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Debtors in Possession*

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Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Joint Administration Requested)

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.



**DEBTORS' MOTION FOR ENTRY OF  
INTERIM AND FINAL ORDERS AUTHORIZING THE DEBTORS TO  
(I) MAINTAIN AND ADMINISTER THEIR CUSTOMER PROGRAMS AND  
(II) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO**

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), authorizing the Debtors to (a) maintain and administer their Customer Programs and (b) honor certain prepetition obligations related thereto. In addition, the Debtors request that the Court schedule a final hearing within approximately thirty (30) days after the commencement of these chapter 11 cases to consider entry of the Final Order.

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court,

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not immediately defined are defined later in this Motion, in the First Day Declaration, or in the Cash Collateral Motion, as applicable.

absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 2002-1, 9013-1, and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

### **The Debtors’ Customer Programs**

6. The Debtors’ customers generally comprise of individual patients, biopharma companies, and institutions such as hospitals, clinics, and third-party laboratories. Historically, the Debtors have provided certain incentives, discounts, and accommodations to their customers, the majority of which do not independently entail the expenditure of cash (such programs, as described below, collectively, the “Customer Programs”).<sup>3</sup> The Debtors believe that the ability to

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<sup>3</sup> Although the description of the Customer Programs set forth in this Motion is intended to be comprehensive, the Debtors may have inadvertently omitted some of the Customer Programs. The Debtors request relief with regard to all Customer Programs, regardless of whether any individual Customer Program is specifically identified herein.

continue the Customer Programs and to honor any obligations thereunder in the ordinary course of business is necessary to retain their reputation for accessibility and reliability, comply with their legal obligations, and ensure customer satisfaction as most of the Debtors' businesses are discretionary. Continuing the Customer Programs allows the Debtors to maintain the goodwill of their current customers, attract new customers, and, ultimately, enhance their revenue and profitability for the benefit of all of the Debtors' stakeholders.

7. As of the Petition Date, the Debtors estimate that there is approximately \$1 million in prepetition obligations outstanding related to Customer Programs that entail direct cash expenditures. These obligations include amounts on account of the following Customer Programs: (a) Research Partnerships for Genetic Testing Programs; (b) Discount Programs; (c) Prior Authorization Services; (d) Genetic Counseling Services, (e) Phlebotomy Services, and (f) Refunds. By this Motion, the Debtors seek authorization to maintain the Customer Programs in the ordinary course of business and to continue to honor all customer-related obligations, including paying any prepetition obligations associated therewith.

**I. Research Partnerships for Genetic Testing Programs.**

8. In the ordinary course of business, the Debtors partner with biopharma companies (the "Biopharma Partners") who are running clinical trials or other research programs that require genetic testing. The Biopharma Partners pay the Debtors for the cost of the Invitae genetic tests, while the Debtors provide the genetic tests, coordinate the collection of specimens, and analyze the tests for patients who meet certain eligibility criteria (collectively, the "Genetic Testing Research Programs"). In connection with the Debtors' participation in the Genetic Testing Research Programs, the Debtors provide the Biopharma Partners with access to de-identified data from patients that elect to participate in the clinical trials.

9. Genetic Testing Research Programs are available in several clinical areas, including cardiology, immunology, metabolic, nephrology, neurology, ophthalmology, skeletal, and urology. As a result of the Genetic Testing Research Programs, the Debtors have been able to assist participating patients in identifying individual and familial disease risks, shortening diagnosis time and decreasing the risk of misdiagnosis, and promoting awareness of related research opportunities, potential therapies and clinical trials.

10. The Debtors do not owe any amounts on account of the Genetic Testing Research Programs, as the Debtors are paid by the Biopharma Partners for the services offered under the programs. The Debtors seek authorization to continue participating in the Genetic Testing Research Programs in the ordinary course of business on a postpetition basis consistent with their historical practices.

## **II. Discount Programs.**

11. In the ordinary course of business, the Debtors provide certain discount programs, including (i) free or reduced-price testing, (ii) the Family Variant Testing Program, and (iii) the Re-requisition Program (collectively, the “Discount Programs”).

12. *Discounted Test Pricing.* The Debtors provide free or reduced-price testing and specimen collection services to certain patients in the United States who qualify. Discounts and free testing are based on (a) income and household size, and/or (b) barriers of access to care, and/or (c) testing results. For some discounts, a prospective patient must complete an application that asks for information relating to the patient’s income, number of household members, and insurance provider information (if applicable). Depending on the prospective patient’s responses in this application process, including if the patient carries insurance, the Debtors may offer their genetic tests (with some exclusions) for free or at reduced prices in lieu of standard prices. Patients with federal or state-funded health insurance are not eligible for discounted or free tests.

