

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)

Hearing Date: July 17, 2024 at 11:30 a.m. (EDT)

Objection Deadline: June 19, 2024 at 4:00 p.m. (EDT)

**FIRST INTERIM FEE APPLICATION OF
WILMER CUTLER PICKERING HALE AND DORR LLP**

Name of Applicant: Wilmer Cutler Pickering Hale and Dorr LLP

Authorized to Provide Professional
Services to: Debtors and Debtors-In-Possession

Date of Retention: March 4, 2024 effective *nunc pro tunc* to
February 1, 2024

Period for which compensation and
reimbursement sought: February 1, 2024 through April 30, 2024

Total amount of compensation sought as
actual, reasonable and necessary: \$107,683.63²

Total amount of expense reimbursement
sought as actual, reasonable and necessary: \$0.00

Total amount of holdback fees sought: \$21,536.73

This is a: _____ monthly x interim _____ final application

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 This amount reflects a 12.5% discount in the aggregate amount of \$15



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SUMMARY OF MONTHLY FEE APPLICATIONS FOR INTERIM FEE PERIOD

Fee Application, Date Filed, Period Covered, Docket No.	Total Fees Requested	Total Expenses Requested	CNO File Date, Docket No.	Amount of Fees Paid or to be Paid (80%)	Amount of Expenses Paid or to be Paid (100%)	Amount of Holdback Fees Sought (20%)
First Monthly 3/14/2024 2/1/2024 - 2/29/2024 [D.I. 111]	\$61,304.25 ¹	\$0.00	3/29/2024 [D.I. 131]	\$49,043.40	\$0.00	\$12,260.85
Second Monthly 4/12/2024 3/1/2024 - 3/31/2024 [D.I. 147]	\$21,980.44 ²	\$0.00	4/29/2024 [D.I. 167]	\$17,584.35	\$0.00	\$4,396.09
Third Monthly 5/14/2024 4/1/2024 – 4/30/2024 [D.I. 185]	\$24,398.94 ³	\$0.00	<i>Pending</i> ⁴	\$19,519.15	\$0.00	\$4,879.79
TOTAL	\$107,683.63⁵	\$0.00		\$86,146.90	\$0.00	\$21,536.73

¹ This amount reflects a 12.5% discount in the amount of \$8,757.75.

² This amount reflects a 12.5% discount in the amount of \$3,140.06.

³ This amount reflects a 12.5% discount in the amount of \$3,485.56.

⁴ The deadline to file objections to the third monthly fee application is May 28, 2024 at 4:00 p.m. (ET).

⁵ This amount reflects a 12.5% discount in the aggregate amount of \$15,383.37.

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

In re:

INVIVO THERAPEUTICS CORPORATION, *et al.*¹

Debtors.

Chapter 11

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Hearing Date: July 17, 2024 at 11:30 a.m. (EDT)

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**FIRST INTERIM FEE APPLICATION OF
WILMER CUTLER PICKERING HALE AND DORR LLP**

Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”), special corporate counsel to the above-captioned Debtors and Debtors-in-possession (the “Debtors”), submits this *First Interim Fee Application of Wilmer Cutler Pickering Hale and Dorr LLP* (the “Application”) for allowance of compensation and reimbursement of expenses pursuant to 11 U.S.C. §§ 330 and 331 for legal services performed during the period commencing on February 1, 2024 through and including April 30, 2024 (the “Interim Fee Period”). In support thereof, WilmerHale respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) has jurisdiction over this Application 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. Venue is proper 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)(A) and (M), and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution.²

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 Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court (the {1394.002-W0075984.}

2. The statutory bases for the relief sought herein are sections 105(a), 330 and 331 of chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended or modified, the “Bankruptcy Code”).

BACKGROUND

3. On February 1, 2024 (the “Petition Date”), the Debtors commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code [D.I. 1].

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

5. The factual background relating to the Debtors’ commencement of these Chapter 11 Cases is set forth in detail in the *Declaration of Richard Christopher in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings* [D.I. 3].

