

**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. 168

**DECLARATION OF JEFFREY MILLER REGARDING THE SOLICITATION AND
TABULATION OF VOTES ON THE DEBTORS' JOINT CHAPTER 11 PLAN OF
LIQUIDATION**

I, Jeffrey Miller, declare, under the penalty of perjury:

1. I am a Managing Director of Corporate Restructuring Services at Kurtzman Carson Consultants LLC dba Verita Global (“**Verita**”). I am over the age of eighteen years and not a party to the above-captioned action.

2. I submit this declaration (the “**Declaration**”) with respect to the solicitation of votes and the tabulation of ballots cast on the Plan.² Except as otherwise noted, all facts set forth herein are based on my personal knowledge, knowledge that I acquired from individuals under my supervision, and/or my review of the relevant documents. I am authorized to submit this Voting

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 The “**Plan**” means the *Joint Plan of Liquidation of Invivo Therapeutics Corporation and Invivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code*, dated April 29, 2024 [Docket No. 168] (as modified by the *Notice of Filing of Revised Joint Plan of Liquidation of Invivo Therapeutics Corporation and Invivo Therapeutics Holding Corp. Pursuant to Chapter 11 of the Bankruptcy Code*, dated April 29, 2024 [Docket No. 162], the *Notice of Filing Plan Supplement*, dated June 11, 2024 [Docket No. 219] and as may be further modified, amended, or supplemented from time to time). Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Plan or the Amended Interim Approval and Procedures Order (defined below).

{1394.002-W0076262.}



Report on behalf of Verita. If I were called to testify, I could and would testify competently as to the facts set forth herein.

3. This Court authorized Verita's retention as (a) the claims and noticing agent to the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") pursuant to the *Order Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date*, dated February 2, 2024 [Docket No. 29] and (b) the administrative advisor pursuant to the *Order Authorizing the Debtors to Employ and Retain Kurtzman Carson Consultants LLC as Administrative Advisor Effective as of the Petition Date*, dated February 22, 2024 [Docket No. 84] (collectively, the "**Retention Orders**"). The Retention Orders authorize Verita to assist the Debtors with, among other things, the service of solicitation materials and tabulation of votes cast to accept or reject the Plan. Verita and its employees have considerable experience in soliciting and tabulating votes to accept or reject chapter 11 plans, and have served as claims, noticing and solicitation agent to numerous debtors in the United States Bankruptcy Court for the District of Delaware.

I. Service and Transmittal of Solicitation Packages and Related Materials

4. Pursuant to the *Amended Order (I) Approving the Disclosure Statement on an Interim Basis; (II) Scheduling a Combined Hearing on Final Approval of the Disclosure Statement and Plan Confirmation and Deadlines Related Thereto; (III) Approving the Solicitation, Notice and Tabulation Procedures and the Forms Related Thereto; and (IV) Granting Related Relief*, dated May 6, 2024 [Docket No. 177] (the "**Amended Interim Approval and Procedures Order**"), the Bankruptcy Court approved procedures to solicit votes from, and tabulate Ballots submitted by, Holders of Claims or Interests entitled to vote on the Plan (the "**Solicitation Procedures**"). Verita adhered to the Solicitation Procedures outlined in the Amended Interim

Approval and Procedures Order and, among other things, distributed (or caused to be distributed) Solicitation Packages (including Ballots) to parties entitled to vote on the Plan. I supervised the solicitation and tabulation performed by Verita's employees.

5. The Amended Interim Approval and Procedures Order established April 30, 2024 as the record date for determining which holders of Claims or Interests in the Voting Classes are entitled to vote to accept or reject the Plan (the "**Voting Record Date**"). Pursuant to the Plan and the Solicitation Procedures, only Holders of Claims or Interests as of the Voting Record Date in the following Classes were entitled to vote to accept or reject the Plan (the "**Voting Class**"):

Plan Class	Class Description
4	General Unsecured Claims
5	ARE Subordinated Claims
6	Interests

No other Classes were entitled to vote on the Plan.

