

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

In re:  INVIVO THERAPEUTICS CORPORATION, <i>et al.</i> <sup>1</sup>  Debtors.	Chapter 11  Case No. 24-10137 (MFW)  (Jointly Administered)  <b>Hearing Date: July 17, 2024 at 11:30 a.m. (EDT)</b> <b>Objection Deadline: June 20, 2024 at 4:00 p.m. (EDT)</b>
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**FIRST INTERIM FEE APPLICATION OF LANDIS RATH & COBB LLP**

Name of Applicant: Landis Rath & Cobb 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

This is a(n)      monthly   x   interim      final application

Interim Fee Application Period, Date Filed & Docket Number	Total Fees Requested	Total Expenses Requested	CNO Filing Date, Docket Number	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 3/12/2024 2/1/2024 - 2/29/2024 [D.I. 109]	\$97,210.00	\$463.01	3/27/2024 D.I. 126	\$77,768.00	\$401.21 <sup>2</sup>	\$19,442.00

<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> This amount reflects an adjustment made on account of \$61.80 in expenses for in-house copying and working meals not attributable to the Application Period but inadvertently included in the *First Monthly Application of Landis Rath & Cobb LLP, Counsel to the Debtors and Debtors-in-Possession, for Compensation and Reimbursement of Expenses Pursuant to 11 U.S.C. §§ 330 and 331 for the Period From February 1, 2024 through February 29, 2024* [D.I. 109] (“First Monthly Application”).

{1394.002-W0075986.2}



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<b>Interim Fee Application Period, Date Filed &amp; Docket Number</b>	<b>Total Fees Requested</b>	<b>Total Expenses Requested</b>	<b>CNO Filing Date, Docket Number</b>	<b>Amount of Fees Paid or to be Paid (80%)</b>	<b>Amount of Expenses Paid or to be Paid (100%)</b>	<b>Amount of Holdback Fees Sought (20%)</b>
Second Monthly 4/11/2024 3/1/2024 - 3/31/2024 [D.I. 145]	\$46,130.50 <sup>3</sup>	\$1,075.10	4/26/2024 D.I. 161	\$36,904.40	\$1,075.10	\$9,226.10
Third Monthly 5/14/2024 4/1/2024 – 4/30/2024 [D.I. 186]	\$51,075.50	\$49.66	3/29/2024 D.I. 199	\$40,860.40	\$49.66	\$10,215.10
<b>TOTALS:</b>	<b>\$194,416.00</b>	<b>\$1,587.77</b>	<b>N/A</b>	<b>\$155,532.80</b>	<b>\$1,525.97</b>	<b>\$38,883.20</b>

3 As noted in the *Certificate of No Objection* [D.I. 161] filed on April 26, 2024, this amount reflects an adjustment made on account of 1.7 hours valued at \$585.00 in fees inadvertently included in the First Monthly Application.

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

**Objection Deadline: June 20, 2024 at 4:00 p.m. (EDT)**

**FIRST INTERIM FEE APPLICATION OF LANDIS RATH & COBB LLP**

Landis Rath & Cobb LLP (“LRC”), counsel to the above-captioned Debtors and Debtors-in-Possession (the “Debtors”), hereby submits this *First Interim Fee Application of Landis Rath & Cobb 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 February 1, 2024 through April 30, 2024 (the “Application Period”). In support thereof, LRC respectfully represents 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 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

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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.

(M), and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution.<sup>2</sup>

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.

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

5. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and information regarding the Debtors’ businesses 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. 2].

6. On February 22, 2024, the Court entered its *Order Authorizing the Employment and Retention of Landis Rath & Cobb LLP as Counsel, Nunc Pro Tunc to the Petition Date, Pursuant to Bankruptcy Code Section 327(a), Bankruptcy Rules 2014 and 2016 and Local Rule*

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<sup>2</sup> Pursuant to rule 9013(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), LRC hereby confirms its consent to entry of a final order by the Bankruptcy Court in connection with this Application if it is later determined the Bankruptcy Court, absent consent of the parties, cannot enter final orders and judgments consistent with Article III of the United States Constitution.

2014-1 [D.I. 83] authorizing the Debtors' retention of LRC as their counsel in these Chapter 11 Cases.