6. The Office of the United States Trustee (the “U.S. Trustee”) did not appoint an official committee of unsecured creditors in these Chapter 11 Cases [D.I. 55] and, as of the date of this Application, no examiner or statutory committee has been appointed in these Chapter 11 Cases.

7. On February 22, 2024, the Bankruptcy Court entered the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [D.I. 85] (the “Interim Compensation Order”).

8. On March 4, 2024, the Bankruptcy Court entered the *Order Authorizing the Application of the Debtors and Debtors-In-Possession to Approve the Employment and Retention of Wilmer Cutler Pickering Hale and Dorr LLP as Special Corporate Counsel Nunc Pro Tunc to*

“Local Rules”), WilmerHale hereby confirms its consent to entry of a final order by the Bankruptcy Court in connection with this Application if it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

the Petition Date Pursuant to Bankruptcy Code Sections 327(e) and 328(a), Bankruptcy Rule 2014(a) and Local Rule 2014-1 [D.I. 99].

RELIEF REQUESTED

9. By this Application, WilmerHale seeks interim approval and allowance of its compensation for legal services rendered during the Interim Fee Period, including authorization for the Debtors to pay the 20% holdback of fees as provided under the Interim Compensation Order. WilmerHale has filed and served monthly fee applications and related certificates of no objection, where appropriate, for the periods covering February 1, 2024 through and including April 30, 2024 (collectively, the “Monthly Fee Applications”). A copy of the computer generated time entries reflecting the time recorded for services rendered, organized in project billing categories in accordance with the *Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330* (the “U.S. Trustee Guidelines”), is attached to each of the Monthly Fee Applications.³ Each of the Monthly Fee Applications is incorporated by reference as if fully set forth herein.⁴

10. A summary of the hours spent, the names of each professional and paraprofessional rendering services to the Debtors during the Interim Fee Period, the regular customary billing rates and the total value of time incurred by each professional and paraprofessional during the Interim Fee Period is attached hereto as **Exhibit A**.

11. A detailed itemization, by project category, of all services performed by WilmerHale during the Interim Fee Period is attached hereto as **Exhibit B**.

³ WilmerHale has also made reasonable efforts to submit this Application in a manner consistent with the U.S. Trustee Guidelines. To the extent that the U.S. Trustee Guidelines conflict with the Local Rules, in particular, Local Rule 2016-2, WilmerHale has chosen to comply with such Local Rule. WilmerHale will supplement this Application with additional detail or information upon request.

⁴ Copies of the Monthly Fee Applications [D.I. 111, 147 and 185] may be obtained by written request to the undersigned counsel.

COMPENSATION REQUESTED

12. WilmerHale seeks interim allowance of compensation for legal services rendered during the Interim Fee Period in the amount of **\$107,683.63**⁵ and reimbursement of actual and necessary expenses in the amount of **\$0.00** incurred in connection with rendering such services. In addition, WilmerHale requests authorization for the Debtors to pay the twenty percent (20%) “holdback” of fees in the amount of **\$21,536.73** with respect to the Monthly Fee Applications.

LEGAL STANDARD

13. Bankruptcy Code section 330(a)(1) allows the payment of:

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and

(B) reimbursement for actual, necessary expenses.

11 U.S.C. § 330(a)(1). Reasonableness of compensation is informed by the “market-driven approach,” which considers the nature, extent and value of services provided by the professional and the cost of comparable services in non-bankruptcy contexts. *See Zolfo Cooper & Co. v. Sunbeam-Oster Co.*, 50 F.3d 253, 258 (3d Cir. 1995), *citing In re Busy Beaver Building Ctr., Inc.*, 19 F.3d 833, 849 (3d Cir. 1994). Thus, the “baseline rule is for firms to receive their customary rates.” *Zolfo Cooper*, 50 F.3d at 259.

14. In accordance with its practices in non-bankruptcy matters, WilmerHale has calculated its compensation requested in this Application by applying its standard hourly rates. WilmerHale’s calculation is based upon hourly rates that are well within the range of rates that are charged by comparable firms in similar bankruptcy cases. Accordingly, WilmerHale’s rates should be determined to be reasonable under Bankruptcy Code section 330.

⁵ This amount reflects a 12.5% discount in the aggregate amount of \$15,383.37.

