

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
**Caption in Compliance with D.N.J. LBR 9004-1**

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*Co-Counsel to the Official Committee of Unsecured Creditors*

In re:

INVITAE CORPORATION, *et al.*,  
Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

<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 16<sup>th</sup> Street, San Francisco, California 94103.



**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EMERGENCY  
MOTION TO EXTEND THE CHALLENGE PERIOD THROUGH JUNE 15, 2024**

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The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the chapter 11 cases of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), by and through its undersigned counsel, hereby files its *Emergency Motion to Extend the Challenge Period Through June 15, 2024* (the “**Motion**”). In support of the Motion, the Committee respectfully states as follows:

**PRELIMINARY STATEMENT**

1. Before the Committee was even constituted, the Debtors negotiated and entered into a stipulation dictating the Debtors’ use of cash collateral with its purportedly secured creditors. Through that agreement, the Debtors stipulated to the validity, priority, and extent of those creditors’ claims and liens. The Debtors also proposed that any forthcoming unsecured creditors’ committee be allotted a \$50,000 budget and 60-day period during which it may investigate certain of the Debtors’ prepetition transactions and raise any viable challenges with this Court. Despite precedent providing the Committee may be entitled to more time, the Committee acquiesced to a 75-day challenge period on the representation that, “in the months leading up to the filing of these cases, the Special Committee of the Debtors’ Board conducted a *thorough* investigation into these transactions and concluded that they were permitted by the underlying indenture and consistent with the Debtors’ fiduciary duties.”<sup>2</sup>

2. To that end, within days of hiring counsel, as set forth in the accompanying Chase Declaration,<sup>3</sup> the Committee began a process of diligently seeking information regarding potential

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<sup>2</sup> See *Debtors’ Reply to Objection of the Official Committee of Unsecured Creditors to Final Approval of Debtors’ Cash Collateral Motion* [ECF No. 161] (the “**Cash Collateral Reply**”), ¶ 4 (emphasis added).

<sup>3</sup> Citations to the “Chase Declaration” or “Chase Decl.” refer to the *Declaration of Ashley Chase in Support of the Official Committee of Unsecured Creditors’ Emergency Motion to Extend the Challenge Period Through June 15, 2024*.

claims and causes of action related to the Debtors' prepetition business, particularly claims related to the 2023 Exchange Transactions. Anticipating that the Debtors would be able to produce, at the very least, the documents the Special Committee viewed in conducting their investigation, the Committee was hopeful that 75 days would be a sufficient Challenge Period. However, other than providing off-the-shelf Board materials, the Debtors did not make a substantive document production until April 12, 2024—one month after the Committee served its discovery. Since that production, the Committee continually prodded the Debtors for additional productions and followed up regarding deficiencies in the productions received. The Debtors produced one additional small production on Friday, April 26, 2024.

3. As of May 1, 2024, the Debtors had only produced 7,959 bates-stamped documents. It was not until *yesterday*, May 2, 2024, that the Debtors produced nearly 70% of their entire production to date, providing the Committee with 17,322 documents. Had the Committee consented to the Debtors' initial proposal of a 60-day Challenge Period, this production would have been made on the 62nd day. The Debtors also failed to provide any indication that their production would far outweigh any prior productions. Assuming a member of the Committees' review team looks at each document on average for one minute, that amounts to almost three hundred hours required to review these productions in the first instance. There are only nine business days remaining in the Challenge Period.

4. Equally as concerning, also on May 2, 2024, the Debtors finally conceded their obligation to collect and review text messages exchanged for business purposes in furtherance of the Committee's investigation. The need to start from scratch on document collection, search term application, document review, and production of custodians' text messages (which evidently had not been done in connection with the Special Committee's "thorough" investigation) will,

according to the Debtors' practice in these Chapter 11 Cases, take weeks. In addition, both the Debtors and Deerfield have committed to future document productions and the production of privilege logs. The Committee has already flagged, for example, that it has concerns over the Debtors' extensive redactions in the presentations made by Kirkland & Ellis LLP to parties adverse to the Special Committee's investigation, which the parties will have to address in advance of the Challenge Deadline.

5. The Debtors rejected the Committee's request that they consent to an extension of the Challenge Deadline to June 15, 2024 without providing any defensible claim of prejudice. In fact, there is none. The Debtors do not have a proposed disclosure statement on file and are months away from seeking this Court's confirmation of any proposed plan. The Debtors also are not requesting this Court to approve the sale of its assets through a credit bid by Deerfield such that the validity of Deerfield's purported liens is not currently at issue. Therefore, the Court should grant the Committee's Motion and enter the proposed order extending the Challenge Deadline, attached hereto as **Exhibit A**.

### **JURISDICTION**

6. 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.). This is a core proceeding under 28 U.S.C. § 157(b).

7. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The bases for the relief sought herein are section 105 of the United States Bankruptcy Code and Rule 9006(b)(1) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").



## **BACKGROUND**

### **I. Case Background**

9. On February 13, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the above-caption chapter 11 cases (the “**Chapter 11 Cases**”).

10. On March 1, 2024, the United States Trustee appointed the Committee pursuant to Bankruptcy Code section 1102(a)(1). The Committee consists of (i) Wilmington Savings Fund Society, Federal Savings Bank; (ii) Chimetech Holding Ltd; and (iii) Workday, Inc.

11. On March 18, 2024, the Court approved the Cash Collateral Order,<sup>4</sup> which provides the Committee with 75 days from its appointment—*i.e.*, until May 15, 2024—to challenge any liens or the secured status or amount of Prepetition Secured Indebtedness (as defined in the Cash Collateral Order) (the “**Challenge Period**”).

### **II. The 2023 Exchange Transactions**

12. Between 2019 and 2021, Invitae consummated *thirteen* “unprofitable” transactions.<sup>5</sup> To fund its aggressive expansion, in October 2020, Invitae entered into a credit agreement with Perceptive Credit Holdings III, LP under which Invitae borrowed \$135.0 million due 2024 (the “**2024 Term Loan**”). When that proved insufficient, in April of 2021, Invitae issued \$1.15 billion 1.50% convertible unsecured notes due in 2028 (the “**2028 Convertible Unsecured**”).

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<sup>4</sup> The “**Cash Collateral Order**” means *Final Order Pursuant to Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [ECF No. 188].

<sup>5</sup> *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* [ECF No. 21] (the “**First Day Decl.**”), ¶ 4.

**Notes**”). The 2028 Convertible Unsecured Notes were issued *pari passu* to \$350 million of 2.00% unsecured notes due 2024 (the “**2024 Convertible Unsecured Notes**”) already outstanding.

13. In February 2023, Invitae repaid the principal balance and interest outstanding of the 2024 Term Loan and incurred debt extinguishment costs of \$19.3 million to complete this prepayment.<sup>6</sup>

14. In March 2023, Invitae and certain holders of 2024 Convertible Unsecured Notes—primarily, Deerfield Partners L.P. (“**Deerfield**”)—entered into a series of exchanges (the “**March 2023 Exchange**”) that converted most of the 2024 Convertible Unsecured Notes to secured notes through that certain indenture (the “**Senior Secured Indenture**”) dated as of March 7, 2023, by and among Invitae Corporation, as issuer; certain of its subsidiaries, as Guarantors; and U.S. Bank Trust Company, National Association, as trustee and collateral agent. Under the Senior Secured Indenture, Invitae (i) exchanged \$305.7 million in aggregate principal amount of 2024 Convertible Unsecured Notes for \$275.3 million aggregate principal amount of new 4.50% secured Series A Notes due in 2028 (the “**Series A Notes**”) and 14,219,859 shares of common stock, and (ii) sold \$30 million of new 4.50% secured Series B Notes due in 2028 (the “**Series B Notes**” and, together with the Series A Notes, the “**Secured Notes**”) for nominal cash.<sup>7</sup> Other creditors had proposed alternative restructuring transactions, which the Debtors declined.

15. In August 2023, pursuant to an amendment to the Senior Secured Indenture, Deerfield entered into an additional exchange agreement with Invitae for its remaining 2024 Convertible Unsecured Notes, whereby Invitae exchanged approximately \$17.2 million aggregate principal amount of 2024 Convertible Unsecured Notes for \$0.1 million aggregate principal

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<sup>6</sup> *Invitae Corporation Form 10-Q*, U.S. SEC EDGAR, 21 (filed on Nov. 8, 2023).

<sup>7</sup> *Id.* ¶ 65.

amount of Series A Notes and approximately 15 million shares of common stock (the “**August 2023 Exchange**,” and together with the March 2023 Exchange, the “**2023 Exchange Transactions**”).<sup>8</sup>

16. As of the Petition Date, the Secured Notes have an aggregate outstanding principal amount of \$305.4 million, the remaining 2024 Convertible Unsecured Notes have an aggregate outstanding principal amount of approximately \$27.1 million, and the 2028 Convertible Unsecured Notes have an outstanding principal balance of \$1.15 billion.<sup>9</sup>

17. Deerfield holds approximately 78% of the 2028 Convertible Senior Secured Notes.

### **III. Cash Collateral**

18. Before the Committee was constituted, on February 13, 2024, the Debtors filed their Cash Collateral Motion,<sup>10</sup> which this Court granted on an interim basis on February 16, 2024. The Interim Order<sup>11</sup> gave the Committee a 60-day Challenge Period and a budget of \$50,000 to investigate the validity, extent and priority of Prepetition Secured Parties’ claims and liens, as well as other potential claims and causes of action of the Debtors against the Prepetition Secured Parties (as defined in the Cash Collateral Order) that would benefit general unsecured creditors. *See* Interim Order ¶¶ 19(a), 20.

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<sup>8</sup> *Id.* ¶ 66; *see also* Invitae Corporation Form 10-Q, Ex. 10.1 (Exchange Agreement, dated as of August 22, 2023, by and among Invitae Corporation, the guarantor parties thereto and Deerfield Partners, L.P.), U.S. SEC EDGAR (filed on Nov. 8, 2023), <https://www.sec.gov/Archives/edgar/data/1501134/000150113423000072/exhibit101-exchangeagreeme.htm>.

<sup>9</sup> First Day Decl. ¶ 48.

<sup>10</sup> The “**Cash Collateral Motion**” means the *Debtors’ Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [ECF No. 18].

<sup>11</sup> The “**Interim Order**” means the *Interim Order Pursuant to Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [ECF No. 47].

19. On March 11, 2024, the Committee objected to the Cash Collateral Motion in part seeking to expand the proposed Challenge Period from 60 days to 90 days.<sup>12</sup> In the Cash Collateral Reply, the Debtors disagreed with the Committee's request proffering, "in the months leading up to the filing of these cases, the Special Committee of the Debtors' Board conducted a thorough investigation into these transactions and concluded that they were permitted by the underlying indenture and consistent with the Debtors' fiduciary duties." The Court ultimately entered the Cash Collateral Order, which provided the Committee with a 75-day Challenge Period and a budget of \$125,000 from cash collateral to conduct its investigation. *See* Cash Collateral Order ¶¶ 19(a), 20. The Cash Collateral Order also provided "that any party in interest reserves the right to seek relief to modify the Challenge Period." *Id.* ¶ 19(a).

#### **IV. The Committee's Investigation**

20. As detailed in the Chase Declaration filed contemporaneously herewith, the Committee has been extremely diligent and proactive in seeking discovery in furtherance of fulfilling its fiduciary obligations to independently investigate certain prepetition transactions. However, the Debtors and Deerfield have not provided the requested discovery sufficiently in advance of the Challenge Deadline. Indeed, yesterday, the Debtors produced 17,322 documents—over 150,000 pages—which amounts to nearly seventy percent of the Debtors' entire productions to date. Chase Decl. ¶ 35. The Debtors have also expressed they still need to conduct a privilege review *and* have only started pulling, reviewing, and producing any responsive text messages. *Id.* ¶¶ 34, 36-37. Deerfield has also communicated it anticipates providing the Committee with two future productions. *Id.* ¶ 30. It is not possible for the Committee to review what has been produced, let alone review the multiple additional document productions still expected, conduct

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<sup>12</sup> *See Objection of the Official Committee of Unsecured Creditors to Final Approval of Debtors' Cash Collateral Motion [ECF No. 18]* [ECF No. 148].

interviews related to the documents, address concerns of the Debtors' privilege designations, and file any viable challenge before the Challenge Deadline.

21. In refusing to consent to the Committee's request for an extension, the Debtors attempt to substitute their judgment as to the significance of documents in their most recent and future productions for the Committee's own independent assessment. *See Chase Decl.* ¶ 39 (arguing that an extension "will not serve to generate anything beyond the ample information already available for the Committee's evaluation of the uptier transaction"). Nor does the Debtors' suggestion that an extension would cause "needless expense and a delay of these cases to the detriment of stakeholder distribution" provide any bases to deny the extension. *See id.* With regard to expense, the budget allotted pursuant to the Cash Collateral Order remains unchanged irrespective of whether the Committee's investigation is completed on or before May 15, 2024 or on or before June 15, 2024. The Cash Collateral Order was also premised in part on the representation that the Debtors performed a thorough investigation. However, the Committee has not been provided the same access to documents and witnesses as the Special Committee. With regard to delay, there is, in fact, no pressing need to have any potential challenge resolved in the next four weeks. There is no disclosure statement or plan on file and the Debtors' exclusivity period to file any plan does not run until June 12, 2024. Moreover, no hearing date has been set to match the Debtors' Transaction Support Agreement milestone requiring the Debtors to obtain conditional approval of a disclosure statement by June 3, 2024. The Debtors also did not select Deerfield's purported credit bid as the winning bidder at the auction for the Debtors' assets, and the sale cannot close earlier than six weeks after entry of the Sale Order is entered – *i.e.*, mid-June at the earliest.

### **RELIEF REQUESTED**

22. The Committee seeks the entry of an order, substantially in the form attached hereto as **Exhibit A**, extending the Challenge Period through and including June 15, 2024, without prejudice to the Committee’s right to seek further extensions of the Challenge Period.

### **BASIS FOR RELIEF**

23. Federal Rule of Bankruptcy Procedure 9006(b) provides that the Court may extend unexpired time periods, such as the Challenge Period, in its discretion “for cause shown.” Fed. R. Bankr. P. 9006(b)(1); *see also* 11 U.S.C. § 105(a) (providing the Court with the authority to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title”). Although “cause” is not defined in the rules, courts agree that an adversary’s “stonewalling” discovery constitutes cause. *See In re SunEdison, Inc.*, No. 16-10992 (SMB) (Bankr. S.D.N.Y.), Apr. 22, 2016 Hr’g Tr. at 64:23-65:4 [ECF No. 147] (in discussing DIP financing, the court stated, “[t]he challenge period has to be extended for cause. For example, whoever is conducting an investigation, they request documents. The party just stonewalls them for the sixty days and runs out the string. Somebody has to be able to come back to court and argue that I wasn’t able to — or somebody can’t be deposed because they’re half-way around the world or whatever.”); *see also In re Phoenix Services Topco, LLC*, No. 1:22-bk-10906 (Bankr. D. Del. Feb. 2, 2023), Jan. 30, 2023 Hr’g Tr. at 10:5-11 [ECF No. 488] (finding cause to grant the statutory committee an extension to its challenge deadline despite the committee’s own delay because the producing parties “slow-walk[ed] the production”).

