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

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| In re: | Chapter 11 |
| INVIVO THERAPEUTICS CORPORATION, *et al.*,[1] | Case No. 24-10137 (MFW) |
| | (Jointly Administered) |
| Debtors. | **Ref. Nos. 138 & 139** |

**DECLARATION OF RICHARD CHRISTOPHER IN SUPPORT OF CONFIRMATION OF THE JOINT PLAN OF LIQUIDATION OF INVIVO THERAPEUTICS CORPORATION AND INVIVO THERAPEUTICS HOLDINGS CORP. PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE**

I, Richard Christopher, hereby submit this declaration (the "Declaration") and declare under the penalty of perjury that the following information is true and correct to the best of my knowledge, information and belief:

1. I am the Chief Financial Officer (the "CFO") of the above-captioned debtors and debtors-in-possession (the "Debtors" or "InVivo"). I am duly authorized to make this Declaration on behalf of the Debtors.

2. I submit this Declaration in support of confirmation of the *Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Pursuant to Chapter 11 of the Bankruptcy Code* [D.I. 138] (together with all exhibits and as amended, modified revised, or supplemented, the "Plan").[2] Except as otherwise indicated, all facts set forth in this Declaration are based on my personal knowledge, information provided by professionals or consultants retained by the Debtors, or information I obtained by reviewing relevant documents.

[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 used but not defined herein shall have the meanings ascribed to them in the *Declaration of Richard Christopher in Support of the Debtors' Chapter 11 Petition and First Day Pleadings* [D.I. 3] (the "First Day Declaration"), the Plan or the Disclosure Statement (defined herein), as applicable.



3. I am not being compensated specifically for this testimony. If called upon to testify, I could and would testify competently as to the facts set forth herein.

4. I have served as InVivo's CFO since January 2019. In that capacity, I am familiar with InVivo's business, day-to-day operations and financial affairs.

5. In my role as CFO of InVivo, I have responsibility for business development, corporate accounting and finance, legal affairs, human resources and information technology functions. I have more than 25 years of financial experience at a variety of publicly-traded life sciences companies, and expertise in corporate finance and partnering transactions, corporate governance, securities, compliance, employment law and other legal and operational issues relevant to developing new therapies and solutions in both the private and public company setting. Prior to my appointment as CFO, I served as the chief financial officer of iCAD Inc., a Nasdaq-listed company with a focus on therapies and solutions for the early identification and treatment of cancer. Prior to iCAD Inc., I served as chief financial officer and chief operating officer of Caliber Imaging & Diagnostics, Inc. ("Caliber"), a medical technology company focused on cancer detection imaging solutions, with primary applications in dermatology. Before Caliber, I held various positions of increasing responsibility at DUSA Pharmaceuticals, Inc., a Nasdaq-listed dermatology company focused on the treatment of precancerous skin lesions, where I ultimately served as chief financial officer through its acquisition and integration into Sun Pharmaceuticals Industries Ltd. I hold an M.S. in accounting from Suffolk University and a B.S. in finance from Bentley University.

6. In making the statements and arriving at the conclusions set forth herein, I have relied upon and/or considered, among other things, the following: (a) my knowledge of the Debtors' business, operations, assets and liabilities; (b) the Plan; (c) the *Disclosure Statement for*

*the Joint Plan of Liquidation of InVivo Therapeutics Corporation and InVivo Therapeutics Holdings Corp. Inc. Pursuant to Chapter 11 of the Bankruptcy Code*, dated April 8, 2024 [D.I. 139] (together with all exhibits thereto and as amended, modified, revised or supplemented, the "Disclosure Statement"); and (d) my discussions with the Debtors' creditors and other interested parties.

***The Plan Satisfies the Plan Confirmation Requirements Under Bankruptcy Code Section 1129***

7. Based on the foregoing I believe that the Plan satisfies all applicable provisions of the Bankruptcy Code and should be confirmed.

8. **The Plan Complies with Bankruptcy Code Section 1129(a)(1).** I understand that a plan may be confirmed only if "[t]he plan complies with the applicable provisions of [the Bankruptcy Code]." I further understand that the primary focus of this requirement is to ensure that a plan complies with Bankruptcy Code sections 1122 and 1123, which govern classification of claims and interests and the contents of a plan, respectively.

