

TURNER LAW FIRM, LLC
Andrew R. Turner, Esq.
76 South Orange Avenue
South Orange, New Jersey 07079
Phone: (973) 763-5000
Fax: (973) 763-0568
aturner@turnerlaw.net

-and-

TUCKER ARENSBERG, P.C.
Beverly Weiss Manne, Esq.
Maribeth Thomas, Esq.
1500 One PPG Place
Pittsburgh, Pennsylvania 15222
Telephone: (412) 566-1212
Fax: (412) 594-5619
bmanne@tuckerlaw.com
mthomas@tuckerlaw.com

Counsel to Thermo Fisher Scientific, Inc., Life Technologies Corporation, Life Technologies AS, and Thermo FisherScientific Baltics UAB

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	:	Chapter 11
	:	
INVITAE CORPORATION, <i>et al.</i> , ¹	:	Case No. 24-11362 (MBK)
	:	
Debtors.	:	(Jointly Administered)
	:	

**OBJECTION AND RESERVATION OF RIGHTS REGARDING
DEBTORS' NOTICE TO CONTRACT PARTIES TO POTENTIALLY
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Thermo Fisher Scientific, Inc. ("TFS"), Life Technologies Corporation ("**Life Tech**"), Life Technologies AS ("**Life Tech AS**"), and Thermo Fisher Scientific Baltics UAB ("**TFS Baltics**")

¹ 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. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



and together with TFS, Life Tech, and Life Tech AS, the “**TFS Entities**”), by and through their undersigned counsel, file this Objection and Reservation of Rights with respect to the Debtors’ *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (“**Cure Notice**”), [Doc. No. 365], and state as follows:

BACKGROUND

1. Invitae Corporation and the related debtors (the “**Debtors**”) filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “**Bankruptcy Code**”) on February 13, 2024 (the “**Petition Date**”).

2. The TFS Entities and certain of the Debtors are parties to certain supply, service, and purchase agreements (collectively the “**TFS Agreements**”).

3. On February 16, 2024, the Court entered its *Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets* (the “**Bidding Procedures Order**” and such procedures, the “**Bidding Procedures**”). [Doc. No. 57.]

4. Pursuant to the Bidding Procedures Order, on April 12, 2024, the Debtors filed and served the Cure Notice identifying certain contracts and leases the Debtors intend to potentially assume and assigned in connection with the Sale Transaction the Successful Bidder (as such terms are defined in the Bidding Procedures Order). [See Cure Notice, Doc. No. 57.]

5. Certain TFS Agreements are included on Exhibit A to the Cure Notice, which sets forth the list of contracts to potentially be assumed and assigned, with the following stated Cure Amounts:

Contract Counterparty	Document Title	Effective Date	Proposed Cure Amount
Illumina, Inc.; Genomics England; Thermo Fisher; Amazon Web Services; deCODE genetics; Roche; Microsoft; Myriad Genetics, Inc.; AncestryDNA	Collaboration Agreement	1/25/2022	\$0.00
Life Technologies Corporation	Instrument Services Terms and Conditions	5/11/2023	\$0.00
Life Technologies Corporation	Terms and Conditions of Sale	5/4/2021	\$0.00
Life Technologies Corporation (Thermo Fisher Scientific)	Letter re: Additional Terms and Conditions for Purchase of LTC Products from LTC Authorized Distributor	5/30/2023	\$0.00
Life Technologies Corporation	Terms and Conditions of Sale	8/11/2022	\$0.00
Life Technologies Corporation	Terms and Conditions of Sale		\$0.00
Life Technologies Corporation	Master Supply Agreement	7/6/2015	\$0.00
Life Technologies AS	Quotation #BBS1714	1/18/2019	\$0.00
Life Technologies Corporation	Service Agreement Quotation	1/1/2023	\$0.00
Life Technologies Corporation	Service Agreement Quotation	1/15/2023	\$0.00
Life Technologies Corporation	Service Agreement Quotation	2/1/2023	\$0.00
Life Technologies Corporation	Service Agreement Quotation	5/17/2023	\$0.00
Life Technologies Corporation	Service Agreement Quotation	8/23/2023	\$0.00
Thermo Fisher Scientific Baltics UAB	Supply and License Agreement	1/1/2018	\$0.00
Thermo Fisher Scientific Baltics UAB	Termination Letter re: Supply and License Agreement	9/30/2022	\$0.00
Thermo Fisher Scientific	Laboratory Services Agreement	12/1/2015	\$0.00
Thermo Fisher Scientific	Laboratory Services Agreement	6/1/2019	\$0.00
Thermo Fisher Scientific	Terms and Conditions of Sale		\$0.00
Thermo Fisher Scientific, Life Technologies AS	Quote and Terms and Conditions	3/30/2023	\$0.00
Thermo Fisher Scientific	Terms and Conditions of Sale		\$0.00
Thermo Fisher Scientific	Estimate	5/20/2022	\$0.00
Life Technologies Corporation, a part of ThermoFisher Scientific	Quotation S4975065 January 31, 2023	1/31/2023	\$0.00