24. First, despite the Committee’s constant prodding for meet and confers and the numerous follow ups concerning the status of document productions, the Committee did not begin receiving documents responsive to its Rule 2004 Subpoenas until April 12, 2024—almost a month after service was effectuated. Chase Decl. ¶¶ 22-23. Indeed, the Debtors did not quickly (if they

did at all) produce the documents they had collected a few months prior from [REDACTED] [REDACTED] in connection with the investigation of Invitae’s board of directors’ (the “**Board**”) special committee (the “**Special Committee**”) into prepetition transactions. Chase Decl. Ex. 6, Interrog. No. 12. The Debtors have also refused to provide the Committee with the same access to interviewees that the Special Committee had when it investigated certain prepetition transactions. *See* Chase Decl. ¶ 32.

25. Deerfield has acted similarly, producing only 854 documents in the past seven weeks. *See* Chase Decl. ¶¶ 22, 25.

26. What’s more, contrary to their obligations, the Debtors have only agreed to review and produce responsive text messages from their custodians *after* the Committee brought affirmative evidence that custodians communicated responsive materials over text. Chase Decl. ¶¶ 33, 34. To be clear, the Committee explicitly included text messages in their definition of “Document” and raised text messages as a medium for responsive documents on a meet and confer and over email in April, but the Debtors did not agree at that time. Chase Decl. ¶ 17.

27. Second, solely focusing on yesterday’s production, it is going to require, at minimum, dozens—if not hundreds—of hours of review by the Committee’s team, which, due to budgetary constraints, is limited in number. Further, beginning the collection and review process of responsive text messages within the Debtors’ custody or control as of May 2 justifies the Committee’s requested extension. *See In re Zucker, Goldberg & Ackerman, LLC*, No. 15-24585 (CMG) (Bankr. D.N.J.), Dec. 17, 2015 Order [ECF No. 295] (extending the Committee’s challenge period by 45 days upon consideration of the Committee’s motion, which identified, among other things, “[c]ertain categories of documents” that had not yet been produced); *see also In re Phoenix Services Topco, LLC*, No. 1:22-bk-10906 (Bankr. D. Del. Feb. 2, 2023), Jan. 30, 2023 Hr’g Tr. at

10:5-11 [ECF No. 488] (granting the Committee an additional three weeks on its challenge deadline from the completion of document discovery to enable it sufficient time to take a deposition). In fact, the Debtors have provided no details as to the estimated date of completion or estimated amount of messages included in any subsequent production. *See* Chase Decl. ¶ 36. The Debtors themselves do not even know. *See* Chase Decl. ¶ 34 (during the collection and review of Ms. Schrank’s text messages, “if it appears that there are substantive communications with other custodians, we will endeavor to collect their text messages as well”).

28. Relatedly, days away from the Challenge Deadline, Deerfield’s promise of two additional productions and a privilege log somewhere on the horizon also warrants extending the Challenge Deadline by four weeks. *See* Chase Decl. ¶¶ 30, 37.

29. Third, extending the Committee’s Challenge Deadline is appropriate because the documents that have been produced raised “a number of issues that will need to be the subject of further discovery.” *In re Zucker, Goldberg & Ackerman, LLC*, No. 15-24585 (CMG) (Bankr. D.N.J.), Dec. 17, 2015 Order [ECF No. 295] (extending the Committee’s challenge period by 45 days). Here, the Committee intends to dispute numerous suspicious redactions in the Debtors’ productions, including the redactions over any presentations concerning the Special Committee’s investigation that was made in the presence of third parties.

### **NOTICE**

30. Notice of the Motion will be given to the following parties or their counsel: (i) the Debtors; (ii) the Office of the U.S. Trustee for the District of New Jersey; (iii) counsel to Deerfield Partners, LP, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004-2498, Attn: Ari B. Blaut, Esq. (blauta@sullcrom.com), and Benjamin S. Beller, Esq. (bellerb@sullcrom.com), (iv) co-counsel to Deerfield Partners, LP, Wollmuth Maher & Deutsch



LLP, 500 Fifth Avenue, New York, NY 10110, Attn: James N. Lawlor (jlawlor@wmd-law.com); and (v) any party that requests service pursuant to Bankruptcy Rule 2002. The Committee submits that, in light of the nature of the relief requested, no other or further notice is required or necessary.

WHEREFORE, the Committee respectfully requests that the Court enter the proposed order attached hereto as **Exhibit A** granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

*[Remainder of Page Intentionally Left Blank]*

Dated: May 3, 2024

By: /s/ John S. Mairo

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Creditors*

In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

<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' claims and noticing agent at [www.kccellc.net/invitae](http://www.kccellc.net/invitae). The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

**DECLARATION OF ASHLEY CHASE IN SUPPORT OF THE  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EMERGENCY  
MOTION TO EXTEND THE CHALLENGE PERIOD THROUGH JUNE 15, 2024**

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I, Ashley Chase, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am an associate at White & Case LLP and counsel for the Official Committee of Unsecured Creditors (the “**Committee**”) in the above captioned cases. I offer this declaration in support of *The Official Committee of Unsecured Creditors' Emergency Motion to Extend the Challenge Period Through June 15, 2024* (the “**Motion**”).<sup>2</sup> This declaration is based on my personal knowledge and upon my review of the records of this and related matters.

**Facts**

2. On February 13, 2024 the Debtors filed their Cash Collateral Motion. On February 15, 2024, before the Committee was constituted, the Court held an interim hearing on the Cash Collateral Motion, and on February 16, 2024, the Court granted the Interim Order approving the Cash Collateral Motion on an interim basis. The Interim Order gave the Committee a 60-day Challenge Period and a budget of \$50,000 to investigate the validity, extent and priority of the Prepetition Secured Parties' claims and liens, as well as other potential claims and causes of action of the Debtors that would benefit general unsecured creditors. *See* Interim Order ¶¶ 19(a), 20.

3. On March 1, 2024, the United States Trustee appointed the Committee pursuant to Bankruptcy Code section 1102(a)(1). The Committee hired White & Case LLP (“**White & Case**”) as proposed counsel on March 5, 2024. This Court approved White & Case's retention application on May 3, 2024.

4. On March 9, 2024, four days after we were hired, I sent an email to Kirkland and Ellis LLP (“**K&E**”) notifying it of the Committee's intent to serve formal discovery requests in

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<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Motion filed contemporaneously herewith.

the near term and, in the meantime, attaching a list of nineteen initial discovery requests for “readily available documents that [the Debtors] can easily collect and share”. A true and correct copy of the email chain between White & Case and K&E is attached hereto as **Exhibit 1**. A true and correct copy of the Committee’s initial diligence request list is attached hereto as **Exhibit 2**.

5. On March 11, 2024, the Committee objected to the Cash Collateral Motion in part because the proposed Challenge Deadline was too short and instead proposed a 90-day Challenge Period, reserving all rights.<sup>3</sup> In the Cash Collateral Reply, the Debtors disagreed with the Committee’s request proffering, “in the months leading up to the filing of these cases, the Special Committee of the Debtors’ board conducted a thorough investigation into these transactions and concluded that they were permitted by the underlying indenture and consistent with the Debtors’ fiduciary duties.” Cash Collateral Reply ¶¶4. The Court ultimately entered the Cash Collateral Order, which provided the Committee with a 75-day Challenge Period and a budget of \$125,000 from cash collateral to conduct its investigation. *See* Cash Collateral Order ¶¶ 19(a), 20. The Cash Collateral Order also provides “that any party in interest reserves the right to seek relief to modify the Challenge Period or oppose such requested relief.” *Id.* ¶ 19(a).

6. On March 12, 2024, I sent an email to K&E requesting certain documents relating to the Special Committee’s investigation. Among other things, I requested “[a]ny written materials detailing the investigation and its conclusions.” *See* Exhibit 1 at 3.

7. On March 13, 2024, the Debtors informally produced 65 documents in response to certain of the Committee’s initial diligence requests. These documents were primarily the Debtors’ organizational charts, credit and security agreements, and certain documents related to the Debtors’ prepetition marketing process.

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<sup>3</sup> *See Objection of the Official Committee of Unsecured Creditors to Final Approval of Debtors’ Cash Collateral Motion* [ECF No. 148].

8. On March 14, 2024, the Committee served a Bankruptcy Rule 2004 subpoena on the Debtors (the “**Subpoena to Debtors**”). The Subpoena to Debtors requested, among other things, all “Documents” relating to Invitae’s Board, the Special Committee’s investigation, and the 2023 Exchange Transactions. The term “Document” was defined in the Subpoena to Debtors to include, among other forms of communication, text messages, and instant messages. The Subpoena to Debtors also included fifteen interrogatories, requesting information relating to the approval of the 2023 Exchange Transactions and the Special Committee’s investigation, among other topics. K&E accepted service of the Subpoena to Debtors on March 15, 2024. A true and correct copy of the Subpoena to Debtors is attached hereto as **Exhibit 3**.

9. Also on March 14, 2024, the Committee served a subpoena on Deerfield’s counsel, Sullivan & Cromwell LLP (“**S&C**”) pursuant to Bankruptcy Rule 2004 (the “**Subpoena to Deerfield**”) and requested counsel accept service. The Subpoena to Deerfield sought responses to sixteen targeted document requests concerning Deerfield’s relationship with, and analyses of the Debtors, the 2023 Exchange Transactions, and the TSA. A true and correct copy of the Subpoena to Deerfield is attached hereto as **Exhibit 4**.

10. On March 18, 2024, having received no response from S&C, I “follow[ed] up,” asking whether it “agree[d] to accept service of the [] subpoena we sent on March 14[.]” Six hours later, S&C confirmed. White & Case thanked Deerfield’s counsel and asked to “find a time this week to meet and confer regarding the requests[.]” Given the tight timeline it is in both of our interests to address any issues now rather than waiting.” S&C responded: “Tight timeline for what? You served 2004 discovery. We are happy to meet and confer once we’ve served our R&Os which we will do in due course. White & Case responded promptly, again emphasizing “[t]he tight timeline for the Committee’s investigation, which your client demanded and, I’m sure, does

not want to see slip. If we can accelerate the process by discussing issues before you formally serve R&Os, we are available to do so.” S&C did not respond. A true and correct copy of the email chain between S&C and White & Case is attached hereto as **Exhibit 5**.

11. On March 19, 2024, the Debtors produced 85 documents, consisting of a subset of the Debtors’ Board materials. This production included the second of two presentations given by K&E to the Board concerning the Special Committee’s investigation, dated January 3, 2024. The presentation was almost entirely redacted. The production did not include the first of the two presentations, dated December 19, 2023 (the “**December 19 Presentation**”). The production also did not include any text messages.

12. On March 22, 2024, White & Case and K&E met and conferred regarding the Subpoena to Debtors. During the meet and confer, K&E suggested that the Board materials the Debtors produced on March 19 were the full set of relevant materials despite the parties not yet agreeing to the applicable date range and, most notably, the Debtors’ failure to include the first of the two presentations given to the Board regarding the Special Committee’s investigation. K&E also represented that the Debtors would agree to produce nearly everything the Committee requested. The Debtors served their responses and objections (the “**Debtors’ Responses and Objections**”) on March 28, 2024. A true and correct copy of the Debtors’ Responses and Objections is attached hereto as **Exhibit 6**.

13. Also on Friday March 22, 2024, Deerfield served its responses and objections (“**Deerfield’s Responses and Objections**”) to the Subpoena to Deerfield which raised a few notable objections. Namely, Deerfield refused to produce [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Deerfield also relied on this objection in its blanket refusal to produce [REDACTED]

[REDACTED]. A true and correct copy of Deerfield's Responses and Objections to the Subpoena to Deerfield is attached hereto as **Exhibit 7**.

14. First thing the next morning, I asked S&C to "[p]lease let us know when [it was] available to meet and confer next week." *See* Exhibit 5 at 7.

15. On March 26, 2024, White & Case met and conferred with S&C regarding Deerfield's Responses and Objections. Although it stood down on some of its general objections, S&C still refused to produce any relevant internal analyses. Deerfield's counsel argued that such documents were not discoverable under Bankruptcy Rule 2004 unless and until the Committee articulated the specific claims against Deerfield that were the subject of the Committee's investigation. Although the Committee did not agree that it had any obligation to do so, in the interest of compromise, the Committee identified, as one example, that internal analyses would be relevant to understanding whether Deerfield may be liable for aiding and abetting certain transfers by the Debtors. In an additional attempt to compromise and to avoid the time and expense of seeking this Court's intervention, the Committee offered Deerfield the opportunity to propose an agreeable scope of internal documents to produce by 12pm on March 28, 2024, to which Deerfield agreed.

16. At 2:02pm on March 28, 2024, I emailed S&C: "During our meet and confer on Tuesday, you agreed to let us know by noon today whether Deerfield will produce internal materials responsive to our document requests; namely, Requests 13 and 14. You also agreed to simultaneously propose custodians and search terms. Please send your response and proposal as soon as possible." S&C responded with proposed search terms and an agreement to produce



limited documents, which I revised and circulated later that evening. S&C did not respond until after I followed up on April 2, 2024, asking for confirmation regarding “the outstanding questions and whether we are in agreement on search terms.” S&C stated only that it was “evaluating the terms and hit counts and will get back to you tomorrow.” *See* Exhibit 5 at 4.

17. On April 1, 2024, White & Case and K&E met and conferred regarding the Debtors’ Responses and Objections. During the meet and confer, I emphasized the urgency with which the Committee needed to receive documents responsive to its Subpoena to Debtors because “the clock keeps ticking” closer to the Committee’s May 15 deadline to submit a challenge. Shortly after the meet and confer ended, I emailed K&E the questions the Committee raised during our discussion, including whether “[a]ny custodian sent any text messages that would be responsive to any of our requests.” A week later, K&E responded that it “understand[s] that the custodians did not communicate substantively via text message regarding anything that would be responsive to the requests.” A true and correct copy of the email chain between White & Case and K&E is attached hereto as **Exhibit 8**.

18. On April 3, 2024, S&C responded to my March 28, 2024, email concerning search terms and scope, and indicated that it would “get back to [the Committee] on expected timing of production once [it] ha[d] a better sense of what [it] [was] dealing with.” S&C also did not commit to producing its privilege log within three days of completing its production, although it did agree to “produce such a log either contemporaneously with [its] production or shortly thereafter.” *See* Exhibit 5 at 3.

19. I followed up with Deerfield on April 8, 2024 stating:

It has been five days since the below email and we still have not received your ‘expected timing of production,’ much less any of the documents we requested from you. To be clear, we served our Rule 2004 requests on March 14—over three weeks ago—and have yet to receive a single document from Deerfield. We understand from your repeated

statements to us that you do not believe the Committee is under a tight timeline to complete its investigation. We disagree. As we have explained, reviewing documents, noticing and conducting depositions based on those documents, and drafting a standing motion and complaint require substantial time. We now have only five weeks to complete this process. We cannot begin it until we receive the documents we have requested.

Please begin producing documents on a rolling basis as soon as possible so that we may conduct our investigation. We reserve all rights.

Exhibit 5 at 2. In response, S&C said that my “email (including the nasty tone) is uncalled for.” It argued that “[t]he suggestion that you cannot begin your investigation until you get documents from Deerfield is obviously false. We are moving as quickly as we can, and we should be able to begin producing documents on a rolling basis within the next few days, likely sometime later this week. If that changes, I will let you know.” White & Case replied that there was “no nasty tone here.” Rather, S&C had told the Committee “several times, including by email, that you do not understand why we are concerned about timing. You also told us five days ago that we would be advised when to expect documents, which did not happen. I’m sorry if our concern reads as something different to you. As you must know, we cannot make meaningful progress in our investigation without the documents that we requested on March 14. We look forward to receiving a rolling production soon. Thank you.” Exhibit 5 at 1.

