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**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)

**INTEGRATED DNA TECHNOLOGIES, INC.'S MOTION TO  
FILE UNDER SEAL EXHIBIT A TO THE DECLARATION  
OF ROSS ALLEN IN SUPPORT OF THE OBJECTION OF  
INTEGRATED DNA TECHNOLOGIES, INC. TO DEBTORS'  
NOTICE TO CONTRACT PARTIES TO POTENTIALLY  
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES IN CONNECTION WITH MOTION FOR ENTRY OF AN  
ORDER AUTHORIZING ASSUMPTION AND ASSIGNMENT OF  
ASSUMED CONTRACTS AND AUTHORIZING THE SALE OF ASSETS**

Integrated DNA Technologies, Inc (“IDT”), by and through its undersigned counsel, hereby files this motion (this “Seal Motion”) for entry of an order substantially in the form attached hereto (the “Proposed Order”) authorizing IDT to file **Exhibit A** to the *Declaration of Ross Allen in Support of the Objection of Integrated DNA Technologies, Inc. to Debtors’ Notice to Contract*

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s (“Invitae,” and with its subsidiary debtors, the “Debtors”) 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 16th Street, San Francisco, California 94103.



*Parties to Potentially Assumed Executory Contracts and Unexpired Leases in Connection With Motion for Entry of an Order Authorizing Assumption and Assignment of Assumed Contracts and Authorizing the Sale of Assets* (the “Declaration”) under seal in its entirety. In support of this Seal Motion, IDT respectfully represents as follows:

**JURISDICTION, VENUE, AND STATUTORY PREDICATES**

1. This Court has jurisdiction over this Seal Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey.

**BACKGROUND**

3. On February 13, 2024, Invitae Corporation (“Invitae”) and its subsidiaries, as debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq* in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

4. On March 25, 2024, the Debtors filed the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 365] (the “Notice”) in connection with the *Debtors’ Motion for Entry of an 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, (II) 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* [Docket No. 19], pursuant to which the Debtors seek authorization to sell certain assets to Labcorp Genetics Inc. (“Labcorp”).

5. Contemporaneously herewith, IDT has filed the *Objection of Integrated DNA Technologies, Inc. to Debtors’ Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases in Connection With Motion for Entry of an Order Authorizing Assumption and Assignment of Assumed Contracts and Authorizing the Sale of Assets* (the “Objection”) with respect to the Notice.<sup>2</sup>

6. In further support of the Objection, IDT has filed the Declaration and **Exhibit A** thereto entirely under seal. **Exhibit A** comprises a true and correct copy of that certain *Asset Purchase Agreement* entered between Invitae and IDT on December 19, 2022 (the “Asset Purchase Agreement”), including a number of associated agreements as exhibits thereto (the “Ancillary Agreements”).

7. The Ancillary Agreements are specifically identified as follows:

- ArcherDX Software Source Code License
- Assignment and Assumption Agreement and Bill of Sale
- Intellectual Property License Agreement
- Registered IP Assignment Agreement
- Sublease Agreement
- Supply Agreement
- Transition Services Agreement

### **RELIEF REQUESTED**

8. The Asset Purchase Agreement is marked as “Confidential – Company Proprietary” and IDT is honoring that confidentiality by filing this Seal Motion. While the central points raised

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<sup>2</sup> Capitalized but undefined terms used herein shall have the meaning ascribed to them in the Objection.

by IDT in the Objection do not highlight, or rely on, the confidential information in the Asset Purchase Agreement or the Ancillary Agreements, IDT refers to a number of provisions in the Asset Purchase Agreement and the Ancillary Agreements in support of its Objection.

9. Through this Seal Motion, IDT seeks entry of the Proposed Order authorizing IDT to file **Exhibit A** to the Declaration under seal in its entirety. IDT will submit a copy of **Exhibit A** to the Declaration to the Court for *in camera* review, the Debtors' counsel, Labcorp's counsel, and any other party as may be ordered by the Court.

