court including any order addressing interim compensation; provided, however that if an OCP does not, in the ordinary course of business, maintain time records in one-tenth-an-hour increments and indicates that to be the case in its declaration, and no party objects thereto or any such objection is resolved, the requirements of Local Rule 2016-2 shall be waived to permit said OCP to submit time records in whatever increments such professional ordinarily maintains their time and setting forth, in summary format, a description of the services rendered and the professionals rendering such services on behalf of the Debtors. The Notice Parties shall then have fourteen (14) days to object to the Monthly Fee Application. If no objection is timely filed, the fees and expenses requested in the Monthly Fee Application shall be deemed approved without further order of the Court, and the OCP may be paid one hundred percent (100%) of its fees and disbursements;
- e. At three (3) month intervals (each, a "Quarter") during the pendency of the Chapter 11 Cases, the Debtors shall file a statement reflecting the fees and expenses paid to the OCPs for the preceding three-month period (each, a "Quarterly OCP Statement") and serve copies of the Quarterly OCP Statement on the Notice Parties; provided that the initial Quarter shall be the Petition Date through April 30, 2024. The Quarterly OCP Statement shall include the following information: (i) the name of each OCP; (ii) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by each OCP during the reported Quarter; and (iii) a general description of the services rendered by that OCP;

- f. The Debtors reserve the right to supplement the list of OCPs from time-to-time as necessary. The Debtors have diligently attempted to identify all of their current OCPs. Nevertheless, some OCPs may have been omitted inadvertently. Further, the nature of the Debtors' business requires the retention of additional OCPs from time to time. In either event, the Debtors propose to file a notice (a "Supplemental Notice of OCPs") with the Court listing the additional OCPs that the Debtors intend to employ; and
  - g. An OCP listed on a Supplemental Notice of OCPs shall be retained and paid in accordance with the terms and conditions set forth above. For the avoidance of doubt, any OCPs identified in a Supplemental Notice of OCPs shall be subject to the Aggregate Cap.
4. All payments to OCPs shall be subject to sections 328(c) and 330 of the Bankruptcy Code.
  5. Except for law firms that represented the Debtors prior to the Petition Date and that have been employed pursuant to this Order, all OCPs shall, once their employment is effective pursuant to this Order, be deemed to have waived any and all pre-petition claims they may have against the Debtors and their estates, and must include a statement of disinterestedness in their Declaration.
  6. The Debtors shall disclose compensation paid to the OCPs pursuant to this Order in their monthly operating reports and in periodic statements to be filed on a quarterly basis (the "Quarterly Statements") with the first Quarterly Statement due April 15, 2024 covering the period from the Petition Date through and including March 31, 2024.
  7. This Order shall not apply to any professional retained by the Debtors pursuant to a separate order of this Court approving the retention of any such professional.

8. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the implementation or interpretation of this Order.

**Dated: March 26th, 2024**  
**Wilmington, Delaware**

  
**MARY F. WALRATH**  
**UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT 1**

# **EXHIBIT 1**

## **Schedule of Ordinary Course Professionals**

<b>Name of OCP</b>	<b>Description of Services</b>
Ballard Spahr LLP	Nevada Corporate Counsel
RSM US LLP	Auditing
WilliamsMarston LLC	Tax Preparation
<b>Aggregate Cap</b>	<b>\$30,000</b>

# **EXHIBIT 2**

## **OCP Declaration**



**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)

**DECLARATION IN SUPPORT OF EMPLOYMENT AND RETENTION  
OF [FIRM NAME] AS A PROFESSIONAL UTILIZED IN THE  
ORDINARY COURSE OF BUSINESS**

I, [DECLARANT], declare under the penalty of perjury as follows:

1. I am a member of [FIRM NAME] (the “Firm”), which has been employed by the debtors and debtors-in-possession (the “Debtors”) in the above-captioned cases (the “Chapter 11 Cases”) in the ordinary course of their business. The Debtors wish to employ and retain the Firm to continue providing such ordinary course services during the Chapter 11 Cases. This declaration is submitted in compliance with the *Order Granting Motion of the Debtors for Entry of an Order Authorizing the Employment and Retention of Professionals Utilized in the Ordinary Course of Business* (the “OCP Order”).