6. The Cure Claim Amounts. The stated cure claims of \$0 are inaccurate. There are both pre-petition and post-petition balances due to the TFS Entities on account to the TFS

Agreements that include—subject to supplementation and increase—past-due balances (the “**Cure Claim Amount(s)**”) owed to the TFS Entities under the TFS Agreements are as follows:

Contract Counterparty	Pre-Petition Balance	Post-Petition Balance	Cure Claim Amount
Life Technologies Corporation	\$37,300.78	\$77,672.24	\$114,973.02
Life Technologies AS	\$10,891.70	\$30,872.40	\$41,764.10
Thermo Fisher Scientific	\$5,196.36	\$299,312.01	\$304,508.37

7. The Cure Claim Amounts include amounts that could be entitled to administrative claim status under § 503(b)(9) of the Bankruptcy Code.

8. In addition, Debtors are and/or may be obligated to the TFS Entities for additional post-petition goods and services, in amounts in excess of those set forth above, that must be paid and brought current by Debtors prior to or as part of any assumption and assignment.

OBJECTION

I. The Cure Amounts are incorrect.

10. The TFS Entities object to the proposed Cure Notice based upon its failure to comply with section 365 of the Bankruptcy Code, which governs the assumption and assignment of unexpired leases and executory contracts. 11 U.S.C. § 365.

11. Pursuant to section 365 of the Bankruptcy Code, the Debtors must cure, or provide adequate assurance that they will promptly cure, all outstanding amounts owed under the TFS Agreements before they can be assumed and certainly before they can be assigned.

12. Debtors’ unpaid cure obligations to the TFS Entities are as set forth above, and the Debtors may also owe unpaid postpetition obligations to the TFS Entities. As a condition to assumption and assignment of the executory contracts with the TFS Entities, all unpaid prepetition and postpetition amounts due and owing to TFS Entities must be paid.

13. The TFS Agreements also require the prior consent of TFS Entities to any assignment thereof, and purchaser must be a party with whom TFS Entities is willing and able to do business.

II. The Cure Notice includes TFS Agreements that are expired, superseded, or terminated pre-petition.

14. The Cure Notice includes, in its list of contracts to potentially be assumed by and assigned to the Successful Bidder, a number of TFS Agreements that are really parts of other listed agreements, or that have expired by their own terms, been terminated prepetition, or have been superseded by later contracts between the TFS Entities and the Debtors.

15. The Cure Notice fails to identify the TFS Agreements with sufficient specificity to allow the TFS Entities to determine which TFS Agreements have expired, terminated, or been superseded by a later agreement.

16. Accordingly, the TFS Entities object to the Cure Notice to the extent that it attempts to assume / assign a TFS Agreement that is no longer in effect.

RESERVATION OF RIGHTS

17. The TFS Entities reserve all of their rights including under the TFS Agreements, including the right to receipt of a proper cure amount pursuant to 11 U.S.C. § 365. The TFS Entities reserve all of their rights with respect to the TFS Agreements to any purported assumption and assignment or any other transfer of any portion of the TFS Agreements in connection with any proposed sale.

18. The TFS Entities reserve all rights and claims with respect to any claims or executory contracts unrelated to, or allegedly unrelated to, the Sale Transaction.

19. The TFS Entities reserve their rights with respect to payment owed for both prepetition and postpetition goods and services, and with respect to any executory contracts with

the Debtors, including with respect to any cure or damages for rejection thereof and/or to enforce their rights and remedies under applicable law, or as otherwise authorized by the Court.