9. I understand that, under Bankruptcy Code section 1122, a plan may classify various claims and interests into different classes, so long as all the claims and interests in a particular class are substantially similar. It is my understanding that valid business, factual, and legal reasons exist for classifying the Claims and Interests into separate classes under the Plan and that the Claims or Interests in each particular class are substantially similar. Similar Claims and Interests have not been placed into different classes in order to affect the outcome of the vote on the Plan. Accordingly, I believe that the Plan satisfies Bankruptcy Code section 1122.

10. Furthermore, I understand that Bankruptcy Code section 1123(a) requires that a chapter 11 plan: (a) designate classes of claims and interests; (b) specify unimpaired classes of claims and interests; (c) specify treatment of impaired classes of claims and interests; (d) provide

for equality of treatment within each class; (e) provide adequate means for the plan's implementation; (f) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (g) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors. I understand that the Plan satisfies each of these requirements, to the extent applicable. Article III of the Plan designates six (6) separate Classes of Claims and Interests, as required by Bankruptcy Code section 1123(a)(1). Articles III.B and III.C of the Plan specify that the Claims in Classes 1, 2 and 3 are unimpaired under the Plan, as required by Bankruptcy Code section 1123(a)(2). Articles III.B and III.C further specify that the Claims or Interests in Classes 4 through 6 are impaired and describes the treatment of each such Class in accordance with Bankruptcy Code section 1123(a)(3). Further, as required by Bankruptcy Code section 1123(a)(4), the treatment of each Claim or Interest within a Class is either (i) the same as the treatment of each other Claim or Interest in such class or (ii) otherwise consistent with the legal rights of such claimant. In accordance with the requirements of Bankruptcy Code section 1123(a)(5), the Plan provides adequate means for its implementation through Article IV and various other provisions. Specifically, the Plan provides for, among other things: (a) the cancellation of all existing securities and related documents of the Debtors; (b) the dissolution of the existing board of directors or managers, as applicable, of the Debtors; (c) the establishment of the Liquidation Trust and appointment of the Liquidation Trustee; and (d) the exemption from certain transfer taxes. Finally, the Plan complies with Bankruptcy Code section 1123(a)(7) in that it appoints a Liquidation Trustee who will serve as the Debtors' sole officer, director, and manager, as applicable, following the Effective Date. This appointment is consistent with the interests of creditors as the Debtors

are liquidating and the remaining matters for the post-Effective Date estates and the Liquidation Trust will involve implementing the Plan transactions and winding down the Debtors' affairs and closing the Chapter 11 Cases.

11. I believe that the discretionary contents of the Plan are appropriate under Bankruptcy Code section 1123(b). The Plan includes various provisions that fall under the broad spectrum of Bankruptcy Code section 1123(b). For instance, the Plan impairs Classes 4 through 6, leaving Classes 1, 2 and 3 unimpaired. *See* Plan, Art. III. The Plan further provides for the treatment of executory contracts and unexpired leases to which the Debtors are a party. *See* Plan, Art. VII. I understand that the Plan includes other provisions designed to ensure its implementation that are consistent with the Bankruptcy Code, including the provisions of: (a) Article V, regarding funding of and distributions from the Debtors' estates and (b) Article XI, regarding retention of jurisdiction by the Court over certain matters after the Effective Date. I understand that each of these provisions is appropriate under applicable law, including sections 1123(b)(1), (3) and (6), and Bankruptcy Rule 9019.

12. **The Plan Complies with Bankruptcy Code Section 1129(a)(2).** I believe that the Debtors have complied with the applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, as modified by the Court's *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* [D.I. 177] (the "Amended Interim Approval and Procedures Order") governing notice, disclosure and solicitation in connection with the Plan and the Disclosure Statement. The *Certificate of Service* [D.I. 189] filed reflecting compliance with the notice and solicitation requirements of the

Amended Interim Approval and Procedures Order shows that the Debtors have complied with such solicitation and disclosure requirements. I also understand that the Debtors caused to be mailed the Confirmation Hearing Notice in accordance with the Amended Interim Approval and Procedures Order. Accordingly, to the best of my knowledge, the Debtors have complied with all applicable disclosure and solicitation requirements set forth in the Bankruptcy Code and the Bankruptcy Rules, as modified by the Amended Interim Approval and Procedures Order.