6. In accordance with the Solicitation Procedures, Verita worked closely with the Debtors and their advisors to identify the Holders of Claims or Interests entitled to vote in the Voting Classes as of the Voting Record Date, and to coordinate the distribution of Solicitation Packages to these Holders of Claims or Interests or to the banks, brokers, or other nominees that held Interests on behalf of underlying beneficial holders entitled to vote to accept or reject the Plan. A detailed description of Verita's distribution of Solicitation Packages is set forth in Verita's (a) *Certificate of Service*, dated May 16, 2024 [Docket No. 189].

II. The Tabulation Process

7. In accordance with the Solicitation Procedures, Verita received, reviewed, determined the validity of, and tabulated the Ballots submitted to vote on the Plan. Each Ballot

submitted to Verita was date-stamped, scanned (if submitted on paper), assigned a ballot number, entered into Verita's voting database, and processed in accordance with the Solicitation Procedures. To be included in the tabulation results as valid, a Ballot must have been (a) properly completed pursuant to the Solicitation Procedures, (b) executed by the relevant Holder entitled to vote on the Plan (or such Holder's authorized representative), (c) returned to Verita via an approved method of delivery set forth in the Solicitation Procedures, and (d) received by Verita by 5:00 p.m. (prevailing Eastern Time) on June 14, 2024 (as the same may have been extended by the Debtors with respect to particular Holders, the "**Voting Deadline**").

8. All valid Ballots cast by Holders of Claims or Interests entitled to vote in the Voting Classes and received by Verita on or before the applicable Voting Deadline were tabulated pursuant to the Solicitation Procedures.

9. The final tabulation of votes cast by timely and properly completed Ballots received by Verita is attached hereto as **Exhibit A**. The detailed Ballot reports for all Voting Classes are attached hereto as **Exhibit A-1** through **Exhibit A-4**. **Exhibit B** attached hereto reflects ballots that were not included in the tabulation because they did not satisfy the requirements for a valid ballot for reasons set forth in the exhibit.

To the best of my knowledge, information, and belief, I declare under penalty of perjury that the foregoing information concerning the distribution, submission, and tabulation of ballots in connection with the Plan is true and correct.

Dated: June 17, 2024

/s/ Jeffrey Miller
Jeffrey Miller
Kurtzman Carson Consultants LLC
dba Verita Global

Exhibit A

Voting Tabulation

Exhibit A
Ballot Summary Report

Class	Class Description	Not Tabulated	Members Voted	Members Accepted	Members Rejected	% Members Accepted	% Members Rejected	Total Amount Voted	Amount Accepted	Amount Rejected	% Amount Accepted	% Amount Rejected
4	General Unsecured Claims	3	1	1	0	100.00%	0.00%	\$680.00	\$680.00	\$0.00	100.00%	0.00%
5	ARE Subordinated Claims	0	1	1	0	100.00%	0.00%	\$54,527.00	\$54,527.00	\$0.00	100.00%	0.00%
6	Interests	1	393	270	123	68.70%	31.30%	517,638 Shares	505,786 Shares	11,852 Shares	97.71%	2.29%

Exhibit A-1

Exhibit A-1
Class 4 Ballot Detail
General Unsecured Claims

Creditor Name	Date Filed	Ballot No.	Voting Amount	Vote
Tiziani Whitmyre, Inc.	05/20/2024	2	\$680.00	Accept
TOTAL:		Accept	\$680.00	1
		Reject	\$0.00	0

Exhibit A-2

Exhibit A-2
Class 5 Ballot Detail
ARE Subordinated Claims

Creditor Name	Date Filed	Ballot No.	Voting Amount	Vote
ARE-MA Region No. 59, LLC	05/20/2024	8	\$54,527.00	Accept
TOTAL:		Accept	\$54,527.00	1
		Reject	\$0.00	0

Exhibit A-3

Exhibit A-3
Class 6 Ballot Detail
Registered Holders (Interests)