13. *Family Variant Testing Program.* In the ordinary course of business, the Debtors also provide testing to blood-relatives of patients whose diagnostic or proactive genetic test identifies a pathogenic or likely pathogenic variant<sup>4</sup> at no additional charge (the “Family Variant Testing Program”). Certain blood relatives of the Debtors’ patients are eligible for the Family Variant Testing Program if (a) a pathogenic, likely pathogenic, or increased risk allele<sup>5</sup> result was found on a diagnostic or proactive panel or single-gene test, and (b) the family variant testing order is placed within 150 days of the original patient’s test report. The Family Variant Testing Program is aimed at encouraging family members to seek genetic testing since family members have up to a fifty (50) percent risk of having the same variant.

14. *Re-requisition Program.* In the ordinary course of business, patients who are eligible can test existing samples for additional genes for up to 150 days after the patient’s first test report, at no additional charge (the “Re-requisition Program”). Subject to certain other restrictions, a patient is eligible for the Re-requisition Program if the original order was for a diagnostic panel, carrier screening, or non-invasive prenatal screening. Additionally, the genes added must be within the same clinical area (*i.e.* cardiology and neurology, hereditary cancer, hematology, metabolic, newborn screening, immunology, pediatric and rare disease) as the initial order.

15. The Discount Programs do not require any direct cash outlays by the Debtors; however, the Debtors estimate that they indirectly incur approximately \$10 million annually in obligations on account of the Discount Programs, resulting from the direct labor and/or materials relating to the incremental tests. The Debtors seek authorization to honor any prepetition

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<sup>4</sup> A pathogenic variant is a genetic variant responsible for causing a specific disease.

<sup>5</sup> An “allele” is a variant form of a gene.

obligations in connection with the Discount Programs and to continue administering the Discount Programs in the ordinary course of business on a postpetition basis consistent with their historical practices.

### **III. Prior Authorization Services.**

16. In the ordinary course of business, before a patient can take an Invitae genetic test, a request must be submitted to the patient's insurance company for prior authorization. Without prior authorization from an insurance company, the Debtors would not be reimbursed by such insurance company for their genetic tests. In the healthcare industry, this responsibility usually falls to the patient's healthcare provider. In order to reduce this burden, the Debtors use third-party services to help process prior testing authorizations for patients (the "Prior Authorization Services"). The Debtors enter into services agreements with healthcare technology companies, Glidian, Inc. ("Glidian") and Careviso Inc. ("Careviso", and together with Glidian, the "Prior Authorization Companies"), to perform the Prior Authorization Services. The Prior Authorization Companies assist the Debtors with the initiation, modification, and submission of prior authorizations for the Debtors' patients.

17. The Prior Authorization Services are essential to help streamline the prior authorization process and significantly reduce healthcare providers' administrative tasks, thus incentivizing them to order more Invitae genetic tests, ultimately expanding the Debtors' genetic data pool.

18. The Debtors estimate that they incur approximately \$800,000 annually in obligations on account of the Prior Authorization Services. As of the Petition Date, the Debtors estimate that approximately \$135,000 in Prior Authorization Services obligations are reflected in the Debtors' accounting systems, all of which the Debtors anticipate will be due and owing during the first thirty (30) days following the Petition Date (the "Interim Period"). The Debtors seek

authorization to honor any prepetition obligations in connection with the Prior Authorization Services and to continue providing the Prior Authorization Services in the ordinary course of business on a postpetition basis consistent with their historical practice.

#### **IV. Genetic Counseling Services.**

19. In the ordinary course of business, the Debtors contract with Genome Medical (“Genome”) to provide genetic counseling to eligible patients (the “Genetic Counseling Services”).<sup>6</sup> Genetic Counseling Services are currently available for patients who have completed any Invitae genetic test, other than personalized cancer monitoring tests, and have received their test results, and whose ordering healthcare provider is based in the United States or Canada. Other eligibility factors include: (a) if a patient received a “positive finding result,”<sup>7</sup> (b) whether a patient is already working with a genetic counselor, and (c) a patient’s family history.