20. Also on April 8, 2024, I followed up with K&E concerning discovery, writing:

we would be remiss to not raise the lack of urgency the Debtors have demonstrated over the last four weeks. In early March, in discussing our concerns with the Debtors’ cash collateral motion, we raised that a 60 or 75 day Challenge Period was too short given the significant concerns raised by the 2023 Exchanges and the amount of work required to complete an investigation and prepare a standing motion and complaint. To that end, we put the Debtors on notice of the Committee’s intent to serve formal discovery one month ago, on March 9, when I sent an email attaching the Committee’s initial diligence requests. The Committee served its Rule 2004 requests a few days later, on March 14, 2024.

During our meet and confer on April 1, I stressed that we need to begin receiving documents because ‘the clock keeps ticking’ and we only have until May 15 to submit a challenge—a deadline that is now five weeks away. Yet, to date, we have received a mere

150 documents, 65 of which are not even bates stamped, and all of which were produced in response to our informal diligence requests—not our Rule 2004 requests.

Please begin producing documents on a rolling basis so that we may conduct our investigation. We reserve all rights.

Exhibit 8 at 8.

21. On April 9, 2024, K&E responded, disputing that the Debtors had shown any lack of urgency, but agreeing to begin rolling productions that week. In response, I explained that “[w]hile we appreciate the Debtors’ cooperation in certain respects, including the production of centrally-stored materials and public documents, we do not have any emails in response to document requests that we served nearly four weeks ago. As I hope you, as counsel to the Special Committee, would agree, the written communications we have requested are critical to our investigation. We look forward to your rolling production this week.” *Id.* at 6.

22. On Friday April 12, 2024, Deerfield made its first document production. That production consisted of only 367 documents, which included internal chat messages regarding Invitae; communications relating to the 2023 Exchange Transactions; and a few financial analyses and related excel models.

23. The Debtors also made a production on April 12, 2024, consisting of 2,585 documents and 23,397 pages. This production included Board agendas and presentations; materials from Invitae’s auditor; communications regarding potential restructuring transactions with the Invitae’s advisors and Deerfield; and draft agreements relating to the 2023 Exchange Transactions. The Debtors’ production did not include any text messages.

24. On April 17, 2024, I sent an email to K&E regarding certain issues with the Debtors’ document production. In particular, I informed the Debtors that certain Google Document files that were referenced in multiple document families and seemingly responsive to

the Subpoena to Debtors were not produced. I also wrote, “[t]he production included many documents entirely withheld due to privilege with no context. Could you please confirm you are working on a privilege log for these documents?” K&E confirmed it would “track down the Google Documents flagged below and will get you a priv log.” Exhibit 8 at 4-5.

25. On Friday April 19, 2024, the Debtors made an additional production of 1,628 documents, consisting of 11,211 pages. The Debtors’ production consisted of Board materials; proposed restructuring transactions; email correspondences regarding management departures; financial analyses; and several categories of non-responsive documents, including NYSE email alerts, statements of work, and purchase order forms. The Debtors’ production did not include any text messages.

26. Also on Friday April 19, 2024, Deerfield made an additional production of 487 documents, consisting of 12,210 pages. Deerfield’s production included emails and internal messages regarding the 2023 Exchange Transactions; however, many documents were non-responsive images that had been embedded in email signatures.

27. On April 24, 2024, I emailed K&E requesting that it “please provide an estimated percent of completion and the expected date of the Debtors’ next production” responsive to the Subpoena to Debtors. K&E responded that it was “targeting end of next week to finish our document production, with the caveat that there will likely be a relatively small production that follows as a result of our privilege review.” A true and correct copy of the email chain between K&E and White & Case is attached hereto as **Exhibit 9**.

28. On April 26, 2024, I emailed K&E stating:

We encourage the Debtors to substantially complete their production of documents responsive to our Rule 2004 requests sooner than May 3, the date you suggested in your email on Wednesday, April 24. It has been over six weeks since we served our requests and it is unreasonable for the Debtors to expect the Committee to complete its investigation

by the challenge deadline when the Debtors have taken the entire challenge period—save for one week—to produce relevant documents. The Committee needs time to review the documents, challenge any improper privilege designations, and interview witnesses based on those documents well in advance of the challenge deadline.

To that end, please provide dates in May sufficiently after the Debtors have completed their production and before the challenge deadline for when Randy Scott and Ken Knight are available for interviews in connection with our investigation.

Exhibit 8 at 4.

29. In response, K&E pointed the Committee to the documents it has produced to date, the data room and public documents, and further represented that, “given how our document review has been staged, you’ve received substantially all of the email communications with respect to the uptier transaction. Any insinuation that you need additional time to complete your investigation is contrary to fact. It’s also contrary to the positions the Committee has taken in filings with the Court, which indicate that the Committee has already reached a determination as to the validity of the uptier transaction.” I replied, “[w]e appreciate the documents you have produced to date. However, ‘targeting’ substantial completion of your production on May 3—a week and half before the challenge deadline—remains unreasonable. We also take issue with your improper characterization of our investigation” because the 2023 Exchange Transactions “merit a thorough, impartial investigation.” *Id.* at 3.

30. On the same evening, the Debtors produced 3,661 documents consisting of 38,865 pages. This production primarily contained correspondences regarding the TSA and the Company’s divestment of various of business segments as part of its restructuring efforts. The production also included documentation pertaining to the Debtors’ marketing, such as correspondences regarding due diligence requests and non-disclosure agreements. The Debtors’ production did not include any text messages.

31. Also on April 26, 2024, I asked S&C to “please let us know when we can expect the next production and the date on which you expect to be substantially complete. We have only received a total of 854 documents to date and it has been over six weeks since we served our requests.” S&C refused to provide an estimated date of substantial completion, stating that Deerfield expected to make “another substantial production this week and a final production next week.” When asked for clarification, Deerfield’s counsel responded with the same indeterminate statement that the Committee would receive a production the week of April 28 and a final production the week of May 5. A true and correct copy of the email chain between S&C and White & Case is attached hereto as **Exhibit 10**.

32. Still awaiting this next production, on April 29, 2024, I sent an email to S&C, noting that the Committee had “not received a production from Deerfield since April 19 and, again, we have only received 854 documents in total over the last six weeks. Considering the challenge deadline is May 15 and we are still awaiting a ‘substantial’ production (plus any ‘final’ production) and a privilege log from Deerfield, we encourage you to please produce all remaining responsive documents this week.” Exhibit 10 at 1. To date, Deerfield’s counsel has not responded to my email.

33. On May 1, 2024, K&E responded regarding the Committee’s request to interview two witnesses. The Debtors offered only one three-hour window on May 9 and 10 for the depositions (not interviews), of Mr. Knight and Mr. Scott, respectively. White & Case expressed that it would be “appropriate for the Committee to have the same access as part of its investigation that K&E had prior to the petition date” and noted that the Committee anticipated needing more than three hours with both gentlemen. Exhibit 9 at 2. K&E countered, “[w]e’re producing Mr. Knight and Mr. Scott voluntary for depositions in aid of your investigation. Let’s start with 3

hours as proposed. Please let us know if those times do not work. If it turns out that additional time is necessary, we can work to find additional time on their calendars.” I responded that “[i]f the Debtors will make Mr. Scott and Mr. Knight available only for depositions (not interviews), while we will be mindful of their time, we will not agree to a deposition for less than the time allowed under applicable rules. Accordingly, if you insist on our proceeding by deposition, please let us know when both gentlemen have a full day available. Alternatively, as we proposed, we would be willing to interview Mr. Knight and Mr. Scott in a manner consistent with the Special Committee’s investigation. Thus, if the Special Committee completed each witness interview within 3 hours, we will do the same. Please let us know.” Exhibit 9 at 1. To date, K&E has not responded to my email.

34. Also on May 1, 2024, I sent an email to K&E regarding its April 8 statement “that the custodians did not communicate substantively via text message regarding anything that would be responsive to the requests,” providing evidence in the Debtors’ document productions suggesting that, in fact, custodians would have responsive text messages. I also raised concern that the Committee had not yet received the December 19 Presentation. I therefore requested confirmation that the Debtors would conduct the search requested seven weeks ago for responsive text messages and custodians, and that the Debtors produce the missing presentation immediately. Exhibit 8 at 2.

35. On May 2, 2024, K&E responded:

It was and remains our understanding that text messaging was not used to substantively communicate about the issues in the requests and was instead used as a means to facilitate scheduling. That understanding is entirely consistent with Invitae\_00004569. Nonetheless, when we first met and conferred, I told you that if it appeared that individuals were texting, we’d discuss text message collection. Given the contents of Invitae\_00046826, we’ve initiated a collection of Ms. Schrank’s text messages and will apply the agreed upon date range and search terms to them. In doing so, if it appears that there are substantive communications with other custodians, we will endeavor to collect

their text messages as well. As to diligent, it's our understanding that the messaging feature was not used, but we are confirming.

I had thought that the December 19, 2023 presentation was in our previous production, but it appears that it was inadvertently not included. It will be produced in today's production.

Exhibit 8 at 1.

36. Later the same day, the Debtors made two productions totaling 17,322 documents consisting of 151,341 pages. Before these productions, the Debtors produced 7,959 documents 75,036 pages in response to the Subpoena to Debtors. The Committee now has 25,281 documents and 226,337 pages from the Debtors. Understandably, by the time the Motion was filed, the Committee was unable to do more than a cursory glance of these productions. These productions did include the December 19 Presentation, which was heavily redacted. The May 2, 2024, productions do not appear to include any text messages.

37. A few hours later, White & Case asked K&E to "[p]lease confirm whether any K&E attorney has asked the custodians whether they conducted business or would otherwise have responsive materials in their text messages." Further, in response to the newly agreed upon scope of discovery, White & Case requested K&E "[p]lease also let us know when you expect to be substantially complete with your production of the text messages we requested in our Rule 2004 subpoena." Exhibit 8 at 1. K&E has not yet responded to this email, either.

38. Neither the Debtors nor Deerfield have produced a privilege log.

39. On April 30, 2024, in light of the Debtors' and Deerfield's prior statements that neither party would be substantially complete with document production before May 3, 2024, and that the Committee would receive privilege logs thereafter, I sent an email to K&E "request[ing] that the Debtors consent to a one-month extension to adjourn the Challenge Period to June 15. This will provide the Committee with the necessary time to review the productions expected this



week, interview and/or depose witnesses based on those documents, and resolve any concerns over the Debtors and/or Deerfield's privilege designations, including receiving and reviewing any de-designated documents."

40. After receiving no response, I followed up on May 2, 2024, again asking whether the Debtors consent to extend the Challenge Deadline. Later that day, K&E responded<sup>4</sup> proffering its belief that "[t]he Committee has had ample time and documents to thoroughly investigate the uptier transaction (and any other transactions)." K&E argued that "[t]here is no need for additional time, which will not serve to generate anything beyond the ample information already available for the Committee's evaluation of the uptier transaction but will only result in needless expense and a delay of these cases to the detriment of stakeholder distributions. The Debtors cannot responsibly and do not consent to a one-month extension of the Challenge Period." A true and correct copy of the email exchange between White & Case and K&E is attached hereto as **Exhibit 11.**

41. K&E's refusal to consent to the Committee's extension provided no clarification as to how a one-month extension of the Challenge Deadline would delay these Chapter 11 Cases. As of the date of this filing, there is no disclosure statement or plan on file and the Debtors have until June 12, 2024 to file one exclusively. Furthermore, no hearing date has been set yet to match the Debtors' TSA deadline to get conditional approval of a disclosure statement by June 3, 2024, either. The Debtors also did not select Deerfield's purported credit bid as the winning bidder at the auction for the Debtors' assets and I understand the sale cannot close earlier than six weeks after entry of the Sale Order is entered – meaning around mid-June at the earliest.

*[Remainder of page intentionally left blank]*

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<sup>4</sup> This email from K&E came before the email consenting to pull, review, and produce responsive text messages.

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

Executed on May 3, 2024  
New York, New York

By /s/ Ashley Chase  
Ashley Chase, Esq. (admitted *pro hac vice*)  
**WHITE & CASE LLP**  
1221 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 819-8200  
Email: ashley.chase@whitecase.com

*Co-Counsel to the Official Committee  
Unsecured Creditors*

**EXHIBIT 1**

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**From:** Gavey, Nikki <nikki.gavey@kirkland.com>  
**Sent:** Wednesday, March 13, 2024 3:59 PM  
**To:** Chase, Ashley; Goldfine, Jeffrey Ross; Greenblatt, Josh; Cowan, Clint; Greenblatt, Nicole L.; Acuna, Olivia; Adzima, Nicholas; Winters, Spencer A.; Petrie, Francis; Feeney, Megan C.  
**Cc:** Invitae UCC - W&C Team  
**Subject:** RE: Invitae | Initial Diligence Request List

Thanks will revert shortly with the fully executed NDA and diligence requests. Note, it is coming over via large file transfer so the email may look a little different.

### Nikki Gavey

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[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)

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**From:** Chase, Ashley <ashley.chase@whitecase.com>  
**Sent:** Wednesday, March 13, 2024 11:44 AM  
**To:** Gavey, Nikki <nikki.gavey@kirkland.com>; Goldfine, Jeffrey Ross <jeffrey.goldfine@kirkland.com>; Greenblatt, Josh <josh.greenblatt@kirkland.com>; Cowan, Clint <clint.cowan@kirkland.com>; Greenblatt, Nicole L. <ngreenblatt@kirkland.com>; Acuna, Olivia <olivia.acuna@kirkland.com>; Adzima, Nicholas <nicholas.adzima@kirkland.com>; Winters, Spencer A. <spencer.winters@kirkland.com>; Petrie, Francis <francis.petrie@kirkland.com>  
**Cc:** Invitae UCC - W&C Team <InvitaeWCALL@whitecase.com>  
**Subject:** RE: Invitae | Initial Diligence Request List

Nikki,

Please see attached NDA signed by W&C. Please send us a countersigned copy when you have one. Please also let us know when we may expect to receive documents.

Thanks,  
Ashley

**Ashley Chase** | Associate

**T** +1 212 819 7624 **M** +1 631 926 1797 **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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**From:** Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>  
**Sent:** Tuesday, March 12, 2024 1:52 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>

**Subject:** RE: Invitae | Initial Diligence Request List

Execution version attached. Note, this is with company for countersignature as well.

## Nikki Gavey

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Tuesday, March 12, 2024 11:38 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>

**Subject:** RE: Invitae | Initial Diligence Request List

Thanks, yes, we are okay with the NDA and will execute the one you sent. We look forward to the draft protective order.

Best,  
Ashley

**Ashley Chase** | Associate

**T** +1 212 819 7624 **M** +1 631 926 1797 **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Tuesday, March 12, 2024 11:36 AM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>

**Subject:** RE: Invitae | Initial Diligence Request List

Thanks, Ashley. Received. We're pulling this information together. I know you're working through the NDA, but we'll also need a protective order for the case and discovery. We'll send one over for your review.

## Jeffrey R. Goldfine

### KIRKLAND & ELLIS LLP

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Tuesday, March 12, 2024 11:01 AM

**To:** Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>

**Subject:** RE: Invitae | Initial Diligence Request List

K&E Team,

As you know, one of the Committee's objections to the proposed cash collateral order is that it improperly denies the Committee standing to pursue claims against the Prepetition Secured Lenders. The Debtors' first day declaration indicates that the Special Committee conducted an investigation into such claims. To help us evaluate how to proceed with our objection, we ask that you provide the following information. Please note that, while we intend to serve formal discovery requests seeking this information (among other things), in the interest of time we are sending these requests now on an informal basis:

- The names and positions of each individual who participated in any investigation into the Debtors' claims against the Prepetition Secured Lenders;
- The date on which the investigation began and, if completed, the date on which the investigation concluded;
- Any written materials detailing the investigation and its conclusions;
- A list of all individuals interviewed or deposed in connection with the investigation;
- A list of all documents reviewed in connection with the investigation; and
- All board, committee, and/or subcommittee materials prepared in connection with the investigation.