13. **The Plan is Proposed in Good Faith Pursuant to Bankruptcy Code Section 1129(a)(3).** I understand that, under Bankruptcy Code section 1129(a)(3), a plan must be "proposed in good faith and not by any means forbidden by law." The Debtors structured and proposed the Plan in a manner that effectuates the objectives and purposes of the Bankruptcy Code. I believe that the Plan contains no provisions that are contrary to state or other laws nor is there any indication the Debtors lack the ability to consummate the Plan. I understand that Class 4, Class 5 and Class 6 voted to accept the Plan, which provides independent evidence of good faith. For these reasons, I believe the Plan was filed in good faith to further the purposes of the Bankruptcy Code, and I therefore believe that it satisfies the requirements of Bankruptcy Code section 1129(a)(3).

14. **The Plan Complies with Bankruptcy Code Section 1129(a)(4).** I understand that Bankruptcy Code section 1129(a)(4) requires: "Any payment made . . . by the debtor . . . for services or for costs and expenses in or in connection with the case . . . has been approved by, or is subject to the approval of, the court as reasonable." Pursuant to the Plan and other orders of the Court, all Professional Fee Claims are subject to Court approval. Accordingly, I believe that the Plan complies with the requirements of Bankruptcy Code section 1129(a)(4).

15. **The Plan is in the Best Interests of Creditors and Interest Holders Under Bankruptcy Code Section 1129(a)(7).** I understand that, to satisfy Bankruptcy Code section 1129(a)(7), the debtor must demonstrate that with respect to each impaired class of claims or interests, each individual holder of a claim or interest has either accepted the plan or will receive or retain property having a present value, as of the effective date of the plan, of not less than what such holder would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code at that time.

16. I also understand that the "best interests" test applies to individual dissenting creditors or interest holders, rather than classes of claims and interests, and is generally satisfied through a comparison of the estimated recoveries for a debtor's stakeholders in a hypothetical liquidation of that debtor's estates under chapter 7 of the Bankruptcy Code against the estimated recoveries under that debtor's chapter 11 plan.

17. To satisfy the best interests test, Debtors analyzed estimated unrestricted cash as of June 7, 2024. That amount would have to be reduced by the amount of any claims secured by the Debtors' assets, the costs and expenses of the liquidation, and any additional administrative expenses and priority claims that may result from the termination of the Debtors' business and the use of chapter 7 of the Bankruptcy Code. Any remaining net cash would be allocated to creditors in strict priority in accordance with Bankruptcy Code section 726.

18. For the reasons that follow, and based on the hypothetical liquidation analysis attached to the Disclosure Statement as Exhibit B (the "Liquidation Analysis"), I believe that liquidation under chapter 7 of the Bankruptcy Code would result in smaller distributions to holders of Claims and Interests than those provided for in the Plan because of (a) additional administrative expenses required to be satisfied in chapter 7 prior to the payment of any chapter 11 administrative

expenses or claims (including, without limitation, the fees and expenses of a Chapter 7 Trustee and his or her professionals); and (b) the inability of a chapter 7 trustee to maximize the return to the Debtors' estate to the same degree, or as efficiently, as provided by the Plan.

19. The Liquidation Analysis was prepared by individuals at Sonoran Capital Advisors, LLC, the Debtors' financial advisor. I am familiar with the Liquidation Analysis and the underlying financial data and assumptions upon which the Liquidation Analysis is based, which are accurately described in the Liquidation Analysis and notes thereto. I believe that the estimated liquidation values set forth in the Liquidation Analysis are fair and reasonable estimates of the value of the Debtors' assets based on the assumptions set forth therein. I believe that the estimates as to the ultimate amount of allowed claims against, and expenses of, the hypothetical chapter 7 estate are fair and reasonable and, based on those estimates, combined with the estimated liquidation values of assets, that each Class of Claims under the Plan will receive at least as much as that Class would receive in a hypothetical chapter 7 liquidation.

20. In addition, I have recently reviewed the Liquidation Analysis in light of all current information since its filing and continue to believe that the conclusions set forth therein remain unchanged as of the date hereof. In light of all the information I have reviewed, I continue to believe that recoveries under the Plan for each Class of Claims under the Plan are more favorable to creditors than under a hypothetical chapter 7 liquidation.

21. With respect to the Liquidation Analysis, the Debtors assumed that any liquidation of the Debtors' remaining assets would be accomplished through conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code on or about June 7, 2024. The Debtors also assumed that the Bankruptcy Court would appoint a chapter 7 trustee on that hypothetical conversion date to oversee the liquidation of the Debtors' estate, during which time any of the

Debtors' remaining assets would be sold and the Cash proceeds, net of liquidation related costs, would then be distributed to creditors in accordance with relevant law. There can be no assurance that the liquidation would be completed in a limited or expeditious time frame owing to, for example, the need for a chapter 7 trustee to become familiar with the Debtors' assets, liabilities, books and records.