20. Genome specializes in genetic counseling services and employs counselors with expertise across genetic disorders and conditions. Genome’s counselors are board-certified by the American Board of Genetic Counseling and are collectively licensed in all states that require licensure to practice. As part of the Genetic Counseling Services, Genome’s counselors review a patient’s test results and medical history, and provide actionable insights about the patient’s genetic condition, which allows patients and their blood-relatives to make informed healthcare decisions.

21. The Genetic Counseling Services are essential to ensuring that patients understand their “positive finding results” and potential disease risk, especially if such patients do not already

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<sup>6</sup> Genome is not affiliated with the Debtors in any way and the Debtors do not participate in providing any Genetic Counseling Services to patients nor participate in conversations directly with patients regarding their test results.

<sup>7</sup> Tests that find genetic mutations that may lead to increased risk for disease.

have access to genetic counselors. The Genetic Counseling Services are part of the Debtors' commitment to enabling patients to make informed health decisions and supporting patients in building a wellness plan that is personalized to their unique DNA.

22. The Debtors estimate that they incur approximately \$2.3 million annually in obligations on account of the Genetic Counseling Services. As of the Petition Date, the Debtors estimate that approximately \$525,000 in Genetic Counseling Service obligations are reflected in the Debtors' accounting systems, all of which the Debtors anticipate will be due and owing during the Interim Period. The Debtors seek authorization to honor any prepetition obligations in connection with the Genetic Counseling Services and to continue providing the Genetic Counseling Services in the ordinary course of business on a postpetition basis consistent with their historical practice.

#### **V. Phlebotomy Services.**

23. In the ordinary course of business, the Debtors have partnered with health care providers to make phlebotomy services, including via mobile phlebotomy services, available for the convenience of patients (the "Phlebotomy Services"). The Debtors partner with approximately 150 organizations throughout the United States and Canada, including laboratories and medical blood draw facilities, that provide the Phlebotomy Services to patients (the "Phlebotomists").

24. Pursuant to the Debtors' agreements with the Phlebotomists, the Debtors typically pay the Phlebotomists on a per-blood draw basis or on an hourly basis. Without the Phlebotomy Services, a clinician may be dissuaded from ordering an Invitae genetic test if the clinician cannot subsequently provide access for the patient to get their blood drawn. The Phlebotomy Services make genetic testing that requires a blood draw more accessible to patients and allows the Debtors to compete with other genetic testing companies that provide free phlebotomy services.

25. The Debtors estimate that they incur approximately \$2.8 million annually in obligations on account of Phlebotomy Services. As of the Petition Date, the Debtors estimate that approximately \$340,000 in Phlebotomy Service obligations are reflected in the Debtors' accounting systems, of which the Debtors anticipate approximately \$310,000 will be due and owing during the Interim Period. The Debtors seek authorization to honor any prepetition obligations in connection with the Phlebotomy Services and to continue providing the Phlebotomy Services in the ordinary course of business on a postpetition basis consistent with their historical practice.

#### **VI. Refunds.**

26. In the ordinary course of business, the Debtors may process refunds directly to their customers (each, a "Refund" and collectively, the "Refunds"). Generally, Refunds are provided to customers (a) upon notice from the insurance providers that a customer has overpaid or (b) in the event of a laboratory processing failure.<sup>8</sup> In the event of a laboratory processing failure, the ordering clinicians are asked to provide another specimen from the patient. If another specimen is not available and payment has already been submitted, the customer may cancel the order and a Refund will be processed.

27. The Debtors estimate that they incur approximately \$1 million in Refunds annually. Once the Debtors are made aware of a Refund obligation, amounts are paid as soon as reasonably practical. Therefore, the Debtors are not aware of any incurred but unpaid Refund obligations. However, out of an abundance of caution, the Debtors seek authorization to continue honoring their obligations on account of Refunds, including issuing and paying Refund checks, if any,

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<sup>8</sup> Laboratory processing refers to the steps that a specimen undergoes to prepare and extract the DNA for analysis. After a specimen arrives at the Debtors' laboratory and is accessioned, a lab processing failure may occur, although exceptional, when there is an issue with the accessioning, extracting, or plating process.

resulting from prepetition transactions on a postpetition basis in the ordinary course of business and consistent with historical practices.