Given the timing, we would appreciate a prompt response. We are available to discuss.

Thanks,  
Ashley

**Ashley Chase** | Associate

**T** +1 212 819 7624 **M** +1 631 926 1797 **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Chase, Ashley

**Sent:** Sunday, March 10, 2024 3:55 PM

**To:** 'Gavey, Nikki' <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>

**Subject:** RE: Invitae | Initial Diligence Request List

Thanks. We will review.

Best,  
Ashley

**Ashley Chase** | Associate

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**From:** Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>

**Sent:** Sunday, March 10, 2024 3:49 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>

**Subject:** RE: Invitae | Initial Diligence Request List

Ashley, as discussed with some of your colleagues earlier we updated the NDA from the fall – attached for your review. Note, this is with client for review as well. Once executed we have a large chunk of your requests ready to send over.

Thanks,  
Nikki

**Nikki Gavey**

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**KIRKLAND & ELLIS LLP**

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[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Saturday, March 9, 2024 8:51 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Greenblatt, Josh <[josh.greenblatt@kirkland.com](mailto:josh.greenblatt@kirkland.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; Adzima, Nicholas <[nicholas.adzima@kirkland.com](mailto:nicholas.adzima@kirkland.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>

**Subject:** Invitae | Initial Diligence Request List

K&E team,

Attached please find the Committee's initial diligence request list. While we expect to have a more thorough set of document requests in the short term, we are hopeful that the attached targets readily available documents you can easily collect and share.

As we begin to focus on discovery, please let us know whether you would like us to execute an NDA and/or have a draft protective order we may review. We are available to discuss. Thanks.

Best,  
Ashley

**Ashley Chase** | Associate

**T** +1 212 819 7624 **M** +1 631 926 1797 **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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**EXHIBIT 2**

March 9, 2024

**UCC's Initial Due Diligence Request List**

Please provide the following documents at your earliest convenience:

1. All formation documents for Invitae Corporation and all of its Debtor and non-Debtor affiliates.
2. Organizational chart of Invitae Corporation and its Debtor and non-Debtor affiliates that reflects the capital overlay.
3. Executed copies of the 2028 Convertible Senior Secured Notes and any ancillary documents.
4. Documents sufficient to show the payments made, aggregate outstanding principal amount, and pre-and post-petition interest being claimed (if any) on the 2028 Convertible Senior Secured Notes.
5. An executed copy of the Senior Secured Indenture, dated as of March 7, 2023, by and among:  
(a) Invitae Corporation; (b) certain of its subsidiaries pursuant to the Senior Secured Indenture;  
and (c) U.S. Bank Trust Company, National Association, as trustee and collateral agent.
6. An executed copy of the August 2023 amendment to the Senior Secured Indenture.
7. A schedule of all liens, security interests, and other encumbrances made, granted, or suffered by Invitae Corporation, and a corresponding schedule and summary of lien and/or otherwise encumbered collateral as well as the method and proof of perfection thereof.
8. Executed copies of the Series A Notes and any ancillary documents.
9. Executed copies of the Series B Notes and any ancillary documents.
10. Executed copies of the 2028 Convertible Senior Unsecured Notes and any ancillary documents.
11. Documents sufficient to show the payments made, aggregate outstanding principal amount, and pre- and post-petition interest being claimed (if any) on the 2028 Convertible Senior Unsecured Notes.
12. An executed copy of the 2028 Unsecured Notes Indenture, dated as of April 8, 2021, by and among (a) Invitae, as issuer and (b) U.S. National Bank Association, as trustee.

March 9, 2024

**UCC's Initial Due Diligence Request List**

13. Executed copies of the 2024 Convertible Senior Unsecured Notes and any ancillary documents.
14. Documents sufficient to show the payments made, aggregate outstanding principal amount, and pre-and post-petition interest being claimed (if any) on the 2024 Convertible Senior Unsecured Notes.
15. An executed copy of the 2024 Unsecured Notes Indenture, dated as of September 10, 2019, by and among (a) Invitae, as issuer, and (b) U.S. National Bank Association, as trustee, and any amendments or other modifications thereto.
16. An executed copy of the Credit agreement between Invitae and Perceptive Credit Holdings III, LP dated on or around October 2, 2020, and any amendments thereto.
17. Documents sufficient to show the amount and dates of all payments made on the October 2020 Credit agreement between Invitae and Perceptive Credit Holdings III, LP.
18. The "Confidential Information Presentation," as referenced in paragraph 76 of the First Day Declaration.
19. All indications of interest received from third parties to date.

**EXHIBIT 3**

UNITED STATES BANKRUPTCY COURT

District of New Jersey

In re INVITAE CORPORATION, et al.,  
Debtors<sup>1</sup>

Case No. 24-11362 (MBK)  
(Jointly Administered)

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Invitae Corporation and affiliated debtors  
(Name of person to whom the subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE	DATE AND TIME
sam.hershey@whitecase.com White & Case LLP 1221 Avenue of the Americas, New York, NY 10020	March 28, 2024, at 5:00 p.m. E.T.

The examination will be recorded by this method: Written Responses to Interrogatories. See attached Schedule B.

☒ **Production:** You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See attached Schedule A.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 3/14/24

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

/s/ Samuel P. Hershey

\_\_\_\_\_  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)  
Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Samuel P. Hershey, sam.hershey@whitecase.com, (212) 819-8200

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for (*name of individual and title, if any*): \_\_\_\_\_  
on (*date*) \_\_\_\_\_ .

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on (*date*) \_\_\_\_\_ ; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



## **SCHEDULE A TO SUBPOENA TO THE DEBTORS**

### **DEFINITIONS**

For the purposes of these Document Requests, the following Definitions shall apply:

1. “August 2023 Exchange” refers to the transaction through which Invitae exchanged \$17.2 million aggregate principal amount of certain outstanding 2024 Convertible Senior Unsecured Notes for \$0.1 million aggregate principal amount of Series A Notes and 15 million shares of common stock on or around August 22, 2023.
2. “Bankruptcy Code” means title 11 of the United States Code, as amended.
3. “Bankruptcy Court” means the United States Bankruptcy Court for the District of New Jersey.
4. “Board” means any board of directors, managers, or comparable supervisory body, or any group or committee with the responsibility of, among other things, governing the Debtors or overseeing the activities and operations of the Debtors.
5. “Chapter 11 Cases” means the voluntary chapter 11 cases commenced on the Petition Date by the Debtors in the Bankruptcy Court.
6. “Communication” means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including without limitation, correspondence, documents, conversations, dialogues, discussions, e-mail, interviews, consultations, agreements, and other understandings.
7. “Concerning,” “regarding,” “in connection with,” “relating to,” and/or “referring to” shall be construed to mean, without limitation, relating to, referring to, describing, evidencing, constituting, discussing, supporting, pertaining to, containing, analyzing, evaluating, studying, recording, showing, memorializing, reporting on, commenting on, mentioning, reviewed in

conjunction with, setting forth, contradicting, refuting, considering, or recommending, in whole or in part.

8. “Confidential Information Presentation” shall refer to the document identified in paragraph 76 of the First Day Declaration.

9. “Consenting Senior Secured Noteholders” shall have the meaning ascribed to it in the First Day Declaration.

10. “Debtors” means, collectively, Invitae Corporation and its affiliated debtors, which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing the Chapter 11 Cases, and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successors entities; and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

11. “Deerfield” means Deerfield Partners, L.P. and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

12. “Document” means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic mater, in draft or final form, including, but not limited to: any letter, correspondence, or Communication of any sort; photograph; sound recording; video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, or cable; summary, report or record of telephone conversation, voice mail or voice mail back-up, text message, instant message, Bloomberg message, WhatsApp message, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act, or activity; projection, work paper, or draft; computer or computer network output or input,

portable storage devices, e-mail, magnetic and/or optical medias, archived or back up data on any of these medias on the cloud or otherwise, and documents that have been deleted but are recoverable from any of these medias; opinion or report of consultant; request, order, invoice, or bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping, or press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, stubs, register, canceled check, deposit slip, charge slip, tax return (income or other), requisition, file, study, graph, or tabulation, and any and all other writings and recordings of whatever nature, and any other data compilation from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form; including, without limitation, all things meeting the definition of “documents” or “electronically stored information” set forth in Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, or meeting the definition of “writing” or “recording” set forth in Rule 1001 of the Federal Rules of Evidence. Any document with any marks such as initials, comments, or notations of any kind is not deemed to be identical to one without such marks and is a separate document within the meaning of this term.

13. “First Day Declaration” means 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* [D.I. 21].

14. “Including” means “including, without limitation” or “including, but not limited to.”

15. “Invitae” refers to Invitae Corporation and its Debtor and non-Debtor affiliates.

16. “March 2023 Exchange” refers to the transaction through which Invitae (a) exchanged \$305.7 million aggregate principal amount of 2024 Convertible Senior Unsecured Notes for \$275.3 million aggregate principal amount of new secured Series A Notes due in 2028 and 14,219,859 shares of Invitae’s common stock and (b) issued and sold new secured Series B Notes on or around March 7, 2023.

17. “Marketing Process” refers to the process led by Moelis to solicit transaction proposals that began on December 14, 2023.

18. “Moelis” means Moelis & Company LLC.

19. “Perella” refers to Perella Weinberg Partners LP.

20. “Petition Date” means February 13, 2024.

21. “Relate” and its variants encompass the terms “refer,” “reflect,” “constitute,” “evidence,” “in connection with,” and “concern” and shall be construed to bring within the scope of the Document Request, as applicable, all documents and information that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Document Request, as applicable, including, but not limited to, all documents and information that reflect, record, memorialize, discuss, evaluate, consider, review, report, or otherwise evidence the existence of the subject matter of the Document Request, as applicable.

22. “Series A Notes” shall have the meaning ascribed to it in the First Day Declaration.

23. “Series B Notes” shall have the meaning ascribed to it in the First Day Declaration.

24. “Special Committee” means the committee of the Debtor’s board of directors formed on September 23, 2023, including all past and present members.

25. “Transaction Support Agreement” or “TSA” refers to the transaction support agreement attached as Exhibit B to the First Day Declaration.

26. “You” and “Your” shall mean and refer to any of the Debtors and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

27. “2020 Term Loan” refers to the credit agreement Invitae and Perceptive Credit Holdings III, LP executed on or around October 2, 2020, as may have been amended from time to time.

28. “2023 Exchange Transactions” means the March 2023 Exchange and the August 2023 Exchange.

29. “2024 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

30. “2028 Convertible Senior Secured Notes” shall have the meaning ascribed to it in the First Day Declaration.

31. “2028 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

### **INSTRUCTIONS**

The preceding Definitions apply to each of these Instructions and for purposes of these Document Requests, the following Instructions shall be followed:

1. In accordance with Rule 2004 of the Federal Rules of Bankruptcy Procedure, District of New Jersey Local Bankruptcy Rule 2004-1, Rule 34(a) of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, the Document Requests shall be deemed to include any document now or at any

time in Your possession, custody, or control, including, but not limited to, documents in the possession, custody, or control of any Your current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives, or other person acting or purporting to act on its or their behalf. A document is deemed to be in Your possession, custody, or control if it is in Your physical custody, or if it is in the physical custody of any other person or entity and You: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that You may use, inspect, examine, or copy such document when You sought to do so, or (iv) as a practical matter, have been able to use, inspect, examine or copy such document on any terms. If any requested document was, but no longer is, in Your control, state the disposition of each such document.

2. As the term “possession” pertains to e-mails, the term includes, but is not limited to, e-mails contained in Your electronic e-mail directories containing (i) “deleted” e-mails which have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories; (ii) “sent” e-mails, including all subdirectories irrespective of the title of such subdirectories; and (iii) “received” e-mails, including all subdirectories irrespective of the title of such subdirectories.

3. The word “all” shall also include “each of,” and vice versa. The word “any” shall be construed to mean “any and all” where the effect of such construction is to broaden the scope of the Document Request.

4. In responding to each Document Request, You are to review and search all relevant files of appropriate entities and persons.

5. All Document Requests shall be deemed to include requests for any and all transmittal sheets, cover letters, enclosures, or any other annexes or attachments to the documents.

6. You are to produce the original and all non-identical copies, including all drafts of each document requested. If You are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts. Any document that cannot be produced in full shall be produced to the fullest extent possible.

7. In accordance with Rule 34(b) of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond with the categories in each Document Request. The name of the file from which it was produced, the identity of the person from whose file it was produced, and the identity of the present custodian of that file each shall be set forth. All documents requested herein shall be produced electronically as tagged image file format (“TIFF”) or portable document format (“PDF”) files, except that all spreadsheets and accounting and financial data, including those created with Excel software, shall be produced in a fully functional native form (i.e., in a linked format).

8. If any responsive document is known to have existed and cannot now be located, or has been destroyed, discarded, or otherwise disposed, set forth a complete statement of the circumstances surrounding such loss, destruction, discarding, or other disposition, including:

a. A description of the document, including the date, a summary of its contents and the identity of its author and the persons(s) to whom it was sent or shown:

b. The last known custodian;

- c. Whether the document is missing or lost or was destroyed, discarded, or otherwise disposed;
- d. The date of loss, destruction, discarding, or other disposition;
- e. The reason(s) for destruction, discarding, or other disposition;
- f. The person(s) authorizing or carrying out such destruction, discarding, or other disposition; and
- g. The efforts made to locate lost or misplaced documents.

9. In the event You seek to withhold any document, thing, or information on the basis that it is properly entitled to some privilege or other limitation of discovery, You shall produce as much of the document concerned as to which no claim of privilege or other limitation of discovery is made. With respect to documents or portions of documents for which a claim of privilege or other limitation of discovery is made, You are instructed to provide a numeral list of the document(s) and thing(s) for which a privilege or limitation is claimed that (1) identifies the nature of the privilege or limitation (including work product) asserted and, if the privilege or limitation is governed by state law, indicate the state of the privilege rule or other limitation invoked; and (2) provides the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged or otherwise protected information: (i) the type of document; (ii) the name and capacity of each author and recipient of the document; (iii) the general subject matter of the document in a manner sufficient to support the privilege or other protection claimed; (iv) the date of the document; (v) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author(s) of the document, the addressee(s) of the document, and any other recipient(s) shown in the document, and, where not apparent, the relationship of the author(s), addressee(s), and recipient(s) to each



other; and (vi) the same information referenced in (i)-(v) above for each enclosure or attachment to each listed document if the enclosure or attachment is also withheld from production. Notwithstanding the assertion of any privilege or other protection, any requested document that contains responsive, non-privileged or protected information should be produced, but that portion of the document for which the privilege or other protection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

10. Each Definition, Instruction, and Document Request herein shall be construed independently and not with reference to any other Definition, Instruction, or Document Request, for the purposes of limitation.

11. If any meaning of any term in any Document Request herein is unclear to You, without waiver of the right to seek a full and complete response to the Document Request, You shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Document Request according to the assumed meaning.

12. In accordance with Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, objections to any part of these Document Requests shall be stated in full and with specificity. In the event You interpose an objection to a Document Request, You must produce the documents to which objection is not made or provide testimony or information not objected to.

13. Each Document Request shall be deemed continuing. If, after responding, You obtain or become aware of any additional documents or information responsive to these Document Requests, production of such additional documents or information shall be made forthwith.

14. “Including” shall not be construed to limit the scope of any Document Request.

