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*Proposed Co-Counsel to the Debtors and  
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)

(Jointly Administered)

**NOTICE OF HEARING ON DEBTORS' MOTION FOR  
ENTRY OF AN ORDER AUTHORIZING EMPLOYMENT AND PAYMENT  
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

<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' 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.



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**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of an Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business* (the "OCP Motion") will be held on **March 15, 2024 at 10:00 a.m. (prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the "Hearing") before the Honorable Chief Judge Michael B. Kaplan, Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom 8, Trenton, NJ 08608.

**PLEASE TAKE FURTHER NOTICE** that the OCP Motion sets forth the relevant factual bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the OCP Motion is also submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that Objections, if any, to the relief requested in the OCP Motion shall: (a) be in writing; (b) state with particularity the basis of the objection; and (c) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002 (the "General Order") and the Commentary Supplementing Administrative Procedures dated as of March 2004 (the "Supplemental Commentary") (the General Order, the Supplemental Commentary and the User's Manual for the Electronic Case Filing System can be found at [www.njb.uscourts.gov](http://www.njb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties-in-interest, on CD-ROM in Portable Document Format (PDF), and shall be served in accordance with the General Order and the Supplemental Commentary, so as to be received on or before **March 8, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that only those responses or objections that are timely filed, served, and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

**PLEASE TAKE FURTHER NOTICE** that unless objections are timely filed and served, the OCP Motion shall be decided on the papers in accordance with D.N.J. LBR 9013-3(d) and the relief requested may be granted without further notice or hearing.

**PLEASE TAKE FURTHER NOTICE** that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Kurtzman Carson Consultants, LLC at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). You may also obtain copies of any pleadings by visiting the Court's website at <https://www.njb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: February 23, 2024

/s/ Michael D. Sirota

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In re:

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Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**DEBTORS' MOTION FOR ENTRY  
OF AN ORDER AUTHORIZING EMPLOYMENT AND PAYMENT  
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

<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' 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.

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 (the “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), (a) authorizing the Debtors (i) to retain both the Initial Ordinary Course Professionals and Additional Ordinary Course Professionals (together with the Initial Ordinary Course Professionals, the “Ordinary Course Professionals,” each an “Ordinary Course Professional”) without the necessity of a separate, formal retention application approved by this Court for each Ordinary Course Professional, and (ii) to pay each Ordinary Course Professional for postpetition services rendered and expenses incurred, including, if necessary, advancing any reasonable postpetition retainer to the Ordinary Course Professional, subject to certain limits set forth below, without the necessity of additional court approval.

2. For the sake of clarity, individual retention applications will be required for any professionals that the Debtors seek to employ in connection with the conduct of these chapter 11 cases or in connection with special matters not appropriate for ordinary course treatment (the “Chapter 11 Professionals”). Moreover, the Chapter 11 Professionals will be permitted to be compensated and reimbursed only in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any orders entered in these chapter 11 cases governing professional compensation and reimbursement for services rendered and expenses incurred.

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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”) [Docket No. 21]. Capitalized terms used but not immediately defined are defined later in this Motion or in the First Day Declaration.

### **Jurisdiction and Venue**

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

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

5. The bases for the relief requested herein are sections 105(a), 363(c), and 503(b) of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”).

### **Background**

6. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases are set forth in greater detail in the First Day Declaration and incorporated by reference herein.

7. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 16, 2024, the Court entered an order [Docket No. 54] authorizing 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.

8. Prior to the Petition Date, the Debtors employed the professionals identified on Exhibit 1 attached to the Order (the “Initial Ordinary Course Professionals”). The Initial Ordinary Course Professionals perform services, including legal and accounting matters, that are not intrinsically related to these chapter 11 cases. The Debtors require the services of the Initial Ordinary Course Professionals regardless of the pendency of these chapter 11 cases, and the services do not significantly impact the direction of the Debtors’ reorganization. To the best of the Debtors’ knowledge, the Initial Ordinary Course Professionals have no interest materially adverse to the Debtors and their estates.

#### **I. Proposed Ordinary Course Professional Procedures**

9. The Debtors propose the following procedures in recognition of the importance of providing information regarding Ordinary Course Professionals to the Court and the U.S. Trustee.

10. The Debtors propose they be permitted to continue to employ and retain the Initial Ordinary Course Professionals. Within thirty (30) days of the later of (a) the entry of an order granting the relief requested herein or (b) the date on which each retained Initial Ordinary Course Professional commences services for the Debtors, each Initial Ordinary Course Professional will be required to provide to the Debtors’ counsel a declaration pursuant to Section 1746 of title 28 of the United States Code, substantially in the form annexed hereto as Exhibit 2 to the Order, certifying that the professional does not represent or hold any interest adverse to the Debtors or the Debtors’ estates with respect to the matter on which the professional is to be employed (the “Declaration”) for filing with the Court and service upon: (i) the Debtors, Invitae Corporation, 1400 16<sup>th</sup> Street, San Francisco, California 94103, Attn: Benjamin Carver; (ii) proposed co-counsel

to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com), Francis Petrie (francis.petrie@kirkland.com), Nikki Gavey (nikki.gavey@kirkland.com), and Olivia Acuña (olivia.acuna@kirkland.com); Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Spencer A. Winters, P.C. (spencer.winters@kirkland.com); (iii) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota (msirota@coleschotz.com), Warren A. Usatine (wusatine@coleschotz.com), Felice R. Yudkin (fyudkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); (iv) the Office of the United States Trustee for the District of New Jersey, One Newark Center, 1085 Raymond Boulevard, suite 2100, Newark, New Jersey 07102, Attn.: Jeffrey M. Sponder (jeffrey.m.sponder@usdoj.gov), Lauren Bielskie (lauren.bielskie@usdoj.gov); (v) counsel to the official committee of unsecured creditors (if any) appointed in these chapter 11 cases; and (vi) those parties that have filed a notice of appearance and request for service of pleadings in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). Each Ordinary Course Professional shall also complete and return a retention questionnaire substantially in the form annexed as Exhibit 3 to the Order (the “Retention Questionnaire”), which shall be served upon the Notice Parties.