### **Basis for Relief**

#### **I. Continuing to Honor the Customer Programs in the Ordinary Course Is Warranted Under Sections 105(a), 363(b), and 1108 of the Bankruptcy Code.**

28. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going concern value. *See, e.g., Miltenberger v. Logansport C. & S.W.R. Co.*, 106 U.S. 286, 311 (1882) (“Many circumstances may exist which may make it necessary and indispensable to the business . . . and the preservation of the property, for the receiver to pay pre-existing debts.”); *In re Lehigh & N. Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (finding payment of prepetition obligations appropriate where (a) such payment “is essential to the continued operation of the [business] during reorganization” and (b) there exists a “possibility that the creditor will employ an immediate economic sanction, failing such payment.”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 824–26 (D. Del. 1999) (acknowledging section 105(a) of the Bankruptcy Code as a standalone statutory basis for the payment of prepetition obligations and synthesizing Third Circuit law into the general rule that payment of such prepetition obligations is appropriate where failure to pay places the business in serious jeopardy). Courts acknowledge several legal theories rooted in the Bankruptcy Code that support the payment of prepetition obligations. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (acknowledging sections 105(a) and 1107(a) of the Bankruptcy Code as statutory bases for paying prepetition obligations).

29. Section 1107(a) of the Bankruptcy Code (a) grants a debtor in possession the “rights . . . and powers . . . of a trustee” and (b) mandates a debtor in possession to perform “all the

functions and duties . . . of a trustee.” 11 U.S.C. § 1107(a). In turn, section 1108 of the Bankruptcy Code authorizes a debtor in possession to “operate the debtor’s business.” 11 U.S.C. § 1108.

30. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b) of the Bankruptcy Code).

31. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as

the “doctrine of necessity”). See, e.g., *In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); see also *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

## **II. Continuing the Customer Programs and Honoring any Prepetition Amounts Owed Thereunder Is in the Best Interests of the Debtors’ Businesses and Their Estates.**

32. Continuing to administer the Customer Programs without interruption during the pendency of these chapter 11 cases is vital to preserve the Debtors’ valuable customer relationships and goodwill, and to maintain business and drive additional business, which will inure to the benefit of all of the Debtors’ stakeholders and their estates. Importantly, the Debtors’ competitors maintain programs similar to the Customer Programs. Accordingly, if the Debtors are unable to continue the Customer Programs postpetition or pay amounts due and fulfill obligations owing on account of the Customer Programs, the Debtors will be at a significant competitive disadvantage

and at risk of losing prospective customers and patients to their competitors at this crucial time, thereby damaging the value of the estates.

33. Failure to honor the Customer Programs could amplify the negative effect of any customer uncertainty that may arise from these chapter 11 cases. Such uncertainty could erode the Debtors' hard-earned reputation as a leader in the genetic testing industry, which could adversely impact the administration of these chapter 11 cases. Maintaining the Customer Programs and the corresponding relationships will ensure a smooth transition immediately following the filing of these chapter 11 cases. Accordingly, the Debtors submit that they have shown sufficient cause to warrant the authority to honor the Customer Programs and to honor any customer obligations relating thereto.

34. Where, as here, maintaining customer programs is critical to the success of chapter 11 cases, courts in this district and others have granted relief similar to that requested herein. *See, e.g., In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing the debtors to administer any customer programs that were in effect prepetition and honor any prepetition obligations related thereto); *In re Rite Aid Corp., et al.*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 21, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 29, 2023) (same); *In re David's Bridal, LLC, et al.*, No. 23-13131 (CMG) (Bankr. D.N.J. May 18, 2023) (same); *In re L'Occitane, Inc.*, No. 21-10632 (MBK) (Bankr. D.N.J. Feb. 2, 2021) (same).<sup>9</sup>

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<sup>9</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

35. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

36. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The requested relief is necessary for the Debtors to operate their businesses in the ordinary course, preserve the ongoing value of their operations, and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

37. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Waiver of Memorandum of Law**

38. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

**Reservation of Rights**

39. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

**No Prior Request**

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

**Notice**

41. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the office of the United States Trustee for the District of New Jersey; (b) the Debtors' thirty (30) largest unsecured creditors (on a consolidated basis); (c) counsel to the agent to the Secured Notes; (d) the indenture trustee to the 2024 Convertible Notes; (e) the indenture trustee to the 2028 Convertible Notes; (f) Sullivan & Cromwell LLP, as counsel to the Required Holders; (g) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (h) counsel to the 2028 Convertible Noteholders; (i) the U.S. Securities and Exchange Commission; (j) the United States Attorney's Office for the District of New Jersey; (k) the attorneys general in the states where the Debtors conduct their business operations; (l) the Internal Revenue Service; (m) the Biopharma Partners, (n) the Phlebotomists, (o) the Prior Authorization Companies, (p) Genome, and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, and granting the relief requested herein.