15. Whenever necessary to bring within the scope of a Document Request documents or information that might otherwise be construed to be outside its scope:

- a. The use of a verb in any tense shall be construed as the use of that verb in all other tenses;
- b. The use of a word in its singular form shall be deemed to include within its use the plural form, and vice versa;
- c. The use of the masculine form of a noun or pronoun shall include the feminine form, and vice versa; and
- d. The use of the conjunctive or disjunctive, respectively, shall be construed as necessary to be inclusive rather than exclusive.

16. Each paragraph, subparagraph, clause, and word therein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

17. Unless otherwise stated, each Request calls for production of documents from January 1, 2021 through the present.

### **DOCUMENT REQUESTS**

1. All formation documents for each of the Debtors.
2. Documents sufficient to identify the Debtors' and non-Debtor affiliates' corporate organization and any changes thereto since January 1, 2019.
3. Documents sufficient to show all intercompany activity, including outstanding balances among these entities.
4. All intercompany agreements between and among the Debtors and/or any non-Debtor affiliates.

5. All engagement letters or other retention agreements between and among Kirkland & Ellis LLP, Perella, and the Debtors.

6. All Communications concerning the basis for and date on which Perella's engagement was terminated.

7. All Board materials, including but not limited to meeting minutes, agendas, resolutions, and any Documents distributed to any member of the Board in connection with any Board meeting, Board action, or any meeting or action of any committee or subcommittee of the Board.

8. All Documents and Communications concerning the formation and composition of the Special Committee, including the departure or addition of any members since the Special Committee's formation.

9. All Documents and Communications concerning any investigation the Special Committee began, continued, or completed, or was instructed or authorized to begin, continue, or complete.

10. All Communications to, by, between, or among any members of the Special Committee regarding any contemplated or consummated transaction by Invitae.

11. Documents sufficient to show the composition of the Board and any committee or subcommittee thereof at all times from January 1, 2019 to the present.

12. Documents sufficient to show the resignation or termination and basis therefor of any Board member, officer, director, or manager of any Debtor from January 1, 2019 to the present.

13. All director and officer insurance policies for any Debtor, including Documents sufficient to show the remaining balance of each such policy.

14. All financial statements, projections, balance sheets, and business plans for each of the Debtor entities from January 1, 2019 to the Petition Date.

15. All Documents concerning the Debtors' valuation, including any analysis of the total enterprise value or fair market value for each Debtor from January 1, 2019 to the Petition Date.

16. Documents sufficient to show any tax attributes of any Debtor, including any net operating losses.

17. A schedule of the Debtors' assets broken out by Debtor and supporting Documents, including certificates of title, mortgages, and intellectual property security agreements.

18. A schedule of the Debtors' liabilities broken out by Debtor and supporting Documents.

19. All Documents memorializing any credit agreements, loans, financing, or funding for any of the Debtors and any amendments thereto from January 1, 2019 to the Petition Date.

20. All Documents memorializing any liens, security interests, mortgages, charges, and other encumbrances made, granted, or suffered by any Debtor, including Documents sufficient to show the method and proof of perfection thereof.

21. All stock certificates and debt instruments pledged in connection with any Debtor's existing financings, including records identifying which parties have possession of such certificates and instruments.

22. All Documents and Communications regarding the payment of the balance on the 2020 Term Loan in February 2023, including but not limited to, the value provided to the Debtors.

23. All Documents and Communications concerning any contemplated or consummated transaction or strategic alternative between the Debtors and any of its creditors or stakeholders.

24. All analyses concerning any transaction or strategic alternative the Debtor contemplated or consummated from January 1, 2019 to the Petition Date.

25. All Documents and Communications concerning the March 2023 Exchange, including but not limited to, outreach regarding potentially participating in the March 2023 Exchange, the negotiation of the March 2023 Exchange, and the value provided to the Debtors.

26. All Documents and Communications concerning the August 2023 Exchange, including but not limited to, outreach regarding potentially participating in the August 2023 Exchange, the negotiation of the August 2023 Exchange, and the value provided to the Debtors.

27. All Documents regarding the “dispositions” referred to in paragraph 9 in the First Day Declaration that “may have otherwise been prohibited under the Senior Secured Indenture,” including any analyses into whether such “dispositions” would have in fact been prohibited.

28. All Documents and Communications concerning the Consenting Senior Secured Noteholders’ refusal to waive the \$150 million minimum liquidity covenant, as described in paragraph 10 of the First Day Declaration.

29. All Documents and Communications regarding the solvency of the Debtors.

30. All fairness opinions regarding any transaction considered or consummated by the Debtors.

31. All Documents and Communications concerning the filing of these Chapter 11 Cases.

32. All Documents and Communications concerning the “transaction proposal” that the Company received from the Unsecured Ad Hoc Group, as set forth in paragraph 75 of the First Day Declaration, including the basis for the Company’s conclusion that the transaction was “unactionable.”

33. All Documents and Communications concerning the Transaction Support Agreement, including but not limited to its negotiation and any diligence related thereto.

34. All Documents and Communications concerning or identifying any potential third-party acquirer of any or all of the Debtors’ assets from November 2023 to the present.

35. All Communications between or among You, Moelis, and/or any of the “twenty-four (24) identified strategic parties” referenced in paragraph 76 of the First Day Declaration.

36. The Confidential Information Presentation.

37. Documents sufficient to identify the parties with whom the Debtors have negotiated or executed non-disclosure agreements in furtherance of their sale process.

38. All indications of interest received to date as a result of the Marketing Process.

## **SCHEDULE B TO SUBPOENA TO THE DEBTORS**

### **DEFINITIONS**

For the purposes of these Document Requests, the following Definitions shall apply:

1. “August 2023 Exchange” refers to the transaction through which Invitae exchanged \$17.2 million aggregate principal amount of certain outstanding 2024 Convertible Senior Unsecured Notes for \$0.1 million aggregate principal amount of Series A Notes and 15 million shares of common stock on or around August 22, 2023.
2. “Bankruptcy Code” means title 11 of the United States Code, as amended.
3. “Bankruptcy Court” means the United States Bankruptcy Court for the District of New Jersey.
4. “Board” means any board of directors, managers, or comparable supervisory body, or any group or committee with the responsibility of, among other things, governing the Debtors or overseeing the activities and operations of the Debtors.
5. “Chapter 11 Cases” means the voluntary chapter 11 cases commenced on the Petition Date by the Debtors in the Bankruptcy Court.
6. “Communication” means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including without limitation, correspondence, documents, conversations, dialogues, discussions, e-mail, interviews, consultations, agreements, and other understandings.
7. “Concerning,” “regarding,” “in connection with,” “relating to,” and/or “referring to” shall be construed to mean, without limitation, relating to, referring to, describing, evidencing, constituting, discussing, supporting, pertaining to, containing, analyzing, evaluating, studying, recording, showing, memorializing, reporting on, commenting on, mentioning, reviewed in

conjunction with, setting forth, contradicting, refuting, considering, or recommending, in whole or in part.

8. “Consenting Senior Secured Noteholders” shall have the meaning ascribed to it in the First Day Declaration.

9. “Debtors” means, collectively, Invitae Corporation and its affiliated debtors, which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing the Chapter 11 Cases, and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successors entities; and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

10. “Deerfield” means Deerfield Partners, L.P. and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

11. “Document” means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic mater, in draft or final form, including, but not limited to: any letter, correspondence, or Communication of any sort; photograph; sound recording; video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, or cable; summary, report or record of telephone conversation, voice mail or voice mail back-up, text message, instant message, Bloomberg message, WhatsApp message, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act, or activity; projection, work paper, or draft; computer or computer network output or input, portable storage devices, e-mail, magnetic and/or optical medias, archived or back up data on any of these medias on the cloud or otherwise, and documents that have been deleted but are



recoverable from any of these medias; opinion or report of consultant; request, order, invoice, or bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping, or press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, stubs, register, canceled check, deposit slip, charge slip, tax return (income or other), requisition, file, study, graph, or tabulation, and any and all other writings and recordings of whatever nature, and any other data compilation from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form; including, without limitation, all things meeting the definition of “documents” or “electronically stored information” set forth in Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, or meeting the definition of “writing” or “recording” set forth in Rule 1001 of the Federal Rules of Evidence. Any document with any marks such as initials, comments, or notations of any kind is not deemed to be identical to one without such marks and is a separate document within the meaning of this term.

12. “First Day Declaration” means 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 [D.I. 21].

13. “Including” means “including, without limitation” or “including, but not limited to.”

14. “Investigation” refers to any investigation the Board or the Special Committee began, continued, or completed, or was instructed or authorized to begin, continue, or complete concerning any potential claims the Debtors have as a result of the 2023 Exchange Transactions.

15. “Invitae” refers to Invitae Corporation and its debtor and non-debtor affiliates.
16. “March 2023 Exchange” refers to the transaction through which Invitae (a) exchanged \$305.7 million aggregate principal amount of 2024 Convertible Senior Unsecured Notes for \$275.3 million aggregate principal amount of new secured Series A Notes due in 2028 and 14,219,859 shares of Invitae’s common stock and (b) issued and sold new secured Series B Notes on or around March 7, 2023.
17. “Petition Date” means February 13, 2024.
18. “Relate” and its variants encompass the terms “refer,” “reflect,” “constitute,” “evidence,” “in connection with,” and “concern” and shall be construed to bring within the scope of the Document Request, as applicable, all documents and information that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Document Request, as applicable, including, but not limited to, all documents and information that reflect, record, memorialize, discuss, evaluate, consider, review, report, or otherwise evidence the existence of the subject matter of the Document Request, as applicable.
19. “Series A Notes” shall have the meaning ascribed to it in the First Day Declaration.
20. “Series B Notes” shall have the meaning ascribed to it in the First Day Declaration.
21. “Special Committee” means the committee of the Debtor’s board of directors formed on September 23, 2023, including all past and present members.
22. “Transaction Support Agreement” or “TSA” refers to the transaction support agreement attached as Exhibit B to the First Day Declaration.
23. “You” and “Your” shall mean and refer to any of the Debtors and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor

entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

24. “2020 Term Loan” refers to the credit agreement Invitae and Perceptive Credit Holdings III, LP executed on or around October 2, 2020, as may have been amended from time to time.

25. “2023 Exchange Transactions” means the March 2023 Exchange and the August 2023 Exchange.

26. “2024 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

27. “2028 Convertible Senior Secured Notes” shall have the meaning ascribed to it in the First Day Declaration.

28. “2028 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

### **INSTRUCTIONS**

The preceding Definitions apply to each of these Instructions and for purposes of these Interrogatories, the following Instructions shall be followed:

1. Rule 2004 of the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure 26, 33, and 34, made applicable by Bankruptcy Rules 7026, 7033, 7034, and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, is hereby incorporated by reference and applies to each of the Definitions, Instructions and Interrogatories.

2. As the term “possession” pertains to e-mails, the term includes, but is not limited to, e-mails contained in your electronic e-mail directories containing (i) “deleted” e-mails which have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories; (ii) “sent” e-mails, including all subdirectories irrespective of the title of such

subdirectories; and (iii) “received” e-mails, including all subdirectories irrespective of the title of such subdirectories.

3. The word “all” shall also include “each of,” and vice versa. The word “any” shall be construed to mean “any and all” where the effect of such construction is to broaden the scope of the Interrogatory.

4. In responding to each of the Interrogatories, You are to review and search all relevant files of appropriate entities and persons.

5. If any responsive information or documents is known to have existed and cannot now be located, or has been destroyed, discarded, or otherwise disposed, set forth a complete statement of the circumstances surrounding such loss, destruction, discarding, or other disposition, including:

a. A description of the information or documents, including the date, a summary of its contents and the identity of its author and the Person(s) to whom it was sent or shown:

b. The last known custodian;

c. Whether the information or document is missing or lost or was destroyed, discarded, or otherwise disposed;

d. The date of loss, destruction, discarding, or other disposition;

e. The reason(s) for destruction, discarding, or other disposition;

f. The Person(s) authorizing or carrying out such destruction, discarding, or other deposition; and

g. The efforts made to locate lost or misplaced information or documents.

6. If there are no information responsive to a specific request, so state in writing.

7. If You know of any information responsive to a particular request but cannot produce them, so state, produce the information within Your possession, custody or control on the subject matter sought, and identify each Person whom You believe has information responsive to the Interrogatory.

8. In the event you seek to withhold any document, thing, or information on the basis that it is properly entitled to some privilege or other limitation of discovery, You shall produce as much of the document concerned as to which no claim of privilege or other limitation of discovery is made. With respect to information, documents or portions of documents for which a claim of privilege or other limitation of discovery is made, You are instructed to provide a numeral list of the information, document(s) and thing(s) for which a privilege or limitation is claimed that (1) identifies the nature of the privilege or limitation (including work product) asserted and, if the privilege or limitation is governed by state law, indicate the state of the privilege rule or other limitation invoked; and (2) provides the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged or otherwise protected information: (i) the type of information or document; (ii) the name and capacity of each author and recipient of the information or document; (iii) the general subject matter of the information or document in a manner sufficient to support the privilege or other protection claimed; (iv) the date of the information or document; (v) such other information as is sufficient to identify the information or document for a subpoena *duces tecum*, including, where appropriate, the author(s) of the document, the addressee(s) of the document, and any other recipient(s) shown in the document, and, where not apparent, the relationship of the author(s), addressee(s), and recipient(s) to each other; and (vi) the same information referenced in (i)-(v) above for each enclosure or attachment to each listed document if the enclosure or attachment is also withheld from production.

Notwithstanding the assertion of any privilege or other protection, any requested information or document that contains responsive, non-privileged or protected information should be disclosed or produced, but that portion of a document for which the privilege or other protection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

9. Each Definition, Instruction, and Interrogatory herein shall be construed independently and not with reference to any other Definition, Instruction, or Interrogatory, for the purposes of limitation.

10. If any meaning of any term in any Interrogatory herein is unclear to You, without waiver of the right to seek a full and complete response to the Interrogatory, You shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Interrogatory according to the assumed meaning.

11. In accordance with Rule 33 of the Federal Rules of Civil Procedure, as incorporated by Rules 7033 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, objections to any part of these Interrogatories shall be stated in full and with specificity. In the event You interpose an objection to an Interrogatory, You must respond to each part of the Interrogatory which objection is not made or provide testimony or information not objected to, as the case may be.

12. If You cannot respond to any part of the Interrogatories in full, please respond to the extent possible, specifying the reason(s) for Your inability to respond to the remainder and stating whatever information or knowledge You have concerning the portion to which You do not respond.

13. The fact that an investigation is continuing or that discovery is incomplete shall not be a justification for failing to respond to these Interrogatories based on the knowledge or information that You possess at the time You respond to these Interrogatories. If an investigation is continuing or discovery is not complete with respect to the matter inquired into by any Interrogatory, so state in your response to that Interrogatory.

14. Each Interrogatory shall be deemed continuing so as to require You to promptly supplement Your response if You obtain, generate, or discover additional documents or information, as required by Rule 26 of the Federal Rules of Civil Procedure, as incorporated by Rules 7026 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable.

15. “Including” shall not be construed to limit the scope of any Interrogatory.

16. Whenever necessary to bring within the scope of an Interrogatory information that might otherwise be construed to be outside its scope:

- a. The use of a verb in any tense shall be construed as the use of that verb in all other tenses;
- b. The use of a word in its singular form shall be deemed to include within its use the plural form, and vice versa;
- c. The use of the masculine form of a noun or pronoun shall include the feminine form, and vice versa; and
- d. The use of the conjunctive or disjunctive, respectively, shall be construed as necessary to be inclusive rather than exclusive.