11. The Debtors further request that upon the later of (i) the entry of the Order or (ii) service of each required Declaration and Retention Questionnaire, the Notice Parties will have fourteen (14) days (the “Objection Deadline”) to object to the retention of the Initial Ordinary Course Professional in question. Any such objections must be filed with the Court and served upon the Notice Parties and the subject Initial Ordinary Course Professional by the Objection Deadline. If any such objection cannot be resolved or withdrawn within fourteen (14) days after

service, the matter will be scheduled for hearing before the Court on the next regularly scheduled hearing date or such other date that may be agreeable to the Initial Ordinary Course Professional, the Debtors, and the objecting party. If no objection is received on or before the Objection Deadline, if any objection is withdrawn, or if any objection submitted is timely resolved, the Debtors will be authorized to retain the Initial Ordinary Course Professional as a final matter without further order of the Court, as of the Petition Date or the applicable date of engagement.

12. The Debtors also request that they be authorized to employ and retain additional ordinary course professionals not currently listed as Initial Ordinary Course Professionals as future circumstances require (the “Additional Ordinary Course Professionals”), without the need to file individual retention applications or provide further hearing or notice to any party, by filing with the Court a supplement to Exhibit 1 (the “Supplement”) and serving copies of both the Supplement and the Retention Questionnaire upon the Notice Parties.

13. The Debtors propose that, as with the Initial Ordinary Course Professionals, each Additional Ordinary Course Professional be required to provide to the Debtors and their counsel, for filing with the Court, a Declaration, and for service upon the Notice Parties, both a Declaration and a Retention Questionnaire, within thirty (30) days after the filing of the Supplement. The Notice Parties will have fourteen (14) days after service of each required Declaration to object to the retention of the Additional Ordinary Course Professional in question. Any objection would be handled as set forth in paragraph 11 above. If no objection is timely submitted, the objection is withdrawn, or the objection submitted is timely resolved, the Debtors would be authorized to retain

the Additional Ordinary Course Professional as a final matter without further order, effective as of the date of filing the Supplement or the applicable date of engagement.

14. The Debtors will not pay any fees and expenses to any Ordinary Course Professional (nor shall any such Ordinary Course Professional draw down on any existing retainer) unless: (a) such Ordinary Course Professional has submitted its Declaration and such Declaration is filed with the Court and, along with the Retention Questionnaire, served on the Notice Parties; (b) the applicable Objection Deadline has expired; and (c) no timely objection is pending. If a timely objection is received, no payment will be made until such objection is resolved, withdrawn, or otherwise overruled by the Court.

## **II. Proposed Payment Procedures**

15. Once the Debtors retain an Ordinary Course Professional in accordance with these procedures above, they propose to pay such Ordinary Course Professional 100 percent of their fees and disbursements incurred with respect to postpetition services, upon the submission to, and approval by, the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered and expenses incurred after the Petition Date; *provided, however*, that each Ordinary Course Professional's total compensation and reimbursement shall not exceed the applicable monthly fee cap set forth in Exhibit 1 of the Order or in any Supplement on average over any three month period on a rolling basis (the "Monthly Fee Cap").

16. The Debtors propose that payments to a particular Ordinary Course Professional would become subject to Court approval based upon an application for allowance of fees and expenses under sections 330 and 331 of the Bankruptcy Code, under the same procedures that are established for Chapter 11 Professionals, only if such payments exceed the Monthly Fee Cap; *provided, however*, that the applicable Ordinary Course Professional shall be entitled to interim

payment of its requested fees and expenses up to the Monthly Fee Cap pending the Court's allowance of those requested fees and expenses in excess of the Monthly Fee Cap.

17. In the ordinary course of business, as a routine matter, the Debtors review all bills received from the Ordinary Course Professionals to assess the reasonableness of the fees charged and the necessity of the expenses incurred. This type of review will continue postpetition and, coupled with the proposed Monthly Fee Cap, will protect the Debtors' estates against excessive and improper billings.

### **III. Periodic Payment Statements**

18. Within thirty (30) days after the end of, and with respect to, each full three (3)-month period after the Petition Date (including any initial partial month in the first period), the Debtors propose to file a periodic payment summary statement with the Court and to serve such statement upon the Notice Parties. The summary statement will include the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional during the statement period; and (c) a general description of the services rendered by such Ordinary Course Professional. The obligation to file summary statements will terminate upon confirmation of a plan in these chapter 11 cases.

### **Basis for Relief**

19. The Debtors seek the relief requested in this Motion to avoid any later controversy about employing and paying the Ordinary Course Professionals during the pendency of these chapter 11 cases. The Debtors believe that their decision to employ the Ordinary Course Professionals is appropriate under Bankruptcy Code section 363(c)(1) because the employment

and compensation of the Ordinary Course Professionals are matters that relate to the ordinary course of the Debtors' business. "The Code takes cognizance of the fact that if a debtor had to seek court approval to pay for every expense incurred during the normal course of its affairs, the debtor would be in court more than in business." *Bagus v. Clark (In re Buyer's Club Markets)*, 5 F.3d 455, 457–58 (10th Cir. 1993). By this Motion, the Debtors are neither requesting to pay prepetition amounts owed to any of the Ordinary Course Professionals nor requiring the Ordinary Course Professionals to waive any claim against the Debtors.