10. **Exhibit A** to the Declaration includes commercially sensitive information, which has been treated as "confidential" and IDT believes should be kept confidential. Specifically, portions of the Asset Purchase Agreement and the Ancillary Agreements contain sensitive business information of IDT and certain Debtors, including commercial terms, intellectual property license terms, among other matters. Public disclosure of such information could allow third parties to obtain such sensitive business information, which could potentially disadvantage the Debtors, IDT, and/or Labcorp. No party is disadvantaged by keeping this information confidential and under seal.

#### **BASIS FOR RELIEF REQUESTED**

11. Section 107(b) of the Bankruptcy Code provides that the bankruptcy court has the power to issue orders that will protect entities from the potential harm that may result from the disclosure of certain confidential information and provides, in relevant part:

On request of a party in interest, the bankruptcy court shall ...

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information ...

11 U.S.C. § 107(b).

12. Bankruptcy Rule 9018 sets forth the procedure for application of section 107 of the Bankruptcy Code. Pursuant to Bankruptcy Rule 9018, the Court, on a motion or upon its own initiative:

may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information ...

Bankruptcy Rule 9018.

13. Section 107(b) of the Bankruptcy Code does not require an entity seeking to protect trade secrets or other confidential commercial information to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). Instead, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *See Orion Pictures*, 21 F.3d at 27 (emphasis in original); *see also In re Borders Group, Inc.*, 462 B.R. 42, 46 (Bankr. S.D.N.Y. 2011) (“where a party in interest moves to protect ‘commercial information’ from disclosure, the court must grant protection [under section 107(b) of the Bankruptcy Code].”).

14. Specifically, commercial information is defined as “information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citation omitted). Commercial information does not have to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See Orion Pictures*, 21 F.3d at 27 (finding that section 107(b)(1) creates an exception to the general rule that court records are open

to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is “confidential” and “commercial” in nature).

15. Here, IDT seeks authority to seal **Exhibit A** to the Declaration because the information therein is “Confidential – Company Proprietary” and, accordingly, should be protected under section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018. The Asset Purchase Agreement and the Ancillary Agreements contain confidential commercial information of the Debtors and IDT, such information is not public, and disclosure of this information could cause significant injuries to the Debtors, IDT, and/or Labcorp, particularly with respect to their competitive relationships.

16. Accordingly, to protect the confidential commercial information contained in **Exhibit A** to the Declaration, IDT hereby requests the Court to enter into the Proposed Order, authorizing IDT to file **Exhibit A** to the Declaration under seal in its entirety.

#### **WAIVER OF MEMORANDUM OF LAW**

17. In accordance with Rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey, no brief is being filed in support of this Seal Motion because the legal principles involved are not novel or in dispute and are adequately set forth in this Seal Motion.

#### **CONCLUSION**

18. **WHEREFORE**, IDT respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and proper.

*[Remainder of Page Intentionally Left Blank]*

Dated: May 1, 2024

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UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY  Caption in Compliance with D.N.J. LBR 9004-1(b)
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In Re:  INVITAE CORPORATION, <i>et al.</i> ,  Debtors <sup>1</sup>

Case No.: 24-11362 (MBK)  
Chapter: 11  
Judge: Michael B. Kaplan

## ORDER CONCERNING REQUEST TO SEAL DOCUMENTS

The relief set forth on the following page is **ORDERED**.

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And the Court having considered the Seal Motion and any objection thereto, it is

☐ ORDERED that the Seal Motion is denied and **Exhibit A** to the Declaration shall be deleted from the court's electronic filing system.

☐ ORDERED that Seal Motion is granted and **Exhibit A** to the Declaration shall be sealed until the expiration of the judiciary records retention period, at which time **Exhibit A** to the Declaration will be permanently deleted.

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<sup>1</sup> Capitalized but undefined terms used herein shall have the meaning ascribed to them in the Seal Motion.