17. Each paragraph, subparagraph, clause, and word therein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

18. Unless another time period is specified, the relevant time period for these Interrogatories is the time period from January 1, 2021 to the date that you respond to these Interrogatories.

### **INTERROGATORIES**

1. Identify the names and positions of all individuals who advised the Debtors in connection with any of the 2023 Exchange Transactions.

2. Identify all parties contacted regarding any potential opportunity to participate in the 2023 Exchange Transactions and the means by which they were contacted.

3. Identify the names and positions of all individuals who approved the 2023 Exchange Transactions.

4. Identify all “dispositions” referred to in paragraph 9 in the First Day Declaration that “may have otherwise been prohibited under the Senior Secured Indenture.”

5. Identify the names and positions of all individuals who advised the Special Committee in connection with the Investigation.

6. Identify the date on which the Investigation began and, if completed, the date on which the Investigation concluded.

7. Identify any written materials detailing the Investigation and its conclusions.

8. Identify all individuals interviewed or deposed in connection with the Investigation and the topics of each interview or deposition.

9. Identify all individuals who may have information relevant to the Investigation, including the viability of any claims or causes of action resulting from the 2023 Exchange Transactions.

10. Identify all potential claims or causes of action belonging to any of the Debtors or their estates that were reviewed, considered, or evaluated in connection with the Investigation.



11. Provide a list of all Documents reviewed in connection with the Investigation.
12. Identify (a) each individual from whom the Debtors, the Special Committee, or any party acting at their direction requested Documents or information in connection with the Investigation and (b) any Documents provided by such individuals.
13. Identify the facts and circumstances in connection with each of the departures from the Company by “four chief financial officers and various other c-suite executives,” as set forth in paragraph 62 of the First Day Declaration, including any severance, settlement or other payments made in connection with such departures.
14. Identify all potential claims or causes of action belonging to any of the Debtors or their estates that You have reviewed, considered, or evaluated that are unrelated to the 2023 Exchange Transactions.
15. Identify all potential claims or causes of action belonging to any of the Debtors or their estates that You continue to, or intend to, review, consider, or evaluate during these Chapter 11 Cases.

**EXHIBIT 4**

Exhibit 4 to Chase Declaration Page 2 of 15  
UNITED STATES BANKRUPTCY COURT

District of New Jersey

In re INVITAE CORPORATION, et al.,  
Debtors<sup>1</sup>

Case No. 24-11362 (MBK)  
(Jointly Administered)

Chapter 11

SUBPOENA FOR RULE 2004 EXAMINATION

To: Deerfield Partners, L.P.

(Name of person to whom the subpoena is directed)

☐ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at an examination under Rule 2004, Federal Rules of Bankruptcy Procedure. A copy of the court order authorizing the examination is attached.

PLACE

sam.hershey@whitecase.com  
White & Case LLP  
1221 Avenue of the Americas, New York, NY 10020

DATE AND TIME

March 28, 2024, at 5:00 p.m. E.T.

The examination will be recorded by this method:

☒ **Production:** You, or your representatives, must also bring with you to the examination the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

See attached Schedule A.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 3/14/24

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

/s/ Samuel P. Hershey

\_\_\_\_\_  
Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party)  
Official Committee of Unsecured Creditors, who issues or requests this subpoena, are:

Samuel P. Hershey, sam.hershey@whitecase.com, (212) 819-8200

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for (*name of individual and title, if any*): \_\_\_\_\_  
on (*date*) \_\_\_\_\_ .

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on (*date*) \_\_\_\_\_ ; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**SCHEDULE A TO SUBPOENA TO DEERFIELD PARTNERS, L.P.**

**DEFINITIONS**

For the purposes of these Document Requests, the following Definitions shall apply:

1. “August 2023 Exchange” refers to the transaction through which Invitae exchanged \$17.2 million aggregate principal amount of certain outstanding 2024 Convertible Senior Unsecured Notes for \$0.1 million aggregate principal amount of Series A Notes and 15 million shares of common stock on or around August 22, 2023.
2. “Bankruptcy Code” means title 11 of the United States Code, as amended.
3. “Bankruptcy Court” means the United States Bankruptcy Court for the District of New Jersey.
4. “Chapter 11 Cases” means the voluntary chapter 11 cases commenced on the Petition Date by the Debtors in the Bankruptcy Court.
5. “Communication” means any oral or written utterance, notation, or statement of any nature whatsoever between or among two or more persons, by or to whomsoever made, and including without limitation, correspondence, documents, conversations, dialogues, discussions, e-mail, interviews, consultations, agreements, and other understandings.
6. “Concerning,” “regarding,” “in connection with,” “relating to,” and/or “referring to” shall be construed to mean, without limitation, relating to, referring to, describing, evidencing, constituting, discussing, supporting, pertaining to, containing, analyzing, evaluating, studying, recording, showing, memorializing, reporting on, commenting on, mentioning, reviewed in conjunction with, setting forth, contradicting, refuting, considering, or recommending, in whole or in part.

7. “Consenting Senior Secured Noteholders” shall have the meaning ascribed to it in the First Day Declaration.

8. “Debtors” means, collectively, Invitae Corporation and its affiliated debtors, which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing the Chapter 11 Cases, and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successors entities; and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

9. “Deerfield” means Deerfield Partners, L.P. and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives, including but not limited to Deerfield Management Company, L.P., Deerfield Mgmt, L.P., and James E. Flynn, Managing Partner of Deerfield.

10. “Document” means any printed, written, typed, recorded, transcribed, taped, photographic, or graphic mater, in draft or final form, including, but not limited to: any letter, correspondence, or Communication of any sort; photograph; sound recording; video recording; note, notebook, diary, calendar, minutes, memorandum, contract, agreement, or any amendment thereto; telex, telegram, or cable; summary, report or record of telephone conversation, voice mail or voice mail back-up, text message, instant message, Bloomberg message, WhatsApp message, personal conversation, discussion, interview, meeting, conference, investigation, negotiation, act, or activity; projection, work paper, or draft; computer or computer network output or input, portable storage devices, e-mail, magnetic and/or optical medias, archived or back up data on any of these medias on the cloud or otherwise, and documents that have been deleted but are recoverable from any of these medias; opinion or report of consultant; request, order, invoice, or

bill of lading; analysis, diagram, map, index, sketch, drawing, plan, chart, manual, brochure, pamphlet, advertisement, circular, newspaper or magazine clipping, or press release; receipt, journal, ledger, schedule, bill, or voucher; financial statement, statement of account, bank statement, checkbook, stubs, register, canceled check, deposit slip, charge slip, tax return (income or other), requisition, file, study, graph, or tabulation, and any and all other writings and recordings of whatever nature, and any other data compilation from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonable usable form; including, without limitation, all things meeting the definition of “documents” or “electronically stored information” set forth in Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, or meeting the definition of “writing” or “recording” set forth in Rule 1001 of the Federal Rules of Evidence. Any document with any marks such as initials, comments, or notations of any kind is not deemed to be identical to one without such marks and is a separate document within the meaning of this term.

11. “First Day Declaration” means 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* [D.I. 21].

12. “Including” means “including, without limitation” or “including, but not limited to.”

13. “Invitae” refers to Invitae Corporation and its Debtor and non-Debtor affiliates.

14. “March 2023 Exchange” refers to the transaction through which Invitae (a) exchanged \$305.7 million aggregate principal amount of 2024 Convertible Senior Unsecured Notes for \$275.3 million aggregate principal amount of new secured Series A Notes due in 2028



and 14,219,859 shares of Invitae's common stock and (b) issued and sold new secured Series B Notes on or around March 7, 2023.

15. "Petition Date" means February 13, 2024.

16. "Relate" and its variants encompass the terms "refer," "reflect," "constitute," "evidence," "in connection with," and "concern" and shall be construed to bring within the scope of the Document Request, as applicable, all documents and information that comprise, evidence, constitute, describe, explicitly or implicitly refer to, were reviewed in conjunction with, or were generated as a result of the subject matter of the Document Request, as applicable, including, but not limited to, all documents and information that reflect, record, memorialize, discuss, evaluate, consider, review, report, or otherwise evidence the existence of the subject matter of the Document Request, as applicable.

17. "Series A Notes" shall have the meaning ascribed to it in the First Day Declaration.

18. "Series B Notes" shall have the meaning ascribed to it in the First Day Declaration.

19. "Transaction Support Agreement" or "TSA" refers to the transaction support agreement attached as Exhibit B to the First Day Declaration.

20. "You" and "Your" shall mean and refer to Deerfield and any of its respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of its respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

21. "2020 Term Loan" refers to the credit agreement Invitae and Perceptive Credit Holdings III, LP executed on or around October 2, 2020, as may have been amended from time to time.

22. “2023 Exchange Transactions” means the March 2023 Exchange and the August 2023 Exchange.

23. “2024 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

24. “2028 Convertible Senior Secured Notes” shall have the meaning ascribed to it in the First Day Declaration.

25. “2028 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

### **INSTRUCTIONS**

The preceding Definitions apply to each of these Instructions and for purposes of these Document Requests, the following Instructions shall be followed:

1. In accordance with Rule 2004 of the Federal Rules of Bankruptcy Procedure, District of New Jersey Local Bankruptcy Rule 2004-1, Rule 34(a) of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, the Document Requests shall be deemed to include any document now or at any time in Your possession, custody, or control, including, but not limited to, documents in the possession, custody, or control of any Your current or former affiliates, subsidiaries, parent corporations, predecessors, or successor entities and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives, or other person acting or purporting to act on its or their behalf. A document is deemed to be in Your possession, custody, or control if it is in Your physical custody, or if it is in the physical custody of any other person or entity and You: (i) own such document in whole or in part; (ii) have a right, by contract, statute, or otherwise, to use, inspect, examine, or copy such document on any terms; (iii) have an understanding, express or implied, that You may use, inspect, examine, or copy such document

when You sought to do so, or (iv) as a practical matter, have been able to use, inspect, examine or copy such document on any terms. If any requested document was, but no longer is, in Your control, state the disposition of each such document.

2. As the term “possession” pertains to e-mails, the term includes, but is not limited to, e-mails contained in Your electronic e-mail directories containing (i) “deleted” e-mails which have not been permanently deleted, including all subdirectories irrespective of the title of such subdirectories; (ii) “sent” e-mails, including all subdirectories irrespective of the title of such subdirectories; and (iii) “received” e-mails, including all subdirectories irrespective of the title of such subdirectories.

3. The word “all” shall also include “each of,” and vice versa. The word “any” shall be construed to mean “any and all” where the effect of such construction is to broaden the scope of the Document Request.

4. In responding to each Document Request, You are to review and search all relevant files of appropriate entities and persons.

5. All Document Requests shall be deemed to include requests for any and all transmittal sheets, cover letters, enclosures, or any other annexes or attachments to the documents.

6. You are to produce the original and all non-identical copies, including all drafts of each document requested. If You are not able to produce the original of any document, please produce the best available copy and all non-identical copies, including drafts. Any document that cannot be produced in full shall be produced to the fullest extent possible.

7. In accordance with Rule 34(b) of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, documents shall be produced as they are kept in the ordinary course of business or shall be

organized and labeled to correspond with the categories in each Document Request. The name of the file from which it was produced, the identity of the person from whose file it was produced, and the identity of the present custodian of that file each shall be set forth. All documents requested herein shall be produced electronically as tagged image file format (“TIFF”) or portable document format (“PDF”) files, except that all spreadsheets and accounting and financial data, including those created with Excel software, shall be produced in a fully functional native form (i.e., in a linked format).

8. If any responsive document is known to have existed and cannot now be located, or has been destroyed, discarded, or otherwise disposed, set forth a complete statement of the circumstances surrounding such loss, destruction, discarding, or other disposition, including:

a. A description of the document, including the date, a summary of its contents and the identity of its author and the persons(s) to whom it was sent or shown:

b. The last known custodian;

c. Whether the document is missing or lost or was destroyed, discarded, or otherwise disposed;

d. The date of loss, destruction, discarding, or other disposition;

e. The reason(s) for destruction, discarding, or other disposition;

f. The person(s) authorizing or carrying out such destruction, discarding, or other disposition; and

g. The efforts made to locate lost or misplaced documents.

9. In the event You seek to withhold any document, thing, or information on the basis that it is properly entitled to some privilege or other limitation of discovery, You shall produce as much of the document concerned as to which no claim of privilege or other limitation of discovery

is made. With respect to documents or portions of documents for which a claim of privilege or other limitation of discovery is made, You are instructed to provide a numeral list of the document(s) and thing(s) for which a privilege or limitation is claimed that (1) identifies the nature of the privilege or limitation (including work product) asserted and, if the privilege or limitation is governed by state law, indicate the state of the privilege rule or other limitation invoked; and (2) provides the following information in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged or otherwise protected information: (i) the type of document; (ii) the name and capacity of each author and recipient of the document; (iii) the general subject matter of the document in a manner sufficient to support the privilege or other protection claimed; (iv) the date of the document; (v) such other information as is sufficient to identify the document for a subpoena *duces tecum*, including, where appropriate, the author(s) of the document, the addressee(s) of the document, and any other recipient(s) shown in the document, and, where not apparent, the relationship of the author(s), addressee(s), and recipient(s) to each other; and (vi) the same information referenced in (i)-(v) above for each enclosure or attachment to each listed document if the enclosure or attachment is also withheld from production. Notwithstanding the assertion of any privilege or other protection, any requested document that contains responsive, non-privileged or protected information should be produced, but that portion of the document for which the privilege or other protection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

10. Each Definition, Instruction, and Document Request herein shall be construed independently and not with reference to any other Definition, Instruction, or Document Request, for the purposes of limitation.

11. If any meaning of any term in any Document Request herein is unclear to You, without waiver of the right to seek a full and complete response to the Document Request, You shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Document Request according to the assumed meaning.

12. In accordance with Rule 34 of the Federal Rules of Civil Procedure, as incorporated by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure, as applicable, objections to any part of these Document Requests shall be stated in full and with specificity. In the event You interpose an objection to a Document Request, You must produce the documents to which objection is not made or provide testimony or information not objected to.

13. Each Document Request shall be deemed continuing. If, after responding, You obtain or become aware of any additional documents or information responsive to these Document Requests, production of such additional documents or information shall be made forthwith.

14. “Including” shall not be construed to limit the scope of any Document Request.

15. Whenever necessary to bring within the scope of a Document Request documents or information that might otherwise be construed to be outside its scope:

- a. The use of a verb in any tense shall be construed as the use of that verb in all other tenses;
- b. The use of a word in its singular form shall be deemed to include within its use the plural form, and vice versa;
- c. The use of the masculine form of a noun or pronoun shall include the feminine form, and vice versa; and
- d. The use of the conjunctive or disjunctive, respectively, shall be construed as necessary to be inclusive rather than exclusive.

16. Each paragraph, subparagraph, clause, and word therein should be construed independently and not by reference to any other paragraph, subparagraph, clause or word herein for purposes of limitation.

17. Unless otherwise stated, each Request calls for production of documents from January 1, 2021 through the present.

### **DOCUMENT REQUESTS**

1. All Documents and Communications concerning any current or historical debt or equity position held by Deerfield in the Debtors.

2. All agreements by and between You and Invitae or an of its Debtor or non-Debtor affiliates.

3. All Communications regarding the Debtors' payment of the balance on the 2020 Term Loan in February 2023.

4. All Documents and Communications concerning any contemplated or consummated transaction or strategic alternative involving Deerfield and the Debtors.

5. All Documents and Communications concerning the March 2023 Exchange, including but not limited to, the negotiation of the March 2023 Exchange and the value provided to the Debtors and/or Deerfield.