**I. The Debtors Employ the Ordinary Course Professionals in the Ordinary Course of the Debtors' Business.**

20. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors, as debtors in possession, are authorized to operate their businesses. Section 363(c)(1) further defines the scope of a debtor's authority and provides that, unless the court orders otherwise, a debtor in possession may enter into transactions, including the use, sale, or lease of estate property in the ordinary course of business without notice and a hearing. "The framework of section 363 is designed to allow a trustee (or debtor in possession) the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary." *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). "Neither the Bankruptcy Code nor its legislative history provide a framework for analyzing whether particular transactions are in the ordinary course of a debtor's business for the purposes of section 363." *Id.*

21. To determine whether or not a transaction falls in the ordinary course of business, many courts have adopted a two-step inquiry: the "vertical dimension" or "creditor's expectation" test, and the "horizontal dimension" or "industry-wide" test. *See id.* (citations omitted); *see also N.J. Mobile Dental Practice, P.A. v. Cont'l Assocs. Ltd. (In re N.J. Mobile Dental Practice, P.A.)*,

No. 05-17772 (DHS), Adv. No. 07-1988 (DHS), 2008 Bankr. LEXIS 1184 at \*14 (Bankr. D.N.J. Apr. 7, 2008) (explaining that “the Third Circuit adopted a two-step approach consisting of a horizontal and a vertical dimension”).

22. Under the vertical dimension test, courts “analyze[d] the transactions ‘from the vantage point of a hypothetical creditor and the inquiry is whether the transaction subjects a creditor to economic risk of a nature different from those he accepted when he decided to extend credit.’” *In re Roth Am., Inc.*, 975 F.2d at 953 (citations omitted). A debtor’s “pre-petition business practices and conduct” are the primary focus of the vertical analysis. *Id.* Under the horizontal dimension test, courts analyze “whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry.” *Id.*

23. Application of the vertical and horizontal tests to the Debtors’ employment and compensation of the Ordinary Course Professionals demonstrates that the Debtors’ actions should be considered ordinary course transactions pursuant to section 363(c)(1) of the Bankruptcy Code. With regard to the vertical dimension test, the Debtors’ employment and compensation of the Ordinary Course Professionals is consistent with the Debtors’ prepetition business practices. The Debtors utilize the services of each of the Initial Ordinary Course Professionals in connection with the day-to-day operation of the Debtors’ businesses. Further, the Debtors’ creditors may reasonably assume that the operation of the Debtors’ businesses requires the assistance of various non-bankruptcy professionals in connection with legal, tax, accounting, regulatory, and other matters.

24. With regard to the horizontal dimension test, it is standard practice for companies in the genetic testing industry to utilize the services provided by the Ordinary Course Professionals in connection with day-to-day operations. Therefore, employment and compensation of the

Ordinary Course Professionals satisfies both the horizontal and vertical tests and is therefore consistent with section 363(c)(1) of the Bankruptcy Code.

**II. The Ordinary Course Professionals are not Professional Persons Under Section 327.**

25. The Ordinary Course Professionals are not “professional persons” within the meaning of section 327(a) of the Bankruptcy Code and, therefore, should not be subject to its requirements. Under section 327(a), a debtor “with the court’s approval, may employ one or more attorneys, accountants, appraisers, auctioneers, *or other professional persons . . .* to represent or assist the [debtor] *in carrying out the [debtor’s] duties under this title.*” 11 U.S.C. § 327(a) (emphasis added).

26. “[N]ot all individuals normally considered as professionals are deemed professionals for purposes of section 327.” *U.S. ex rel. Kraft v. Aetna Cas. & Sur. Co.*, 43 B.R. 119, 121 (M.D. Tenn. 1984); *see also, e.g., In re Napoleon*, 233 B.R. 910, 913 (Bankr. D.N.J. 1999) (explaining that “it is not enough that the party be a professional by education or training” but that “he or she must also play an integral role in the administration of the bankruptcy case” to be considered a “professional person” under section 327(a)). Section 327(a) only requires the court’s approval of a professional “to represent or assist the trustee in carrying out the trustee’s duties under this title.” Therefore, courts have required that the professional person’s employment must specifically relate to the administration of the bankruptcy case, as opposed to the ordinary course operation of the debtor’s business. *See, e.g., In re Napoleon*, 233 B.R. at 913.

27. Furthermore, the professional person’s employment must be “central” to the administration of the estate, and section 327(a) should only apply if the professional will play an intimate role in the reorganization of the debtor’s estate. *In re Napoleon*, 233 B.R. at 913; *see also, e.g., In re Livore*, 473 B.R. 864, 870 (Bankr. D.N.J. 2012) (holding that the employed party was not a professional person requiring retention under section 327(a) because he “did not play an

integral role in the administration of the bankruptcy case”); *In re Zais Inves. Grade Ltd. VII*, No. 11-20243 (RTL), 2011 WL 4543215 at \*2 (Bankr. D.N.J. Sept. 26, 2011) (“This court is of the opinion that court approval is not required for the Debtor to engage Cayman Islands counsel for such non-bankruptcy legal services and to compensate the professional in accordance with prior practices.”).