2. Neither I, the Firm, nor any member, counsel, or associate thereof, insofar as I have been able to ascertain, has any connection with the Debtors, their creditors or stockholders, or any party in interest, except as set forth herein:

3. [FIRM TO INCLUDE ANY DISCLOSURES]

4. The Firm does not represent or hold any interest adverse to the Debtors or their estates with respect to the engagement for which the Firm is to be retained.

---

<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.

5. The Firm and certain of its members, counsel, and associates may have in the past represented, currently represent and may in the future represent entities that are claimants or equity security holders of the Debtors in matters unrelated to the Debtors' Chapter 11 Cases. None of those past or current representations are material. The Firm intends to apply for compensation for professional services rendered in connection with the Chapter 11 Cases directly to the Debtors, in accordance with the OCP Order, through the submission of invoices and detailed time records based on the hourly rates set forth below, plus reimbursement of actual necessary expenses and other charges incurred by the Firm. The principal attorneys and paralegals/other professionals designated to represent the Debtors and their current rates are:

---

6. The rates set forth above are subject to periodic adjustments to reflect economic and other conditions. Such rates are the Firm's standard rates for work of this nature. The rates are set at a level designed to fairly compensate the Firm for the work of its professionals and to cover fixed and routine overhead expenses. It is the Firm's policy to charge its clients in all areas of practice for all other expenses incurred in connection with the respective client's matter. The expenses charged to clients include, among other things, [DESCRIPTION OF EXPENSES] and, in general, all identifiable expenses that would not have been incurred except for representation of a particular client. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to the Firm's other clients.

7. Except as provided in the OCP Order, no representations or promises have been received by the Firm [nor by any member, counsel or associate thereof] as to compensation in connection with these cases other than in accordance with the provisions of the Bankruptcy Code. The Firm has no agreement with any other entity to share with such entity any compensation

received by the Firm in connection with the Chapter 11 Cases.

I declare under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_, 2024

\_\_\_\_\_  
[PROFESSIONAL NAME]

[TITLE]

[ADDRESS]

# **EXHIBIT 3**

## **OCP Questionnaire**

**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)

**RETENTION QUESTIONNAIRE**

To be completed by each professional to be employed by the above-captioned debtors and debtors-in-possession (the “Debtors”):

If more space is needed, please complete on a separate page and attach.

1. Name and address of firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Date of retention: \_\_\_\_\_

3. Type of service(s) provided:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Brief description of service(s) to be provided:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<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.

5. Arrangements for compensation: \_\_\_\_\_
  - (a) Average rate (if applicable): \_\_\_\_\_
  - (b) Estimated compensation: \_\_\_\_\_
  
6. Prepetition claims against the Debtors held by the Firm:  
Amount of claim: \$ \_\_\_\_\_  
Date claim arose: \_\_\_\_\_  
Source of claim: \_\_\_\_\_
  
7. Prepetition claims against the Debtors held individually by any member, associate or professional employee of the Firm:  
Name: \_\_\_\_\_  
Status: \_\_\_\_\_  
Amount of claim: \$ \_\_\_\_\_  
Date claim arose: \_\_\_\_\_  
Source of claim: \_\_\_\_\_
  
8. Stock of the Debtors currently held individually by any member, associate or professional employee of the Firm:  
Kind of shares: \_\_\_\_\_  
No. of shares: \_\_\_\_\_
  
9. Stock of the Debtors currently held individually by any member, associate or professional employee of the Firm:  
Name: \_\_\_\_\_  
No. of shares: \_\_\_\_\_
  
10. Disclose the nature, and provide a brief description, of any interest adverse to the Debtors or to theirs estate respecting the matters on which the above-named firm is to be employed.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_