20. The TFS Entities reserve the right to amend or supplement the foregoing objections, to join in other objections filed and to further revise and/or amend the foregoing, or to enforce other rights and remedies under applicable law, or as otherwise authorized by the Court.

21. Adequate Assurance of Regulatory Performance Reservation of Rights. The TFS Entities must receive, and are entitled to, sufficient information from the Successful Bidder that would allow the TFS Entities to determine whether buyer qualifies as an assignee under the TFS Agreement. While certain TFS Entities are familiar with Buyer and may already be doing business, the TFS Entities need to confirm that there is an ongoing relationship between TFS and Buyer. Thus, subject to that confirmation, the TFS Entities object to approval of any sale to an entity that has not provided such information or to an entity that has provided the information but who falls short on its ability to provide adequate assurance of future performance, on both a financial basis and an operational basis with respect to compliance with applicable laws, regulations and licensing requirements, including inter alia, the Foreign Corrupt Practices Act, the Federal Food, Drug and Cosmetic Act, the FDA Current Good Manufacturing Practice (CGMP) regulations, or any other regulatory or legal requirements of any governmental entity (for example, the FDA, HHS, CMS or DEA).

WHEREFORE, the TFS Entities respectfully request that, to the extent the Court authorizes the assumption of the TFS Agreements, such authorization be conditioned upon the satisfaction of the Cure Claim Amounts set forth herein and for such additional relief as the Court deems just and proper.

Dated: May 1, 2024

Respectfully Submitted,

Andrew R Turner

Andrew R. Turner, Esq. (NJ 8574)
TURNER LAW FIRM, LLC
76 South Orange Avenue
South Orange, New Jersey 07079
Phone: (973) 763-5000
Fax: (973) 763-0568
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Beverly Weiss Manne, Esq.
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1500 One PPG Place
Pittsburgh, Pennsylvania 15222
Telephone: (412) 566-1212
Fax: (412) 594-5619
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**OBJECTION AND RESERVATION OF RIGHTS REGARDING
DEBTORS' NOTICE TO CONTRACT PARTIES TO POTENTIALLY
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I, Andrew R. Turner, hereby certify that, on the 16th day of April, 2024, I served or caused to be served a true and correct copy of the TFS Entities' *Objection and Reservation of Rights Regarding Debtors' Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* via the Court's CM/ECF notification system to all parties registered to receive such notifications in this case and upon the following parties as stated below.

Invitae Corporation
1400 16th Street
San Francisco, CA 94103
Attn: Tom Brida (tom.brida@invitae.com)

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Nicole L. Greenblatt (nicole.greenblatt@kirkland.com)
Francis Petrie (francis.petrie@kirkland.com)
Nikki Gavey (nikki.gavey@kirkland.com)

Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, IL 60654
Spencer A. Winters (spencer.winters@kirkland.com)

Cole Schotz P.C.
Court Plaza North, 25 Main Street
Hackensack, NJ 07601
Michael D. Sirota (msirota@coleschotz.com)
Warren A. Usatine (wusatine@coleschotz.com)
Felice R. Yudkin (fyudkin@coleschotz.com)
Daniel J. Harris (dharris@coleschotz.com)

Office of the United States Trustee
for the District of New Jersey
1085 Raymond Boulevard, Suite 2100
Newark, NJ 07102
Jeffrey Sponder (jeffrey.m.sponder@usdoj.gov)
Lauren Bielskie (lauren.bielskie@usdoj.gov)

² 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. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

White & Case LLP
1221 6th Avenue
New York, NY 10020
Harrison Denman
(harrison.denman@whitecase.com)
Brett Bakemeyer (brett.bakemeyer@whitecase.com)

Hogan Lovells US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067
Erin N. Brady (erin.brady@hoganlovells.com)
Edward McNeilly (edward.mcneilly@hoganlovells.com)
William Intner (william.intner@hoganlovells.com)

Dated: May 1, 2024

Andrew R Turner

Andrew R. Turner, Esq. (NJ 8574)
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76 South Orange Avenue
South Orange, New Jersey 07079
Phone: (973) 763-5000
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