28. If the debtor is not seeking to employ a professional because of a need that arose incident to the bankruptcy, section 327 should not apply, regardless of whether the professional’s services are important to the debtor’s business. See *In re Livore*, 473 B.R. 864, 870 (Bankr. D.N.J. 2012) (holding that the employed party was not a professional person requiring retention under section 327(a) because he “did not play an integral role in the administration of the bankruptcy case”); *In re Zais Inves. Grade Ltd. VII*, No. 11-20243 (RTL), 2011 WL 4543215 at \*2 (Bankr. D.N.J. Sept. 26, 2011) (“This court is of the opinion that court approval is not required for the [d]ebtor to engage Cayman Islands counsel for such non-bankruptcy legal services and to compensate the professional in accordance with prior practices.”); see also *In re Johns–Manville Corp.*, 60 B.R. 612, 621 (Bankr. S.D.N.Y. 1986) (lobbyists retained to perform services in the ordinary course of debtor’s business “performed a function completely external to the reorganization process” and therefore were not professional persons requiring retention under section 327(a)); *In re Seatrain Lines, Inc.*, 13 B.R. 980 (Bankr. S.D.N.Y. 1981) (holding that maritime engineers employed in the course of Debtor’s business would “play an important role in the mechanics of [Debtor’s] operation,” but were not professionals requiring retention under section 327(a) because their retention would not “affect the administration of [Debtor’s] reorganization”).

29. Although the Ordinary Course Professionals provide valuable services for the Debtors, their employment is not central to the reorganization of the Debtors' businesses. Furthermore, it could hinder the administration of the Debtors' estates if the Debtors were required (a) to submit to the Court an application, declaration, and proposed retention order for each Ordinary Course Professional, (b) to wait until such order is approved before such Ordinary Course Professional continues to render services, and (c) to withhold payment of the normal fees and expenses of the Ordinary Course Professionals until they comply with the compensation and reimbursement procedures applicable to Chapter 11 Professionals.

30. Under such conditions, there is a risk that some Ordinary Course Professionals would be unwilling to provide services, and that others would suspend services pending a specific court order authorizing the services. Since many of the matters for which the Ordinary Course Professionals provide services are active on a day-to-day basis, any delay or need to replace professionals could have adverse consequences on the Debtors' estates. For example, if the expertise and background knowledge of the Ordinary Course Professionals with respect to the particular matters for which they were responsible prior to the Petition Date were lost, the estates undoubtedly would incur additional and unnecessary expenses because the Debtors would have to retain other professionals without such background and expertise, at potentially higher rates. It is therefore in the best interest of the Debtors' estates to avoid any disruption to the professional services required.

31. Moreover, the requested relief will allow the Debtors to avoid additional fees that such Ordinary Course Professionals would charge in connection with preparing and prosecuting numerous interim fee applications. Likewise, the procedures set forth above will relieve the Court,

the U.S. Trustee, and other interested parties of the burden of reviewing a multitude of fee applications involving relatively small amounts of fees and expenses.

32. To the best of the Debtors' knowledge, none of the Initial Ordinary Course Professionals represents or holds any interest materially adverse to the Debtors or to their estates with respect to the matter in which the Debtors employ such Ordinary Course Professional(s). Although certain of the Initial Ordinary Course Professionals may hold unsecured claims against one or more of the Debtors, the Debtors do not believe that any of such claims constitute interests materially adverse to the Debtors, their estates, their creditors, or other parties in interest.

33. Courts in this district have consistently granted similar relief in other chapter 11 cases. *See, e.g., In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 20, 2023) (entering an order approving the retention of professionals utilized in the ordinary course of business); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. Aug. 1, 2023) (same); *In re Bed Bath & Beyond Inc., et al.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 17, 2023) (same); and *In re David's Bridal, LLC, et al.*, No. 23-13131 (CMG) (Bankr. D.N.J. April 27, 2023) (same).

### **III. Retroactive Relief is Appropriate.**

34. The Debtors request that the employment of the Ordinary Course Professionals be approved retroactively to the Petition Date, or in the case of Additional Ordinary Course Professionals, retroactively to the date of the filing of the Supplement or the applicable date of the engagement. The Debtors filed this Motion as a precautionary measure to avoid any later controversy about employing and paying the Ordinary Course Professionals during the pendency of these chapter 11 cases. Therefore, granting the relief requested in this Motion retroactive to the Petition Date will not prejudice any party in interest. Furthermore, even if the Ordinary Course Professionals were subject to the requirements of section 327, the Court would have the authority

to approve retroactive relief. *See, e.g., In re Arkansas Co., Inc.*, 798 F.2d 645, 648 (3d Cir. 1986) (holding “that the bankruptcy courts have the power to authorize retroactive employment of counsel and other professionals under their broad equity power”). While the *Arkansas* case limits *nunc pro tunc* approval to cases involving extraordinary circumstances, courts have recognized that such “heightened showing” of extraordinary circumstances only applies “when there has been a months-long delay before seeking approval.” *City of Rockford v. Mallinckrodt Plc (In re Mallinckrodt Plc)*, No. 21-398-LPS, 2022 WL 906451 at \*22 (Bankr. D. Del. March 28, 2022); *see also, e.g., In re Sound Radio, Inc.*, 145 B.R. 193, 205 n.18 (Bankr. D.N.J. 1992) (explaining that another court “held that thirty days from the commencement of the case . . . is the outer limit” for obtaining court approval and after that, “the applicant must show a reasonable explanation for the delay”) (citing *In re Martin*, 102 B.R. 653 (Bankr. W.D. Tenn. 1989)).