6. All Documents and Communications concerning the August 2023 Exchange, including but not limited to, the negotiation of the August 2023 Exchange and the value provided to the Debtors and/or Deerfield.

7. All Documents and Communications concerning the 2024 Convertible Senior Unsecured Notes, including but not limited to the value of the 2024 Convertible Senior Unsecured Notes.

8. All Documents and Communications concerning the 2028 Convertible Senior Unsecured Notes, including but not limited to the value of the 2028 Convertible Senior Unsecured Notes.

9. All Documents and Communications concerning the 2028 Convertible Senior Secured Notes, including but not limited to the value of the 2028 Convertible Senior Secured Notes.

10. All Documents and Communications concerning the Consenting Senior Secured Noteholders' refusal to waive the \$150 million minimum liquidity covenant, as described in paragraph 10 of the First Day Declaration.

11. All Documents and Communications concerning the filing of these Chapter 11 Cases.

12. All Documents and Communications concerning the Transaction Support Agreement, including but not limited to the negotiation of the Transaction Support Agreement and any diligence related thereto.

13. All solvency analyses concerning the Debtors.

14. All analyses, including any fairness opinions, regarding the 2023 Exchange Transactions.

15. All engagement letters or other retention agreements between Deerfield and Perella.

16. Documents sufficient to show the names and positions of all individuals who provided advice in connection with the 2023 Exchange Transactions.



**EXHIBIT 5**

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**From:** Hershey, Samuel  
**Sent:** Monday, April 8, 2024 7:29 PM  
**To:** DeCamp, Justin J.; Chase, Ashley; Souza, Matthew T.; Beller, Benjamin S.; Blaut, Ari B.; jlawlor@wmd-law.com; JPacelli@WMD-LAW.com  
**Cc:** Invitae UCC - W&C Team; Porzio UCC Invitae; W&C Invitae UCC Litigation  
**Subject:** RE: [EXT] RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Justin, just seeing this. There is no nasty tone here. You have told us several times, including by email, that you do not understand why we are concerned about timing. You also told us five days ago that we would be advised when to expect documents, which did not happen. I'm sorry if our concern reads as something different to you. As you must know, we cannot make meaningful progress in our investigation without the documents that we requested on March 14. We look forward to receiving a rolling production soon. Thank you.

**Samuel P. Hershey** | Partner  
T +1 (212) 819-2699 M +1 (914) 582-1628 E [sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

**WHITE & CASE**

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**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Date:** Monday, Apr 08, 2024 at 18:11  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>, Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>, Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>, Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>, Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>, jlawlor@wmd-law.com <[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>, JPacelli@WMD-LAW.com <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>, W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>  
**Subject:** [EXT] RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ashley,

Your email (including the nasty tone) is uncalled for. We served R&Os long before they were due, very promptly met and conferred with you and negotiated an agreement on search parameters, and have been pulling the documents from the client. The suggestion that you cannot begin your investigation until you get documents from Deerfield is obviously false. We are moving as quickly as we can, and we should be able to begin producing documents on a rolling basis within the next few days, likely sometime later this week. If that changes, I will let you know.

Justin

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Monday, April 8, 2024 5:46 PM  
**To:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; jlawlor@wmd-law.com; JPacelli@WMD-LAW.com  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>  
**Subject:** RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

S&C,

It has been five days since the below email and we still have not received your “expected timing of production,” much less any of the documents we requested from you. To be clear, we served our Rule 2004 requests on March 14—over three weeks ago—and have yet to receive a single document from Deerfield. We understand from your repeated statements to us that you do not believe the Committee is under a tight timeline to complete its investigation. We disagree. As we have explained, reviewing documents, noticing and conducting depositions based on those documents, and drafting a standing motion and complaint require substantial time. We now have only five weeks to complete this process. We cannot begin it until we receive the documents we have requested.

Please begin producing documents on a rolling basis as soon as possible so that we may conduct our investigation. We reserve all rights.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Sent:** Wednesday, April 3, 2024 6:42 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)

**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** [EXT] RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Yes will make those changes.

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Date:** Wednesday, Apr 03, 2024 at 18:39

**To:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>, Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>, Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>, Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>, Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>, [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com) <[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>, [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com) <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, Justin. Two clarifications:

- Request 1 has “enetic Solutions” instead of “Genetic Solutions”
- Request 1 still has the “s” on the end of “shares” – could we please instead have this be share\*

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Sent:** Wednesday, April 3, 2024 6:29 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)

Cc: Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

Subject: [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ashley,

We are willing to use the revised terms, adding the project names (Icon and Ivory) to the search strings where appropriate as reflected in the chart below, subject to applying reasonable filtering to exclude mass mailings/junk.

Request(s)	Search Terms
Request 1	(Invitae OR NVTAQ OR NVTA OR Archer OR "Cape Town" OR Genelex OR "Genetic Solutions" OR Genosity OR Ommdom OR Orbicula OR PGX OR Icon OR Ivory) AND (equity OR debt OR shares* OR stock* OR note* OR loan OR invest* OR position OR hold* OR conver* OR 1L)
Request 2	(Invitae OR NVTAQ OR NVTA OR Archer OR "Cape Town" OR Genelex OR "Genetic Solutions" OR Genosity OR Ommdom OR Orbicula OR PGX OR Icon OR Ivory) AND (agreement OR indenture OR contract)
Request 3	(Invitae OR NVTAQ OR NVTA) AND (pay* OR discharge) AND ("term loan" OR TL OR Perceptive OR 1L)
Requests 4-14, 16	(Invitae OR NVTAQ OR NVTA OR Archer OR "Cape Town" OR Genelex OR "Genetic Solutions" OR Genosity OR Ommdom OR Orbicula OR PGX OR Icon OR Ivory) AND (transaction OR exchange OR unsecured OR unsec* OR secured* OR ("2028 note*"~5) OR ("2024 note*"~5) OR valu* OR covenant OR "fairness opinion*" OR liquidity OR solven* OR bankrupt* OR petition OR "Transaction Support Agreement" OR TSA OR RSA OR "Restructuring Support Agreement" OR PSA OR "Plan Support Agreement" OR "chapter 11" OR restructur*)
Request 15	(Invitae OR NVTAQ OR NVTA) AND (Perella OR PWP) AND (engage* OR retention OR retain) AND (letter OR agreement)

We are also willing to produce internal communications and communications with advisors that we identify based on the agreed search and that are responsive to Requests 13 and 14, and will provide a privilege log identifying any analyses responsive to those requests that we withhold as privileged. I am not going to commit to a three-day time limit now without having done the review, but we will produce such a log either contemporaneously with our production or shortly thereafter.

We will get back to you on expected timing of production once we have a better sense of what we are dealing with.

Regards,

Justin

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**From:** DeCamp, Justin J.

**Sent:** Tuesday, April 2, 2024 9:15 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

We are evaluating the terms and hit counts and will get back to you tomorrow.

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Tuesday, April 2, 2024 3:15 PM

**To:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Justin,

Following up on the below. Can you please confirm the outstanding questions and whether we are in agreement on search terms?

Best,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Chase, Ashley

**Sent:** Thursday, March 28, 2024 11:51 PM

**To:** 'DeCamp, Justin J.' <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Justin,

Our proposed revisions to the search terms are in red below. The search terms do not appear to have any internal code/project name for the transactions at issue—please confirm that Deerfield did not use any such term or add in the applicable project name(s) as search term(s) below.

Regarding your position on producing internal analyses, please confirm that Deerfield will produce internal communications and communications with advisors. We also request you log any analyses you withhold as privileged and provide that log to us within three days of completing your production.

We are available to discuss.

Thanks,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Sent:** Thursday, March 28, 2024 2:07 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ashley,

Below please find our proposed search terms and custodians, and our position on the production of Deerfield's internal analyses.

### Search Terms

We propose the following search terms for our document review. As we've yet to receive a hit report running the proposed search terms across all data load, we reserve the ability to propose modifications in case any search term returns an unreasonably large hit count.

- **Request 1**
  - ("Invitae" OR "NVTAQ" OR "NVTA" OR "Archer" OR "Cape Town" OR "Genelex" OR "Genetic Solutions" OR "Genosity" OR "Ommdom" OR "Orbicula" OR "PGX") AND ("equity" OR "debt" OR "shares\*" OR "stock\*" OR "note-s\*" OR "loan" OR "invest~~ment~~" OR "position" OR "hold\*~~ing~~" OR "convert\*" OR "1L")
- **Request 2**
  - ("Invitae" OR "NVTAQ" OR "NVTA" OR "Archer" OR "Cape Town" OR "Genelex" OR "Genetic Solutions" OR "Genosity" OR "Ommdom" OR "Orbicula" OR "PGX") AND ("agreement" OR "indenture" OR "contract")
- **Request 3**
  - ("Invitae" OR "NVTAQ" OR "NVTA") ("pay\*" OR "discharge") AND ("term loan" OR "TL" OR "Perceptive" OR "1L")
- **Requests 4–14, 16**
  - ("Invitae" OR "NVTAQ" OR "NVTA" OR "Archer" OR "Cape Town" OR "Genelex" OR "Genetic Solutions" OR "Genosity" OR "Ommdom" OR "Orbicula" OR "PGX") AND ("transaction" OR "exchange" OR "unsecured" OR "unsec\*" OR "secured\*" OR (2028 /5 note\*) OR (2024 /5 note\*) OR "valu\*" OR "covenant" OR "fairness opinion\*" OR "liquidity" OR "solven~~cy~~" OR "bankrupt~~cy~~" OR "petition" OR Transaction Support Agreement" OR "TSA" OR "RSA" OR "Restructuring Support Agreement" OR "PSA" OR "Plan Support Agreement" OR "chapter 11" OR "restructur\*")
- **Request 15**
  - ("Invitae" OR "NVTAQ" OR "NVTA") AND ("Perella" OR "PWP") AND ("engage~~ment~~" OR "retention" OR "retain") AND ("letter" OR "agreement")

### Custodians

We propose the following custodians who in our view are most likely to possess responsive documents.

- **Sumner Anderson** – Partner, Public Structured Finance
- **Wenxi Chen** – Principal, Medical Technologies
- **James Flynn** – Managing Partner
- **Terence Fox-Karnal** – Partner, Head Equity Linked and Credit Trader
- **Abraham "Avi" Kometz** – Partner, Medical Technologies
- **Elliot Press** – Partner

### Internal Analyses

Without prejudice to our R&Os, in the interest of good faith compromise and to avoid bringing issues to the Court, we are willing to produce, in response to Requests Nos. 13 and 14, non-privileged internal Deerfield memoranda and presentations that contain solvency analyses of Invitae or analyses of the 2023 exchange transactions to the extent that such documents exist and are identified based on a reasonable search.

Please let us know if you would like to discuss.

Regards,

Justin

**Justin J. DeCamp**

**SULLIVAN & CROMWELL LLP**

125 Broad Street | New York, NY 10004-2498

+1 212 558 1688 (T) | +1 917 660 2445 (M)

[decampj@sullcrom.com](mailto:decampj@sullcrom.com) | [www.sullcrom.com](http://www.sullcrom.com)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Thursday, March 28, 2024 2:02 PM

**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ben,

During our meet and confer on Tuesday, you agreed to let us know by noon today whether Deerfield will produce internal materials responsive to our document requests; namely, Requests 13 and 14. You also agreed to simultaneously propose custodians and search terms. Please send your response and proposal as soon as possible.

Best,

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** Chase, Ashley

**Sent:** Sunday, March 24, 2024 7:29 PM

**To:** 'Souza, Matthew T.' <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, let's do 2:30. I will send a calendar invite shortly.

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095



---

**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Sent:** Sunday, March 24, 2024 5:23 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ashley, we are available on Tuesday between 2:00 p.m. and 4:30 p.m. Thank you.

**Matthew T. Souza**  
[+1 212 558 4109](tel:+12125584109) (T)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Saturday, March 23, 2024 10:01 AM  
**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, Matthew. Please let us know when you are available to meet and confer next week.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Sent:** Friday, March 22, 2024 6:38 PM  
**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Good afternoon, please find attached Deerfield's R&Os to the Committee's requests. Thank you.

**Matthew T. Souza**  
[+1 212 558 4109](tel:+12125584109) (T)

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**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>  
**Sent:** Tuesday, March 19, 2024 11:56 AM  
**To:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

The tight timeline for the Committee's investigation, which your client demanded and, I'm sure, does not want to see slip. If we can accelerate the process by discussing issues before you formally serve R&Os, we are available to do so.



**Samuel P. Hershey** | Partner  
T +1 (212) 819-2699 M +1 (914) 582-1628 E [sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

**WHITE & CASE**

---

**From:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>  
**Sent:** Tuesday, March 19, 2024 11:44 AM  
**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Tight timeline for what? You served 2004 discovery. We are happy to meet and confer once we've served our R&Os which we will do in due course.

**Benjamin S. Beller**  
[+1 212 558 3334](tel:+12125583334) (T) | [+1 917 660 0174](tel:+19176600174) (M)

---

**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>  
**Sent:** Monday, March 18, 2024 11:41 PM  
**To:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, Ben. Can we also find a time this week to meet and confer regarding the requests? Given the tight timeline it is in both of our interests to address any issues now rather than waiting.

**Samuel P. Hershey** | Partner  
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**WHITE & CASE**

---

**From:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>  
**Date:** Monday, Mar 18, 2024 at 18:49  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>, Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>, [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com) <[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>, [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com) <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>, DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>, Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Yes we accept service on behalf of Deerfield.

**Benjamin S. Beller**  
**SULLIVAN & CROMWELL LLP**  
125 Broad Street | New York, NY 10004-2498  
[+1 212 558 3334](tel:+12125583334) (T) | [+1 917 660 0174](tel:+19176600174) (M)  
[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com) | [www.sullcrom.com](http://www.sullcrom.com)

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Date:** Monday, Mar 18, 2024 at 12:40 PM  
**To:** Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>, Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>, [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
<[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>, [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com) <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

All,

Following up on the below. Do you agree to accept service of the attached subpoena we sent on March 14?

Thanks,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** Chase, Ashley  
**Sent:** Thursday, March 14, 2024 11:25 PM  
**To:** 'blauta@sullcrom.com' <[blauta@sullcrom.com](mailto:blauta@sullcrom.com)>; 'bellerb@sullcrom.com' <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; 'jlawlor@wmd-law.com' <[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>; 'JPacelli@WMD-LAW.com' <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** In re Invitae Corporation, No. 24-11362-MBK

Counsel,

Attached please find a subpoena to Deerfield pursuant to Rule 2004. Please confirm whether you accept service on behalf of Deerfield.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**\*\*This is an external message from: [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com) \*\***

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others who have been specifically authorized to receive it. If you are not the intended recipient, please do not read, copy, use or disclose the contents of this communication to others. Please notify the sender that you have received this email in error by replying to the email or by telephoning +1 212 819 8200. Please then delete the email and any copies of it. Thank you.

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Our external privacy policy is available on <https://www.whitecase.com/privacy-policy> [whitecase.com].

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**EXHIBIT 6**

**Document Filed Under Seal**

**EXHIBIT 7**

**Document Filed Under Seal**

**EXHIBIT 8**

**Unredacted Document Filed Under Seal**

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**From:** Chase, Ashley  
**Sent:** Friday, May 3, 2024 1:03 AM  
**To:** Goldfine, Jeffrey Ross; Invitae UCC - W&C Team; Porzio UCC Invitae  
**Cc:** Greenblatt, Nicole L.; Winters, Spencer A.; Petrie, Francis; #Invitae Litigation Team; \*MSirota@coleschotz.com; \*WUsatine@coleschotz.com; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team; W&C Invitae UCC Litigation  
**Subject:** RE: NVTA | Debtors' R&Os

Jeff,

Please confirm whether any K&E attorney has asked the custodians whether they conducted business or would otherwise have responsive materials in their text messages.