Creditor Name	Date Filed	Ballot No.	Total Number of Shares Voting	Vote
JOYCE FENSTERSTOCK	05/16/2024	1	1	Accept
WILLIAM M STRAWBRIDGE	05/21/2024	3	1	Accept
VINCENT G SCOTT	05/21/2024	4	1	Accept
BETH L GOTTSBALL	05/21/2024	5	1	Accept
EDWARD ROBINSON	05/20/2024	7	1	Accept
HAROLD S GAULT & EVELYN GAULT JTWROS	06/01/2024	12	1	Accept
Robert Cartmell	06/03/2024	13	1	Accept
MARGARET M CARTMELL	06/03/2024	14	1	Accept
JOHN F KELLY	06/03/2024	15	1	Accept
JAMES P KELLY	06/03/2024	16	1	Accept
MARGARET M CARTMELL CUST	06/03/2024	17	1	Accept
KEVIN M CARTMELL	06/03/2024	18	1	Accept
TOTAL:		Accept	12	12
		Reject	0	0

Exhibit A-4

**Class 4 Ballot Detail Report
 Beneficial Holders (Interests)**

DTC Participant No.	Nominee	Total No. of Accounts Voting	No. of Accounts Accepting	No. of Accounts Rejecting	Total Number of Shares Voting	Number of Shares Accepting	Number of Shares Rejecting
15	MSSB	52	39	13	7,975	6,401	1,574
50	MORGAN LLC	1		1	1		1
62	VANGUARD	8	5	3	15	5	10
75	LPL LLC	3	3		2,675	2,675	
103	WEDBUSH	1	1		1	1	
141	WELLS CLRG	9	7	2	526	524	2
158	APEX CLEAR	43	30	13	1,186	573	613
161	BOFA	1	1		884	884	
164	CHS SCHWAB	120	82	38	5,577	2,469	3,108
188	TD AMERITR	12	4	8	1,182	71	1,111
221	UBS FINAN	4	4		149	149	
226	NFS LLC	82	48	34	77,481	72,156	5,325
235	RBCCAPMKTS	1		1	1		1
283	WIL-DAV	1	1		1	1	
352	JPMS/JPMC	2	2		101	101	
443	PERSHING	6	5	1	414,226	414,225	1
534	INT BROKER	7	5	2	504	473	31
571	OPPENHEIME	1		1	20		20
725	RAYMOND	2	2		22	22	
756	AEIS INC.	4	3	1	43	42	1
793	STIFEL	1	1		188	188	
901	BANK OF NY	2	2		101	101	
2116	FIFTH NA	1	1		1	1	
2669	NRTHRN TR	1	1		2	2	
5002	RBC/DOMN	4	1	3	229	180	49
5004	WLTHSL/CDS	3	2	1	5	4	1
5008	NBFI INC	1	1		2,722	2,722	
5036	TD WATER	2	2		220	220	
5043	BMO NSBT	1		1	4		4
5084	QUES/CDS	1	1		2	2	
8862	MLPFS/8862	4	4		1,582	1,582	
TOTAL		381	258	123	517,626	505,774	11,852

Exhibit B

Exhibit B
Ballots Excluded from Tabulation

Class	Creditor Name	Date Filed	Ballot No.	Voting Amount	Vote	Reason Not Tabulated
6	Harold S Gault & Evelyn Gault JT TEN	06/01/2024	11	1 Share	Abstain	Abstained
4	Heather M. Hamel	05/23/2024	10	\$404,408.18	Accept	Ballot Submitted by Insider ³
4	Richard Christopher	05/22/2024	9	\$419,446.04	Accept	Ballot Submitted by Insider ³
4	Richard Mark Toselli	05/17/2024	6	\$879,507.89	Accept	Ballot Submitted by Insider ³

³Vote casted by holder of Class 4 Claim that is an Insider of the Debtors and has not been counted by the Debtors for purposes of satisfying section 1129(a)(10) of the Bankruptcy Code.