35. Based on the foregoing facts and circumstances, the Debtors submit that the employment and compensation of the Ordinary Course Professionals in the manner set forth above and in the proposed Order is supported by sound business judgment, and is necessary, prudent, and in the best interests of the Debtors, their estates, and their creditors.

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

36. 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 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.

**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; except as otherwise provided in the 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 Ordinary Course Professionals; and (n) 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.

**WHEREFORE**, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A** granting the relief requested herein.

Dated: February 23, 2024

*/s/ Michael D. Sirota*

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

**Exhibit A**

**Proposed Order**

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

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

Debtors. <sup>1</sup>
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Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**ORDER AUTHORIZING EMPLOYMENT AND PAYMENT  
OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS**

The relief set forth on the following pages, numbered three (3) through thirteen (13), is  
**ORDERED.**

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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' 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.

**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: ORDER AUTHORIZING EMPLOYMENT AND PAYMENT OF PROFESSIONALS UTILIZED IN THE ORDINARY COURSE OF BUSINESS

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Upon the Debtors' Motion for Entry of an Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") (a) authorizing the Debtors to retain Ordinary Course Professionals (which includes both the Initial Ordinary Course Professionals and Additional Ordinary Course Professionals) without the necessity of a separate, formal retention application approved by this Court for each Ordinary Course Professional, and (b) pay each Ordinary Course Professional for postpetition services rendered and expenses incurred, including, if necessary, advancing any reasonable postpetition retainer to the Ordinary Course Professional, subject to certain limits set forth below, without the necessity of additional court approval, 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 cause 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 (the "Hearing"); and this Court having determined that the legal and factual bases

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<sup>2</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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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 therefor

**IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.

2. The Debtors are authorized to employ and retain the Ordinary Course Professionals listed on **Exhibit 1** attached hereto (the “Initial Ordinary Course Professionals”), and any Additional Ordinary Course Professional (collectively with the Initial Ordinary Course Professionals, the “Ordinary Course Professionals”), without the need to file individual retention applications and obtain retention orders for each such Ordinary Course Professional. The Debtors are further authorized, subject to compliance with the Approved Budget, to pay such Ordinary Course Professionals’ fees, including, if necessary, advancing any reasonable postpetition retainer to the Ordinary Course Professional, and reimburse expenses incurred pursuant to the terms of this Order. Any advancement of a reasonable postpetition retainer to an Ordinary Course Professional shall be subject to notice being provided to the Notice Parties (defined below) with an opportunity to object within seven (7) days of service of such notice. Such objection deadline shall be subject to extension by agreement of the Debtors and the U.S. Trustee. Such authorizations are effective as of the Petition Date or the applicable date of engagement.

3. Within seven (7) days after the date of entry of this Order, the Debtors shall serve this Order upon each Initial Ordinary Course Professional. Thereafter, no later than (a) forty-five (45) days after the date of entry of this Order or (b) the date on which each retained Initial Ordinary Course Professional commences services for the Debtors, each Initial Ordinary Course Professional shall provide to the Debtors and the Debtors’ counsel a Declaration pursuant

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to Section 1746 of title 28 of the United States Code, substantially in the form attached hereto as

**Exhibit 2** for filing with the Court and service upon (i) the Debtors, Invitae Corporation, 1400 16<sup>th</sup> Street, San Francisco, California 94103, Attn: Benjamin Carver; (ii) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com), Francis Petrie (francis.petrie@kirkland.com), Nikki Gavey (nikki.gavey@kirkland.com), and Olivia Acuña (olivia.acuna@kirkland.com); Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Spencer A. Winters, P.C. (spencer.winters@kirkland.com); (iii) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota (msirota@coleschotz.com), Warren A. Usatine (wusatine@coleschotz.com), Felice R. Yudkin (fyudkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); (iv) the Office of the United States Trustee for the District of New Jersey, One Newark Center, 1085 Raymond Boulevard, suite 2100, Newark, New Jersey 07102, Attn.: Jeffrey M. Sponder (jeffrey.m.sponder@usdoj.gov), Lauren Bielskie (lauren.bielskie@usdoj.gov); (v) counsel to the official committee of unsecured creditors (if any) appointed in these chapter 11 cases; and (vi) those parties that have filed a notice of appearance and request for service of pleadings in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”). Each Ordinary Course Professional shall also complete and return the Retention Questionnaire substantially in the form attached hereto as **Exhibit 3** and serve the same upon the Notice Parties.

4. The Debtors are authorized, without need for further hearing or order from the Court, to employ and retain ordinary course professionals not currently listed on **Exhibit 1**

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(the “Additional Ordinary Course Professionals”) by filing with the Court, and serving on the Notice Parties, a supplement to **Exhibit 1** (the “Supplement”), listing the name of the Additional Ordinary Course Professional, together with a brief description of the services to be rendered and the applicable monthly fee cap, serving a copy of both the Supplement and the Retention Questionnaire on the Notice Parties, and by otherwise complying with the terms of this Order. Such authorization is effective retroactive to the date of filing the Supplement or the applicable date of engagement. Within thirty (30) days of the filing of such Supplement, each Additional Ordinary Course Professional shall provide to the Debtors and the Debtors’ counsel a Declaration and Retention Questionnaire, and the Debtors will file the Declaration with the Court and serve the Declaration and Retention Questionnaire upon the Notice Parties.