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

### **RELIEF REQUESTED**

8. By this Application, LRC seeks interim approval and allowance of its compensation for legal services and reimbursement of expenses incurred during the Application Period, including authorization for the Debtors to pay the 20% holdback of fees as provided under the Interim Compensation Order. LRC has filed and served monthly fee applications and related certificates of no objection, where appropriate, for the periods covering February 1, 2024 through 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") and statement of the expenses incurred by LRC are attached to each of the Monthly Fee Applications.<sup>3</sup> Each of the Monthly Fee Applications is incorporated by reference as if fully set forth herein.<sup>4</sup>

9. This Application is supported by (i) **Exhibit A**, which is a summary of compensation by each professional of LRC who worked on these Chapter 11 Cases during the

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<sup>3</sup> LRC 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, LRC has chosen to comply with such Local Rule. LRC will supplement this Application with additional detail or information upon request.

<sup>4</sup> Copies of the Monthly Fee Applications are available at D.I. 109, 145, and 186 and may be obtained by written request to the undersigned counsel.

Application Period; (ii) **Exhibit B**, which is a summary of compensation by project category; (iii) **Exhibit C**, which is an expense summary; and (iv) the Certification of Matthew B. McGuire, which is attached hereto as **Exhibit D**.

### **COMPENSATION REQUESTED**

10. LRC seeks interim allowance of fees in the amount of \$194,416.00 for legal services rendered and reimbursement of expenses in the amount of \$1,525.97 which were incurred during the Application Period. In addition, LRC requests that the Debtors are authorized to pay LRC \$38,821.40 representing the twenty percent (20%) “holdback” of fees (\$38,883.20) less \$61.80 in expenses inadvertently included in the First Monthly Application.

### **LEGAL STANDARD**

11. 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); *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.

12. In accordance with its practices in non-bankruptcy matters, LRC has calculated its compensation requested in this Application by applying its standard hourly rates. LRC’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, LRC's rates should be determined to be reasonable under Bankruptcy Code section 330.

13. LRC's fees during the Application Periods 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 extraordinary amount of work required at the outset of the Debtors' Chapter 11 Cases. LRC'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, LRC's fees are reasonable pursuant to Bankruptcy Code section 330.

14. Bankruptcy Code section 330(a)(1)(B) permits reimbursement for actual and necessary expenses. LRC's legal services and expenses incurred during the Application Period are set forth in this Application and constitute only those necessary expenses that were incurred for the benefit of the Debtors' estates. LRC has properly requested reimbursement of only actual, necessary and appropriate legal expenses.

15. Except as permitted by Bankruptcy Rule 2016, no agreement or understanding exists between LRC 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.

16. Pursuant to the standards set forth in Bankruptcy Code sections 330 and 331, LRC submits that the compensation requested is for actual and necessary services and expenses, 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.

17. The considerable challenges of these Chapter 11 Cases have been attended to and managed by LRC at all levels promptly, expertly and often to the exclusion of other matters in

LRC's office. LRC submits, therefore, that its fees and expenses were actually necessary, reasonable and justified, and should be allowed in full.

**NOTICE AND NO PRIOR REQUEST**

18. Notice of this Application has been given to the following parties or, in lieu of, to their counsel, if known: the Office of the United States Trustee for the District of Delaware. LRC submits that no other or further notice is necessary.

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

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

Dated: May 30, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ Matthew B. McGuire

Matthew B. McGuire (No. 4366)

Joshua B. Brooks (No. 6765)

George A. Williams III (No. 6964)

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



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

In re:

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

Debtors.

Chapter 11

Case No. 24-10137 (MFW)

(Jointly Administered)

**Hearing Date: July 17, 2024 at 11:30 a.m. ET**

**Obj. Deadline: June 20, 2024 at 4:00 p.m. (EDT)**

**NOTICE OF FIRST INTERIM FEE APPLICATION OF LANDIS RATH & COBB LLP**

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

**PLEASE TAKE NOTICE** that on the date hereof, Landis Rath & Cobb LLP (“LRC”) filed the *First Interim Fee Application of Landis Rath & Cobb 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. 65] (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 20, 2024** (the “Objection Deadline”):

(1) Counsel to the Debtors, Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Matthew B. McGuire, Esq., mcguire@lrclaw.com and Joshua B. Brooks, Esq., brooks@lrclaw.com); and (2) the 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 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 IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE APPLICATION WITHOUT FURTHER NOTICE OR HEARING.**

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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.