22. Additionally, the Debtors assumed that the costs of liquidation under chapter 7 of the Bankruptcy Code would include the fees payable to a chapter 7 trustee, as well as those fees that might be payable to attorneys and other professionals that such trustee would engage. The foregoing types of claims and other claims that might arise in a chapter 7 liquidation case (including claims from potentially redundant activities that could be engaged in by a chapter 7 trustee) or result from the pending Chapter 11 Cases, including any unpaid expenses incurred by the Debtors during the Chapter 11 Cases such as compensation for attorneys, brokers and financial advisors, would be paid in full from the liquidation proceeds before the balance of those proceeds would be made available for distributions to other creditors.

23. After considering the effects that a liquidation under chapter 7 of the Bankruptcy Code would have on the ultimate proceeds available for distribution to the holders of Claims and Interests in these Chapter 11 Cases, including the increased costs and expenses of a liquidation under chapter 7 of the Bankruptcy Code arising from fees payable to a trustee in bankruptcy and professional advisors to such trustee, it is my conclusion that confirmation of the Plan will provide each holder of a Claim with a recovery that is not less than what such holder would receive pursuant to a liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

24. **The Plan Complies with Bankruptcy Code Sections 1129(a)(8).** I understand that Bankruptcy Code section 1129(a)(8) requires that "with respect to each class of

claims or interests — (A) such class has accepted the plan or (B) such class is not impaired under the Plan." As set forth in the Plan and the *Declaration of Jeffrey Miller Regarding the Solicitation and Tabulation of Votes on the Debtors' Joint Chapter 11 Plan of Liquidation* [D.I. 225] (the "Voting Declaration"), the holders of Claims in Class 1 (Secured Tax Claims), Class 2 (Other Secured Claims) and Class 3 (Other Priority Claims) are unimpaired under the Plan and, pursuant to Bankruptcy Code section 1126(f), are conclusively presumed to have voted to accept the Plan. Thus, the requirements of section 1129(a)(8) have been satisfied as to each of Classes 1, 2 and 3. As set forth in the Voting Declaration, the holders of Claims in Classes 4 (General Unsecured Claims), Class 5 (ARE Subordinated Claims) and Class 6 (Interests) voted to accept the Plan. Thus, as to the impaired and accepting Classes 4, 5 and 6, I believe that the requirements of section 1129(a)(8) likewise have been satisfied.

25. **The Plan Complies with Bankruptcy Code Section 1129(a)(9).** I understand that all administrative and priority claims against the Debtors will be satisfied in the manner required by section 1129(a)(9) of the Bankruptcy Code, unless such holder of a particular claim has agreed to different treatment of such claim.

26. **The Plan Complies with Bankruptcy Code Section 1129(a)(10).** The Voting Declaration shows that at least one Class of Claims that is impaired under the Plan voted to accept the Plan. Specifically, Class 4 (General Unsecured Claims), Class 5 (ARE Subordinate Claims) and Class 6 (Interests) voted to accept the Plan. The Voting Declaration identifies three votes which were not included in the tabulation of votes, as the holders of those Class 4 Claims are insiders. *See* Voting Declaration, Exhibit B. Accordingly, I believe that the Plan complies with section 1129(a)(10) of the Bankruptcy Code.

27. **The Plan Complies with Bankruptcy Code Section 1129(a)(11).** Based on my knowledge of the Debtors and the terms of the Plan, I believe that the Plan is feasible. I understand that Bankruptcy Code section 1129(a)(11) provides that a court may confirm a plan only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." Because the Plan expressly provides for the liquidation of the Debtors' assets and the proposed distribution of those assets to creditors holding Allowed Claims and Interests, I believe that the Plan satisfies Bankruptcy Code section 1129(a)(11).

28. **The Plan Complies with Bankruptcy Code Section 1129(a)(12).** The Plan provides that all fees required under 28 U.S.C. § 1930 will be paid on or prior to the Effective Date. Based on my review of the Debtors' books and records, the Debtors have adequate means to make such payments, and therefore the Plan satisfies section 1129(a)(12) of the Bankruptcy Code.

29. **The Plan Complies with Bankruptcy Code Section 1129(c).** The Plan is the sole plan that has been proposed, and thus I believe that the requirement of section 1129(c) has been met.