5. The Notice Parties shall have fourteen (14) days after the later of (i) the entry of this Order, (ii) the service of any Declaration, or (iii) the service of any Retention Questionnaire (the “Objection Deadline”) to object to the retention of any Ordinary Course Professional. Any such objections shall be filed with the Court and served upon the Notice Parties and the Ordinary Course Professional subject to such objection by the Objection Deadline. If any objection cannot be resolved or withdrawn within fourteen (14) days after service (or on such earlier date as determined by the Debtors in their discretion), upon motion by the Debtors, such objection shall be scheduled for hearing before the Court on the next regularly scheduled hearing date or such other date that may be agreeable to the Ordinary Course Professional, the Debtors, and the objecting party. If no objection is received on or before the Objection Deadline, or if any submitted objection is timely withdrawn or resolved, the Debtors shall be authorized to retain the Ordinary

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Course Professional as a final matter without further order of the Court, as of the Petition Date or the applicable date of engagement.

6. The Debtors shall not pay any fees or reimburse any expenses (nor shall any Ordinary Course Professional draw down any previously provided retainer) to any Ordinary Course Professional unless (a) the Ordinary Course Professional has submitted its Declaration and such Declaration has been filed with the Court and, along with the Retention Questionnaire, served on the Notice Parties; (b) the Objection Deadline has expired; and (c) no timely objection is pending. If a timely objection is received, no payment shall be made until such objection is either resolved, withdrawn, or otherwise overruled by the Court.

7. The Debtors shall pay each Ordinary Course Professional retained in accordance with the procedures outlined above 100 percent of the fees and disbursements incurred with respect to postpetition services, upon the submission to, and approval by, the Debtors of an appropriate invoice, a copy of which shall be provided to the U.S. Trustee and counsel to any statutory committee appointed in these chapter 11 cases, setting forth in reasonable detail the nature of the services rendered and expenses actually incurred during the month, without prejudice and subject to (i) the Debtors' right to dispute any such invoices in the ordinary course and (ii) the rights of the Notice Parties to file an Ordinary Course Professional Fee Objection (defined below) in accordance with paragraph 12 hereof; *provided, however*, that each Ordinary Course Professional's total compensation and reimbursement shall not exceed the Monthly Fee Cap set forth in **Exhibit 1** or in any Supplement, as applicable, on average over any three (3)-month period on a rolling basis; *provided, further*, that the Debtors shall not pay any Ordinary Course Professional in excess of their applicable Aggregate Fee Cap during the course of these

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chapter 11 cases except as otherwise authorized by the Court under the procedures outlined in paragraphs 8–10 of this Order.

8. The Debtors shall have the authority to change the Monthly Fee Cap and Aggregate Fee Cap applicable to any given Ordinary Course Professional upon seven (7) calendar days' notice to the Notice Parties, subject to objection by the Notice Parties. In addition, in the event the duration of these chapter 11 cases is longer than seven (7) months from the date of entry of this Order, the Aggregate Fee Cap for each Ordinary Course Professional that has been retained, may be increased by agreement of the Notice Parties or by order of the Court. Notwithstanding the foregoing, the aggregate fees to be paid to Ordinary Course Professionals pursuant to this Order shall not exceed \$9.0 million (the "Overall Aggregate Case Cap"). The Overall Aggregate Case Cap may be increased by agreement of the Notice Parties or by order of the Court.

9. If an Ordinary Course Professional's fees and expenses exceed the Monthly Fee Cap over a three (3)-month rolling basis, such Ordinary Course Professional shall file a fee application on account of the amount over the applicable limit and apply for compensation and reimbursement of such amount in compliance with sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Federal Rules of Bankruptcy Procedure, the Local Rules, the U.S. Trustee Fee Guidelines (defined below) and any other procedures and orders of the Court. Such applicable Ordinary Course Professional shall be entitled to interim payment of its requested fees and expenses up to the Monthly Fee Cap pending the Court's allowance of those requested fees and expenses in excess of the Monthly Fee Cap. Each Ordinary Course Professional that is a law firm and exceeds the Monthly Fee Cap shall agree to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures set forth in the *Guidelines for*

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*Reviewing Applications for Compensation and Reimbursement of Expenses Filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective as of November 1, 2013* (the “U.S. Trustee Fee Guidelines”).

10. If an Ordinary Course Professional seeks payment of fees in excess of the Aggregate Fee Cap, such Ordinary Course Professional shall be required to (a) file a separate retention application to be retained as a professional person pursuant to section 327 of the Bankruptcy Code; and (b) apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases in accordance with Bankruptcy Code § 330 and 331 and applicable provisions of the Federal Rules of Bankruptcy Procedure, the Local Rules, the U.S. Trustee Fee Guidelines, and any other procedures and orders of the Court. Such applicable Ordinary Course Professional shall be entitled to interim payment of its requested fees and expenses pursuant to any order granting the *Debtors’ Motion for Entry of an Administrative Fee Order Establishing Procedures for the Allowance and Payment of Interim Compensation and Reimbursement of Expenses of Professionals Retained by Order of This Court* [Docket No. 108]. Each Ordinary Course Professional that is a law firm and exceeds the Aggregate Fee Cap shall agree to make a reasonable effort to comply with the U.S. Trustee Fee Guidelines.

11. Within thirty (30) days after the end of, and with respect to, each full three (3)-month period after entry of this Order (including any initial partial month in the first period), the Debtors shall file with this Court, and serve upon the Notice Parties, a summary statement that includes the following information for each Ordinary Course Professional: (a) the name of the Ordinary Course Professional; (b) the aggregate amounts paid as compensation for services rendered and reimbursement of expenses incurred by such Ordinary Course Professional

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during the statement period; (c) the aggregate amount of postpetition payments made to the Ordinary Course Professional through the end of the statement period; and (d) a general description of the services rendered by such Ordinary Course Professional. The obligation to file summary statements shall terminate upon confirmation of a plan in these chapter 11 cases.