15. WilmerHale's fees incurred during the Interim Fee Period are also reasonable under the prevailing legal standard and should be allowed. The amount of these fees is not unusual given the complexity, size and the amount of work required at the outset of the Debtors' Chapter 11 Cases. WilmerHale's fees are commensurate with fees that other attorneys of comparable experience and expertise have charged and been awarded in similar chapter 11 cases. Accordingly, WilmerHale's fees are reasonable pursuant to Bankruptcy Code section 330.

16. Bankruptcy Code section 330(a)(1)(B) permits reimbursement for actual and necessary expenses. WilmerHale did not incur any expenses during the Interim Fee Period.

17. Except as permitted by Bankruptcy Rule 2016, no agreement or understanding exists between WilmerHale and/or any third person for the sharing or division of compensation. All of the services for which compensation is requested in this Application were rendered at the request of and solely on behalf of the Debtors.

18. Pursuant to the standards set forth in Bankruptcy Code sections 330 and 331, WilmerHale submits that the compensation requested is for actual and necessary services and is reasonable based upon the nature, extent and value of such services, the time spent thereon, and the costs of comparable services in cases under the Bankruptcy Code, and, therefore, should be allowed in full.

NOTICE AND NO PRIOR REQUEST

19. Notice of this Application has been given to the following parties or, in lieu of, to their counsel, if known: (a) the U.S. Trustee; and (b) all parties required to be given notice in the Interim Compensation Order. WilmerHale submits that no other or further notice is necessary.

20. No prior request for the relief sought in this Application has been made to this or any other Court.

WHEREFORE, WilmerHale respectfully requests that the Bankruptcy Court (i) grant the Application and (ii) grant such further relief as is just and proper.

Dated: May 29, 2024

**WILMER CUTLER PICKERING
HALE AND DORR LLP**

/s/ George W. Shuster, Jr.
George W. Shuster, Jr., Esq.
7 World Trade Center
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8000
Email: george.shuster@wilmerhale.com

*Special Corporate 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.*,¹

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

Hearing Date: July 17, 2024 at 11:30 a.m. ET
Obj. Deadline: June 19, 2024 at 4:00 p.m. (EDT)

**NOTICE OF FIRST INTERIM FEE APPLICATION OF
WILMER CUTLER PICKERING HALE AND DORR LLP**

TO: Office of the United States Trustee for the District of Delaware.

PLEASE TAKE NOTICE that on the date hereof, Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) filed the *First Interim Fee Application of Wilmer Cutler Pickering Hale and Dorr LLP* (the “Application”) with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that objections (the “Objections”), if any, to the Application must be made in accordance with the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [D.I. 85] (the “Interim Compensation Order”). Objections must be served on the following parties so as to be received no later than **4:00 p.m. ET on June 19, 2024** (the “Objection Deadline”):

- (1) 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);
- (2) Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Joseph Cudia, Esq. (joseph.cudia@usdoj.gov); and
- (3) counsel to any Committee.

A HEARING ON THE APPLICATION WILL BE HELD ON **JULY 17, 2024 AT 11:30 A.M. (ET)** BEFORE THE HONORABLE MARY F. WALRATH, UNITED STATES BANKRUPTCY COURT JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5th FLOOR, COURTROOM NO. 4, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IN ACCORDANCE WITH THE INTERIM COMPENSATION ORDER, IF NO OBJECTIONS ARE SERVED IN

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.

ACCORDANCE WITH THE INTERIM COMPENSATION ORDER, THE DEBTORS WILL BE AUTHORIZED TO PAY WILMERHALE AN AMOUNT EQUAL TO 80% OF THE FEES AND 100% OF THE EXPENSES REQUESTED IN THE APPLICATION THAT ARE UNOPPOSED WITHOUT FURTHER COURT ORDER.

PLEASE TAKE FURTHER NOTICE that if an Objection to the Application is served by the Objection Deadline, the parties shall follow the procedures set forth in the Interim Compensation Order.