30. **The Plan Complies with Bankruptcy Code Section 1129(d).** The Plan does not have as one of its principal purposes the avoidance of taxes or avoidance of requirements of section 5 of the Securities Act of 1933, and I am not aware of any filing by any governmental agency asserting such avoidance. Thus, I believe that the requirements of Bankruptcy Code section 1129(d) have been met.

***Other Plan Provisions Are Necessary and Appropriate***

31. **The Plan's Releases and Exculpation Provisions Should Be Approved.** Article VIII.C of the Plan provides for the releases by the Debtors of the Released Parties (the "Debtor Releases"). The Plan also includes in Article VIII.B, a customary exculpation and limitation of liability provision (the "Exculpation Provision").

32. I believe that the Debtor Releases are appropriately tailored under the facts and circumstances of these Chapter 11 Cases and are supported by ample consideration. The Debtors' directors, officers, and employees each have substantially contributed to these Chapter 11 Cases. Notably, the claims subject to the Debtor Releases specifically exclude claims based on or arising out of gross negligence, fraud or willful misconduct.

33. The Debtor Releases are an integral part of the Plan and provide appropriate levels of protection to the Released Parties. Accordingly, I believe that approval of the Debtor Releases represents the sound and valid exercise of the Debtors' business judgment and is permissible under Bankruptcy Code section 1123(b)(6) and applicable law. The Released Parties made important contributions in the Chapter 11 Cases, including formulating the Plan and otherwise navigating the Debtors and their constituencies toward a successful exit from chapter 11. Moreover, the Debtors have indemnification obligations to their current and former officers and directors. The Debtor Releases are of an integral nature to the Plan as a whole, which ultimately will result in distributions to the Debtors' general unsecured creditors and equity interest holders. Furthermore, I do not have any reason to believe that the Debtors are releasing any material claims. As such, retaining and potentially pursuing any unknown or speculative claims against the Released Parties is not in the best interests of the Debtors' various constituencies as the costs involved likely would outweigh any potential benefits from pursuing such claims. Finally, the Debtors' management

reviewed, considered, and approved the Debtor Releases in the sound exercise of their business judgment.

34. I believe that the proposed Exculpation Provision is appropriate based on the limitation of liability provided in Bankruptcy Code section 1125(e). The Exculpation Provision expressly and narrowly applies to the Exculpated Parties and only relates to Exculpated Claims in connection with the Chapter 11 Cases. Accordingly, I believe that the Exculpation Provision should be approved as appropriate under Bankruptcy Code section 1125(e).

35. **Substantive Consolidation of the Debtors' Estates for Distribution Purposes Should be Approved.** I understand that the Plan serves as a motion by the Debtors to substantively consolidate the estates of the Debtors into a single consolidated estate for all purposes related to confirmation and consummation of the Plan, including for purposes of voting and distributions. *See* Plan, Art. VI. The Plan groups the Debtors together for purposes of making distributions via the Plan in respect of Claims against any one of the Debtors.

36. I believe that substantive consolidation of the Debtors' estates is appropriate in these Chapter 11 Cases. The Debtors have continuously operated on a consolidated basis, as Debtor InVivo Therapeutics Holdings Corp. has functioned as a true holding company with its only significant asset being Debtor InVivo Therapeutics Corporation. The consolidated nature of the Debtors is evidenced by the following: (i) all of the Debtors' employees and independent contractors have been engaged and paid by Debtor InVivo Therapeutics Corporation; (ii) each of the Debtors' bank accounts are held in the name of Debtor InVivo Therapeutics Corporation; and (iii) the public has consistently observed the Debtors, and the Debtors have consistently held themselves out (except with respect to regulatory registration and reporting obligations), as a singular entity, "InVivo Therapeutics." Such consolidation shall not affect any Debtor's status as

a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, nor cause the transfer of any assets or the assumption of any liabilities; and, except as otherwise provided by or permitted in the Plan, each of the Debtor entities shall continue to exist as separate legal entities. Moreover, no creditor has objected to the substantive consolidation of the Debtors' estates.

37. I believe that substantive consolidation of the Debtors' estates under the terms of the Plan will not adversely impact the treatment of the Debtors' creditors, but rather will allow for greater efficiencies and simplification in administration, and thus, will reduce expenses by decreasing the administrative difficulties and costs related to the administration of and distributions from the Debtors' estates. Accordingly, I believe substantive consolidation of the Debtors' estates should be approved through confirmation of the Plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 17, 2024

*/s/ Richard Christopher*
Richard Christopher
Chief Financial Officer