12. On the date that is established in the chapter 11 cases for professionals to file final fee applications and pursuant to D.N.J. LBR 2016-4, the Debtors shall file a statement (the “Final Statement”) for each of the Ordinary Course Professionals. The Final Statement shall include the following information for each Ordinary Course Professional: (i) the name of the Ordinary Course Professional; (ii) the aggregate amount paid to the Ordinary Course Professional during the previous ninety (90) days; (iii) the total amount paid post-petition to each Ordinary Course Professional; and (iv) a reasonably detailed description of the services rendered by the Ordinary Course Professional during the chapter 11 cases. The Final Statement shall be served upon the Notice Parties, who shall have twenty (20) days to file an objection with the Court pursuant to section 330 of the Bankruptcy Code (an “Ordinary Course Professional Fee Objection”).

13. This Order shall not apply to any Chapter 11 Professional retained by the Debtors under a separate order of this Court.

14. Each Ordinary Course Professional shall waive any prepetition claim against the Debtors as a condition of its retention and compensation as an Ordinary Course Professional.

15. Each Ordinary Course Professional shall periodically update its Declaration and Retention Questionnaire to the extent necessary to reflect new facts or circumstances relevant to

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its retention, including, without limitation, any changes in the type or scope of services to be provided.

16. Subject to the payment procedures set forth in this Order, the Debtors' rights and the right of any party in interest to dispute any invoice submitted by an Ordinary Course Professional shall not be affected or otherwise prejudiced.

17. As this Order is only procedural in nature, the U.S. Trustee reserves his rights to object to the retention of any Ordinary Course Professional on any grounds including those Initial Ordinary Course Professionals and any Supplement.

18. The Debtors shall not make any payment to any Ordinary Course Professional that has not complied with the Ordinary Course Professional Procedures and the other terms of this Order.

19. 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 Order.

20. Nothing contained in the Motion or this Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this 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

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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 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.

21. 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 Order.

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

23. 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.

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

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

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Debtors: INVITAE CORPORATION, *et al.*

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26. 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.

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

**Exhibit 1**

**Initial Ordinary Course Professionals**

<b>Professional (Name &amp; Address)</b>	<b>Type of Service Provided</b>	<b>Monthly Fee Cap if Services are Utilized</b>
Weil Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153-0119	Legal – Litigation	\$350,000
Ernst & Young LLP One Manhattan West, 395 9th Ave New York, NY 10001	Audit	\$250,000
Pillsbury Winthrop Shaw Pittman LLP 31 West 52nd Street New York, NY 10019	Legal	\$175,000
McDermott Will & Emery 444 West Lake Street Chicago, IL 60606-0029	Legal	\$150,000
Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130	Legal	\$100,000
McCarter & English, LLP 100 Mulberry St. Newark, NJ 07102	Legal – Litigation	\$100,000
Zuckerman Spaeder LLP 1800 M Street NW Suite 1000 Washington, DC 20036-5807	Legal	\$50,000
Wolf, Greenfield, & Sacks, P.C. 605 Third Avenue 25th Floor New York, NY 10158	Legal – Patents	\$35,000
Nicholson De Vos Webster & Elliott LLP 99 S Almaden Ave #575, San Jose, CA 95113	Legal – Patents	\$30,000
Gordon Rees Scully Mansukhani 1300 SW Fifth Avenue, Suite 2000 Portland, OR 97201	Legal - Litigation	\$20,000
Ogletree Deakins P.C. One Ninety One Peachtree Tower 191 Peachtree Street, N.E., Suite 4800 Atlanta, GA 30303	Legal – Employment Counsel	\$20,000
Coblentz, Patch, Duffy & Bass, LLP 1 Montgomery St, Suite 3000 San Francisco, CA 94104	Legal	\$20,000
Sterne, Kessler, Goldstein & Fox, PLLC 1101 K Street NW, 10th Floor Washington, D.C. 20005	Legal – Patents	\$10,000

<b>Professional (Name &amp; Address)</b>	<b>Type of Service Provided</b>	<b>Monthly Fee Cap if Services are Utilized</b>
Hogan Lovells US LLP 4 Embarcadero Center Suite 3500 San Francisco, CA 94111	Legal	\$10,000
Goldfarb Gross Seligman & Co 98 Yigal Alon Street Tel Aviv 6789141, Israel	Legal – Israeli Counsel	\$10,000
Latham & Watkins LLP 555 Eleventh Street, NW, Suite 1000 Washington, D.C., 20004	Legal	\$10,000
Nixon Peabody LLP Exchange Place, 53 State Street Boston MA 02109-2835	Legal – Patents	\$ 5,000
Carpmaels & Ransford LLP 1 Southampton Row London WC1B 5HA, United Kingdom	Legal – Patents	\$5,000
Hanson Bridgett LLP 425 Market Street, 26th Floor San Francisco, CA 94105	Legal	\$5,000
Baker & McKenzie LLP 300 East Randolph Street Suite 5000 Chicago, Illinois 60601	Legal	\$5,000
Jensen Baird Gardner & Henry 10 Free Street P.O. Box 4510 Portland, ME 04112-4510	Legal	\$5,000
Al Tamimi & Company Advocates and Legal Consultants Bahrain Financial Harbour, West Tower, 13th floor, Suite 1304, Office 13B, Building 1459, Block 346, Manama, Bahrain	Legal	\$5,000
Ulmer & Berne LLP 1660 West 2nd Street, Suite 1100 Cleveland, Ohio 44113-1406	Legal	\$5,000
Blake, Cassels & Graydon LLP 126 East 56th Street Suite 1700, Tower 56 New York, NY, 10022	Legal	\$5,000
Latvia Pty Ltd Transactions	Legal – Patents	\$5,000