Dated: February 13, 2024

*/s/ Michael D. Sirota*

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*Proposed Co-Counsel to the Debtors and  
Debtors in Possession*

Exhibit A

**Proposed Interim Order**

Caption in Compliance with D.N.J. LBR 9004-1(b)

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
In re:  INVITAE CORPORATION, <i>et al.</i> ,  Debtors. <sup>1</sup>	Chapter 11  Case No. 24-11362 (MBK)  (Joint Administration Requested)

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<sup>1</sup> The last four digits of Debtor Invitae Corporation's tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

**INTERIM ORDER AUTHORIZING THE DEBTORS TO  
(I) MAINTAIN AND ADMINISTER THEIR CUSTOMER PROGRAMS AND  
(II) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO**

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The relief set forth on the following pages, numbered three (3) through seven (7), is  
**ORDERED.**

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) MAINTAIN AND ADMINISTER THEIR CUSTOMER PROGRAMS AND (II) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO

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Upon the *Debtors' Motion For Entry of Interim and Final Orders Authorizing the Debtors to (I) Maintain and Administer Their Customer Programs and (II) Honor Certain Prepetition Obligations Related Thereto* (the "Motion")<sup>1</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), authorizing the Debtors to (a) maintain and administer the Customer Programs in the ordinary course of business, and (b) honor certain prepetition obligations related thereto, and (c) scheduling a final hearing (the "Final Hearing") to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this 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 this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.

2. The Final Hearing on the Motion will be held on \_\_\_\_\_, **2024, at \_\_\_\_\_**

**(Eastern Time)**. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by (i) the Debtors' proposed counsel; (ii) the office of the United States Trustee for the District of New Jersey; (iii) the agent to the Secured Notes; (iv) the indenture trustee to the 2024 Convertible Notes; (v) the indenture trustee to the 2028 Convertible Notes; (vi) counsel to the Required Holders; (vii) counsel to the 2028 Convertible Noteholders; and (viii) counsel to any statutory committee appointed in these chapter 11 cases on or before \_\_\_\_\_, **2024, at 4:00 p.m. (Eastern Time)**. If no objections are filed to the Motion, the Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.

3. Subject to the Approved Budget, the Debtors are authorized to continue to administer the Customer Programs (as defined in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer Programs, in each case in the ordinary course of business, consistent with prepetition practices, and to modify, replace, or terminate any Customer Program in the ordinary course of business; *provided that*, the Debtors shall provide five (5) business days' notice to any statutory committee appointed in these cases, and the U.S. Trustee, before terminating any Customer Program or making any change to any Customer Program that materially and adversely affects the Debtors' customers.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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4. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

5. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Interim Order.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

8. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

9. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

12. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

13. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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14. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

15. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

**Exhibit B**

**Proposed Final Order**

Caption in Compliance with D.N.J. LBR 9004-1(b)

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
In re:	
INVITAE CORPORATION, <i>et al.</i> ,	
	Debtors. <sup>1</sup>

Chapter 11  
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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
(A) MAINTAIN AND ADMINISTER THEIR CUSTOMER PROGRAMS AND  
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO**

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The relief set forth on the following pages, numbered three (3) through six (6), is  
**ORDERED.**

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Upon the *Debtors' Motion For Entry of Interim and Final Orders Authorizing the Debtors to (I) Maintain and Administer Their Customer Programs and (II) Honor Certain Prepetition Obligations Related Thereto* (the "Motion")<sup>1</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), authorizing the Debtors to (a) maintain and administer the Customer Programs in the ordinary course of business, and (b) honor certain prepetition obligations related thereto, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this 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 this Court having found that sufficient causes exists for the relief set forth herein; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore. **IT IS HEREBY ORDERED THAT:**

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<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Subject to the Approved Budget, the Debtors are authorized to continue to administer the Customer Programs (as defined in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer Programs, in each case in the ordinary course of business, consistent with prepetition practices, and to modify, replace, or terminate any Customer Program in the ordinary course of business; *provided that*, the Debtors shall provide five (5) business days' notice to any statutory committee appointed in these cases, and the U.S. Trustee, before terminating any Customer Program or making any change to any Customer Program that materially and adversely affects the Debtors' customers.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.
4. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense

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claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

6. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

7. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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10. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.