Dated: May 30, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

/s/ George A. Williams III

Matthew B. McGuire (No. 4366)

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*Counsel for the Debtors and Debtors in Possession*

# EXHIBIT A

**SUMMARY OF FEES BY INDIVIDUAL FOR THE APPLICATION PERIOD**  
**(February 1, 2024 – April 30, 2024)**

<b>Name of Professional</b>	<b>Position w/LRC and Year of Admission</b>	<b>Year of Law School Graduation</b>	<b>Hourly Billing Rate<sup>1</sup></b>	<b>Total Billed Hours</b>	<b>Total Compensation</b>
Matthew B. McGuire	Partner; admitted PA 2001, DE 2003	May, 2000	\$1,025.00	87.90	\$90,097.50
Matthew R. Pierce	Partner; admitted DE 2013	May, 2013	\$750.00	0.20	\$150.00
Joshua B. Brooks	Associate; admitted MD 2021, DE 2022	May, 2020	\$535.00	133.70	\$71,529.50
George A. Williams	Associate; admitted DE 2022	May, 2021	\$450.00	34.60	\$15,570.00
Melissa Ramirez	Paralegal	N/A	\$350.00	6.30	\$2,205.00
Jennifer L. Ford	Paralegal	N/A	\$350.00	27.10	9,485.00
Joshua Huynh	Paralegal	N/A	\$310.00	18.90	\$5,859.00
<b>Sub-Total</b>				<b>309.00</b>	<b>\$195,001.00</b>
Adjustment				1.70	\$585.00
<b>Total</b>				<b>307.30</b>	<b>\$194,416.00</b>

**Blended Hourly Rate: \$631.07**

<sup>1</sup> LRC's billing rates have not changed during the Application Period (defined below).

# EXHIBIT B

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

B110 – Asset Analysis and Recovery	1.50	\$1,537.50
B112 – Asset Disposition	14.9	\$8,403.50
B114 – Assumption/Rejection of Leases and Contracts	8.80	\$5,264.50
B118 – Board of Directors Matters	0.30	\$307.50
B120 – Business Operations	15.6	\$9,480.00
B122 – Case Administration	37.5	\$21,593.50
B124 – Claims Administration & Objections	19.0	\$11,267.50
B126 – Employee Benefits/Pensions	0.80	\$320.00
B130 – Financing/Cash Collateral	0.50	\$175.00
B134 – Hearings	35.7	\$16,951.50
B135 – Litigation	3.70	\$3,081.50
B136 – LRC Retention & Fee Matters	19.5	\$10,078.50
B138 – Committee Meetings/Communications	0.00	\$0.00
B139 – Equity Committee	15.2	\$15,090.00
B140 – Creditor Inquiries	0.50	\$267.50
B144 – Non-LRC Retention & Fee Matters	54.1	\$28,424.00
B146 – Plan and Disclosure Statement (including Business Plan)	43.2	\$33,312.50
B150 – Relief from Stay/Adequate Protection Proceedings	0.00	\$2,835.00
B151 – Schedules/Operating Reports	37.7	\$26,386.50
B152 – Tax Issues	0.50	\$225.00
<b>SUB-TOTAL</b>	<b>309.00</b>	<b>\$195,001.00</b>
Adjustment	1.70	\$585.00
<b>TOTAL</b>	<b>307.30</b>	<b>\$194,416.00</b>

# EXHIBIT C

**SUMMARY EXPENSE SUMMARY FOR THE APPLICATION PERIOD**  
**(February 1, 2024 – April 30, 2024)**

Inhouse Copying	\$148.00
Outside Printing	\$8.96
Online Research	\$12.21
Delivery Services/Messengers	\$93.80
Lien Searches	\$914.00
Document Retrieval	\$0.00
Filing Fee	\$349.00
Hearing Transcripts	\$0.00
Overnight Delivery	\$0.00
<b>TOTAL:</b>	<b>\$1,525.97</b>



# EXHIBIT D

**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)

**CERTIFICATION OF MATTHEW B. MCGUIRE**

Matthew B. McGuire, an attorney-at-law, duly admitted and in good standing to practice in the State of Delaware, hereby certifies that:

1. I am a partner in the firm of Landis Rath & Cobb LLP (“LRC”) and I am duly authorized to make this certification on behalf of LRC. LRC was retained by the above-captioned Debtors and Debtors-in-possession as bankruptcy counsel pursuant to an order of the Bankruptcy Court. This certification is made in support of the *First Interim Fee Application of Landis Rath & Cobb 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”) 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 “Guidelines”)

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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.

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

Dated: May 30, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

*/s/ Matthew B. McGuire*

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