<b>Professional (Name &amp; Address)</b>	<b>Type of Service Provided</b>	<b>Monthly Fee Cap if Services are Utilized</b>
K.Valdemāra iela 11a. Rīga, LV-1364		
Mewburn Ellis LLP City Tower, 40 Basinghall Street London EC2V 5DE, United Kingdom	Legal – Patents	\$5,000
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC 3414 Peachtree Road, N.E., Suite 1500 Atlanta, GA 30326	Legal	\$ 5,000
WFBM, LLP 19900 MacArthur Blvd., Suite 1150 Irvine, CA 92612	Legal	\$ 5,000
Bryan Cave Leighton Paisner LLP One Metropolitan Square 211 North Broadway, Suite 3600 St. Louis, MO 63102	Legal	\$ 5,000
Brown Rudnick LLP 7 Times Square New York, NY 10036	Legal	\$ 5,000
Law Office of Brad Simon 1630 Dublin Road Richmond, MA 01254 USA	Legal	\$ 5,000
Womble Bond Dickinson (US) LLP One West 4th Street Winston-Salem, NC, US 27101	Legal	\$ 5,000
ZAB Ellex Klavins, SIA K, Krišjāņa Valdemāra iela 62, Rīga, LV-1013, Latvia	Legal – Latvia	\$ 5,000
<b>Total – All Professionals</b>		<b>\$1,425,000</b>

**Exhibit 2**

**Form of Declaration**

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)  
Francis Petrie (admitted *pro hac vice*)  
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-and-

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Spencer A. Winters, P.C. (admitted *pro hac vice*)  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
spencer.winters@kirkland.com

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

*Proposed Co-Counsel to the Debtors and  
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)

(Jointly Administered)

**DECLARATION OF [DECLARANT], ON BEHALF OF  
PROPOSED ORDINARY COURSE PROFESSIONAL [COMPANY NAME]**

<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' 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.

I, [**Declarant**], pursuant to Section 1746 of title 28 of the United States Code, hereby declare that the following is true to the best of my information, knowledge, and belief:

1. I am [**Title**] of [**Company Name**], located at [**Address**] (the “Company”).
2. Invitae Corporation and/or its affiliated debtors (collectively, the “Debtors”) have requested that the Company provide [**Type of Services**] to the Debtors, and the Company has consented to provide such services.
3. The Company may have performed services in the past and may perform services in the future, in matters unrelated to these chapter 11 cases, for persons that are parties in interest in these cases. As part of its customary practice, the Company is retained in cases, proceedings, and transactions involving many different parties, some of whom may represent or be claimants or employees of the Debtors, or other parties in interest in these cases. The Company does not perform services for any such person in connection with these cases. In addition, the Company does not have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.
4. Neither I, nor any principal of, or professional employed by the Company has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principals and regular employees of the Company.
5. Neither I, nor any principal of, or professional employed by the Company, insofar as I have been able to discover, holds or represents any interest adverse to the Debtors or their estates.

6. The Company believes that it is [not owed any amounts] / [owed approximately \$[●]] on account of services rendered and expenses incurred prior to the Petition Date in connection with the Company's employment by the Debtors. The Company agrees to waive all unpaid amounts for services rendered prior to the Petition Date.

7. As of the Petition Date, which was the date on which the Debtors commenced these chapter 11 cases, the Company [was/was not] party to an agreement for indemnification with the Debtors. [A copy of such agreement is attached as **Exhibit 1** to this Declaration.]

8. At any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

9. I, or a representative of the Company, have read and am familiar with the requirements of the *Order Authorizing Employment and Payment of Professionals Utilized in the Ordinary Course of Business*.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this [Date] in [City, State, Country].

---

[Declarant]

**Exhibit 3**

**Form Retention Questionnaire**

**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)

(Jointly Administered)

**RETENTION QUESTIONNAIRE**

**TO BE COMPLETED BY EACH ORDINARY COURSE PROFESSIONAL  
EMPLOYED BY THE DEBTORS**

**Do not file this Questionnaire with the Court. Please return it to:**

**KIRKLAND & ELLIS LLP**

**KIRKLAND & ELLIS INTERNATIONAL LLP**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)  
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francis.petrie@kirkland.com  
jeffrey.goldfine@kirkland.com

-and-

**KIRKLAND & ELLIS LLP**

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fyudkin@coleschotz.com  
dharris@coleschotz.com

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

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

<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' 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.

If more space is needed, please complete on a separate page and attach.

1. Name and address of firm:

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2. Date of retention:

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3. Type of services provided (accounting, legal, etc.):

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4. Brief description of services to be provided:

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5. Arrangements for compensation (hourly, contingent, etc.):

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6. Prepetition claims against the Debtors held by the firm (if any):

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(a) Average hourly rate (if applicable):

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(b) Estimated average monthly compensation:

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7. Prepetition claims against the Debtors held individually by any member, associate, or professional employee of the firm:

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8. Disclose the nature and provide a brief description of any interest adverse to the Debtors or to its estate with respect to the matters on which the above-named firm is to be employed:

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9. Name and title of individual completing this Retention Questionnaire:

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

Dated: \_\_\_\_\_, 2024

[Name]  
[Title]  
[Firm]