Dated: May 29, 2024
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ George A. Williams III

Matthew B. McGuire (No. 4366)

Joshua B. Brooks (No. 6765)

George A. Williams III (No. 6964)

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Counsel for the Debtors and Debtors in Possession

EXHIBIT A

COMPENSATION BY PROFESSIONAL
(February 1, 2024 - April 30, 2024)

Name of Professional	Position; Year of Admission (if applicable); Practice Group	Hourly Billing Rate¹	Total Hours Billed	Total Compensation
George W. Shuster, Jr.	Partner; admitted to MA Bar since 2001 and NY Bar since 2010; Bankruptcy & Financial Restructuring	1,795.00	22.20	\$39,849.00
Benjamin Loveland	Partner; admitted to MA Bar and RI Bar since 2007; BFR	1,650.00	0.30	\$495.00
Jonathan Wolfman	Partner; admitted to MA Bar since 1989; Corporate	1,610.00	0.20	\$322.00
Rosemary G. Reilly	Partner; admitted to NY Bar since 1995, CA Bar since 1997 and MA Bar since 2005; Corporate	1,535.00	4.80	\$7,368.00
Lauren Lifland	Counsel; admitted to NY Bar since 2012; Bankruptcy & Financial Restructuring	1,360.00	25.00	\$34,000.00
Hilary Baker-Jennings	Counsel; admitted to MA Bar since 2016; Corporate	1,270.00	0.30	\$381.00
Austin M. Chavez	Associate; admitted to TX Bar since 2022 and NY Bar since 2023; Bankruptcy & Financial Restructuring	1,015.00	15.60	\$15,834.00
Helen Park	Associate; admitted to MA Bar since 2022; Corporate	865.00	0.60	\$519.00
Yolande Thompson	Senior Paralegal; Bankruptcy & Financial Restructuring	710.00	33.70	\$23,927.00
Cynthia M. Sullivan	Senior Paralegal; Corporate	620.00	0.60	\$372.00
TOTAL			103.30	\$123,067.00
Less 12.5% Discount				-\$15,383.37
GRAND TOTAL			103.30	\$107,683.63

Blended Hourly Rate: \$1,191.36

¹ WilmerHale's billing rates remained the same during the Interim Fee Period.
{1394.002-W0075984.}

EXHIBIT B

COMPENSATION BY PROJECT CATEGORY
(February 1, 2024 - April 30, 2024)

Project Category	Total Hours	Total Fees
B110 - Case Administration	6.00	\$10,148.00
B130 - Asset Disposition	0.20	\$272.00
B150 - Meetings of and Communications with Creditors	4.60	\$7,537.00
B160 - Fee/Employment Applications	68.00	\$68,231.50
B185 - Assumption/Rejection of Leases and Contracts	1.90	\$2,101.00
B210 - Business Operations	13.70	\$20,494.00
B220 - Employee Benefits/Pensions	0.80	\$1,436.00
B260 - Board of Directors Matters	3.50	\$6,282.50
B310 - Claims Administration and Objections	0.30	\$408.00
B320 - Plan and Disclosure Statement (including Business Plan)	4.30	\$6,157.00
TOTAL	103.30	\$123,067.00
Less 12.5% Discount		-\$15,383.37
GRAND TOTAL	103.30	\$107,683.63

**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)

CERTIFICATION OF GEORGE W. SHUSTER, JR.

George W. Shuster, Jr., an attorney at law, duly admitted and in good standing to practice in the State of New York and the Commonwealth of Massachusetts, hereby certifies that:

1. I am a partner in the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”) and I am duly authorized to make this certification on behalf of WilmerHale. WilmerHale was retained by the above-captioned Debtors and Debtors-in-Possession as its special corporate counsel pursuant to an order of the Bankruptcy Court. This certification is made in support of the *First Interim Fee Application of Wilmer Cutler Pickering Hale and Dorr LLP* (the “Application”) and in compliance with rule 2016-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Rule 2016-2”) and with the *United States Trustee’s Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330* (the “U.S. Trustee Guidelines”).

2. I have read the Application and I certify that the Application substantially complies with Rule 2016-2 and the U.S. Trustee Guidelines.

Dated: May 29, 2024

/s/ George W. Shuster, Jr.
George W. Shuster, Jr.

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. {1394.002-W0075984.}