Please also let us know when you expect to be substantially complete with your production of the text messages we requested in our Rule 2004 subpoena.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Goldfine, Jeffrey Ross <jeffrey.goldfine@kirkland.com>  
**Sent:** Thursday, May 2, 2024 5:00 PM  
**To:** Chase, Ashley <ashley.chase@whitecase.com>; Invitae UCC - W&C Team <InvitaeWCall@whitecase.com>; Porzio UCC Invitae <PorzioUCCInvitae@pbnlaw.com>  
**Cc:** Greenblatt, Nicole L. <ngreenblatt@kirkland.com>; Winters, Spencer A. <spencer.winters@kirkland.com>; Petrie, Francis <francis.petrie@kirkland.com>; #Invitae Litigation Team <invitaelitigationteam@kirkland.com>; \*MSirota@coleschotz.com <MSirota@coleschotz.com>; \*WUsatine@coleschotz.com <WUsatine@coleschotz.com>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <invitaelitigationteam@kirkland.com>; W&C Invitae UCC Litigation <InvitaeWCLitigation@whitecase.com>  
**Subject:** RE: NVTA | Debtors' R&Os

Ashley,

It was and remains our understanding that text messaging was not used to substantively communicate about the issues in the requests and was instead used as a means to facilitate scheduling. That understanding is entirely consistent with Invitae\_00004569. Nonetheless, when we first met and conferred, I told you that if it appeared that individuals were texting, we'd discuss text message collection. Given the contents of Invitae\_00046826, we've initiated a collection of Ms. Schrank's text messages and will apply the agreed upon date range and search terms to them. In doing so, if it appears that there are substantive communications with other custodians, we will endeavor to collect their text messages as well. As to diligent, it's our understanding that the messaging feature was not used, but we are confirming.

I had thought that the December 19, 2023 presentation was in our previous production, but it appears that it was inadvertently not included. It will be produced in today's production.

Best,  
Jeff

**Jeffrey R. Goldfine**



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**KIRKLAND & ELLIS LLP**

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M +1 609 923 8853

F +1 212 446 4900

[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Wednesday, May 1, 2024 3:59 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUstatine@coleschotz.com <[WUstatine@coleschotz.com](mailto:WUstatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

**Subject:** RE: NVTa | Debtors' R&Os

Jeff,

On April 8, you stated "that the custodians did not communicate substantively via text message regarding anything that would be responsive to the requests." The documents in the Debtors' production show otherwise. For instance,

[REDACTED] Another document shows that, [REDACTED]

[REDACTED] All texts related to Board communications fall squarely within document request #7.

These documents, among others, demonstrate that, in fact, custodians did text regarding responsive materials. Invitae\_4569 also suggests that, to the extent the Board migrated to Diligent, the messages exchanged on that platform would also contain responsive documents. To that end, please confirm that you will conduct the search we requested seven weeks ago for responsive text messages from custodians and also confirm whether the Debtors have produced all responsive documents from Diligent.

Additionally, we have not been able to locate the December 19, 2023 presentation regarding the Special Committee's investigation, which is responsive to both our March 14 subpoena and the document requests we served in connection to K&E's retention application. Please produce that immediately or, if you have produced it, identify that presentation by bates number.

Best,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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---

**From:** Chase, Ashley

**Sent:** Friday, April 26, 2024 10:07 PM

**To:** 'Goldfine, Jeffrey Ross' <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUstatine@coleschotz.com <[WUstatine@coleschotz.com](mailto:WUstatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

**Subject:** RE: NVTa | Debtors' R&Os

Jeff,

We appreciate the documents you have produced to date. However, “targeting” substantial completion of your production on May 3—a week and half before the challenge deadline—remains unreasonable. We also take issue with your improper characterization of our investigation. As the Court agreed, the 2023 Exchanges raise “significant issues” that merit a thorough, impartial investigation.

We look forward to hearing back about the availability of Messrs. Knight and Scott.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>  
**Sent:** Friday, April 26, 2024 8:42 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUstatine@coleschotz.com <[WUstatine@coleschotz.com](mailto:WUstatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>  
**Subject:** RE: NVTA | Debtors' R&Os

Ashley,

We’re working to complete our production of documents as quickly as possible. As you know, we agreed to nearly all of your proposed search terms and custodians, which resulted in a substantial number of documents to review. We’ve been diligently reviewing them and consistently making rolling productions. Including tonight’s production, Debtors have produced nearly 8,000 documents and more than 75,000 pages. That’s of course in addition to the thousands of documents in the data room that you have access to and the information provided to you in response to your diligence requests. Beyond that, because Invitae is a public company, you also have access to voluminous financial information filed with the SEC. And given how our document review has been staged, you’ve received substantially all of the email communications with respect to the uptier transaction. Any insinuation that you need additional time to complete your investigation is contrary to fact. It’s also contrary to the positions the Committee has taken in filings with the Court, which indicate that the Committee has already reached a determination as to the validity of the uptier transaction.

Regardless, we’ll revert on your request for interviews.

Best,  
Jeff

**Jeffrey R. Goldfine**

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**KIRKLAND & ELLIS LLP**  
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M +1 609 923 8853  
F +1 212 446 4900

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Friday, April 26, 2024 2:05 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>;

\*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>;

W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

**Subject:** RE: NVTa | Debtors' R&Os

Jeff,

We encourage the Debtors to substantially complete their production of documents responsive to our Rule 2004 requests sooner than May 3, the date you suggested in your email on Wednesday, April 24. It has been over six weeks since we served our requests and it is unreasonable for the Debtors to expect the Committee to complete its investigation by the challenge deadline when the Debtors have taken the entire challenge period—save for one week—to produce relevant documents. The Committee needs time to review the documents, challenge any improper privilege designations, and interview witnesses based on those documents well in advance of the challenge deadline.

To that end, please provide dates in May sufficiently after the Debtors have completed their production and before the challenge deadline for when Randy Scott and Ken Knight are available for interviews in connection with our investigation.

Best,  
Ashley

**Ashley Chase** | Associate

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Wednesday, April 17, 2024 1:42 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>;

\*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>;

W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

**Subject:** RE: NVTa | Debtors' R&Os

Thanks, Ashley. We're working to track down the Google Documents flagged below and will get you a priv log. Next production should be made tomorrow or Friday. We're targeting tomorrow.

**Jeffrey R. Goldfine**

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Wednesday, April 17, 2024 1:22 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>;

Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

Cc: Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

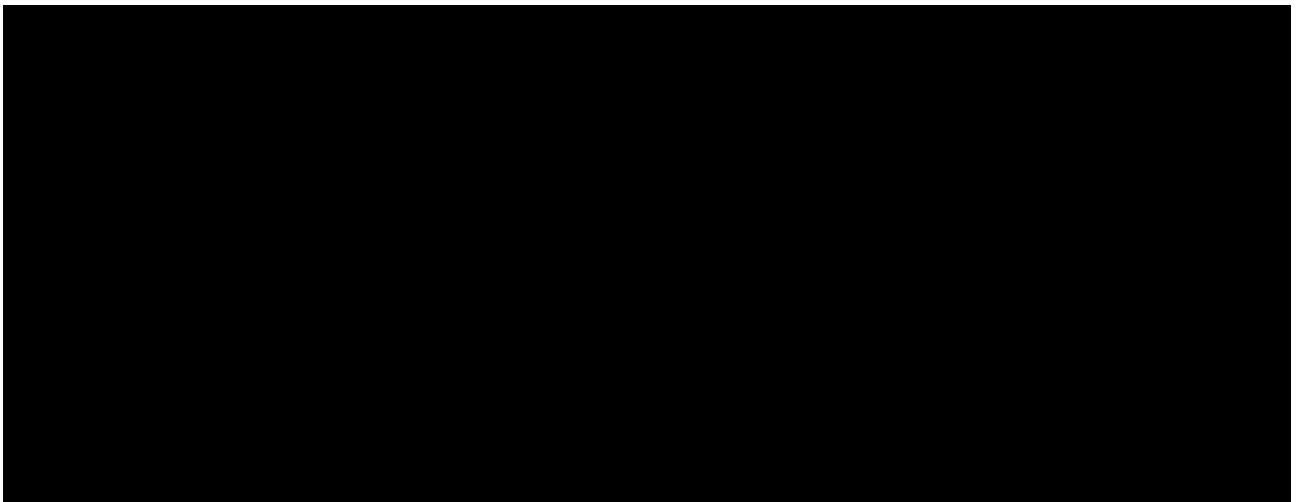
**Subject:** RE: NVTA | Debtors' R&Os

Jeff,

Thanks for the production on Friday. There are two issues we noticed to date we are you hoping you would address:

1. There are multiple document families that reference comments to a Google Document where the underlying document has not been produced. Given the comments we have seen, we believe these Google Documents are also responsive and should be produced. For your convenience, below is a list of the Google Documents we have seen to date:

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2. The production included many documents entirely withheld due to privilege with no context. Could you please confirm you are working on a privilege log for these documents? Here is a non-exhaustive list of some examples: INVITAE\_00002106-08, INVITAE\_00005382-6309, INVITAE\_00007696-7754, INVITAE\_00009611-9615; INVITAE\_00012073-12080.

Please also let us know when we can expect the next production. Thank you.

Best,  
Ashley

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Tuesday, April 9, 2024 6:11 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

**Subject:** RE: NVTA | Debtors' R&Os

Jeff,

While we appreciate the Debtors' cooperation in certain respects, including the production of centrally-stored materials and public documents, we do not have any emails in response to document requests that we served nearly four weeks ago. As I hope you, as counsel to the Special Committee, would agree, the written communications we have requested are critical to our investigation. We look forward to your rolling production this week.

Best,  
Ashley

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>  
**Sent:** Tuesday, April 9, 2024 5:42 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; [fyudkin@coleschotz.com](mailto:fyudkin@coleschotz.com); [dharris@coleschotz.com](mailto:dharris@coleschotz.com); #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>  
**Subject:** RE: NVTA | Debtors' R&Os

Ashley,

We disagree with your contention that Debtors have shown a "lack of urgency" over the last four weeks. Debtors have been nothing but cooperative with and responsive to the Committee. For instance:

- Committee constituents have been granted two meetings with company management, spanning multiple hours.
- Debtors have timely responded to all the Committee's voluminous diligence requests.
- The Committee's advisors have been provided with weekly updates on the sale process.
- The Committee's advisors have had a weekly touch-base with Moelis.
- Debtors have agreed to nearly all the Committee's requests for extensions on various filing deadlines.
- Debtors have agreed to nearly all the Committee's formal document requests, search terms, custodians, and date ranges.
- Debtors' counsel have made themselves available, in a timely fashion, for each meet-and-confer the Committee has requested and routinely provided follow-up responses to the Committee's questions.

We also take issue with your contention that the Committee has not yet received ample documents. Debtors proactively served a production on March 19, which contained over 2,500 pages of Invitae board materials dating back to 2022 (the 150-document figure in your email is misleading as many of those "documents" are the lengthy records of board meetings containing multiple documents). These documents should be the most critical to the issues that the Committee is examining. Debtors have also shared numerous documents in response to the Committee's informal diligence requests, which the Debtors will be re-producing in the short-term with Bates-labeling. And, the Committee has access to more than 3,284 files in the virtual data room—with more files being added daily. Beyond that, Invitae is a public company, so the material information relating to the transactions that the Committee is investigating is publicly available. Regardless, Debtors will begin rolling productions this week in response to the Committee's considerably broad and numerous document requests and will continue making rolling productions on a regular basis. Put simply, Debtors have already provided the Committee with copious amounts of documents and information and are moving expeditiously to provide even more.

As to the two outstanding items, for ease of review, we've pasted the parties' exchanges below and provided responses in red.

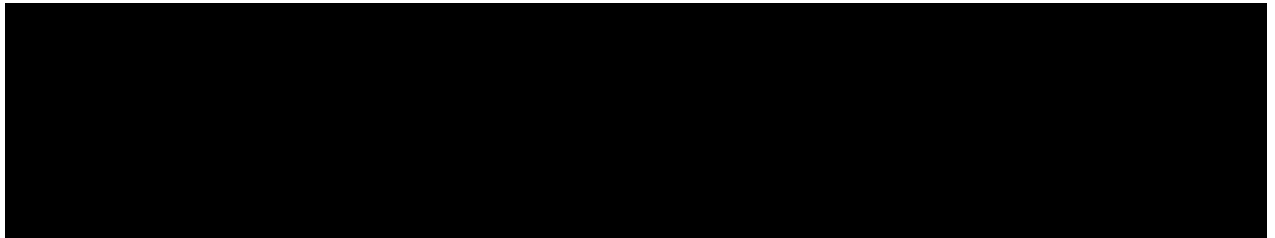
Search Term Follow-Up.

"Special Committee" OR Frizzley OR investigat\* OR Jill

From 10/18/23 onward [No – the First Day Declaration says that the Special Committee was established in September 2023. The reasons for establishing the Special Committee and who was to comprise its members are relevant to our Investigation and responsive to our requests. Further, any documents regarding Ms. Frizzley and her relationship or retention by the Debtors before October 18, 2023 are relevant to our Investigation and responsive to our requests.] Debtors will run these search terms from September 1, 2023 onward. It doesn't make sense to run investigat\* OR Jill for the entire time period.

Interrogatory Follow-Up.

Interrogatory 7: Please identify the written materials detailing the Investigation and its conclusions. We understand you propose to exclude internal Kirkland materials in the first instance and will identify Kirkland materials shared with the board or the Special Committee, in addition to materials shared with the board or the Special Committee by others, or created by any board or Special Committee member.



Happy to discuss.

Best,  
Jeff

**Jeffrey R. Goldfine**

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Monday, April 8, 2024 5:41 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: NVTA | Debtors' R&Os

Jeff –

A few follow ups regarding the below search terms and interrogatory responses in green.



However, we would be remiss to not raise the lack of urgency the Debtors have demonstrated over the last four weeks. In early March, in discussing our concerns with the Debtors' cash collateral motion, we raised that a 60 or 75 day Challenge Period was too short given the significant concerns raised by the 2023 Exchanges and the amount of work required to complete an investigation and prepare a standing motion and complaint. To that end, we put the Debtors on notice of the Committee's intent to serve formal discovery one month ago, on March 9, when I sent an email attaching the Committee's initial diligence requests. The Committee served its Rule 2004 requests a few days later, on March 14, 2024.

During our meet and confer on April 1, I stressed that we need to begin receiving documents because "the clock keeps ticking" and we only have until May 15 to submit a challenge—a deadline that is now five weeks away. Yet, to date, we have received a mere 150 documents, 65 of which are not even bates stamped, and all of which were produced in response to our informal diligence requests—not our Rule 2004 requests.

Please begin producing documents on a rolling basis so that we may conduct our investigation. We reserve all rights.

Best,  
Ashley

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Monday, April 8, 2024 4:41 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUstatine@coleschotz.com <[WUstatine@coleschotz.com](mailto:WUstatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com

**Subject:** RE: NVTa | Debtors' R&Os

Ashley,

Please see responses interlineated below. Additionally, as discussed, below are our revisions to the search terms. We'll also add the codenames identified below. Hopefully we're in agreement on the search terms given our limited revisions.

Happy to discuss.

Best,  
Jeff

\*\*\*\*

Search Terms:

- "uptier" or "up-tier"
- "indenture" ~~OR loan OR fund\*~~ [OK subject to our review of documents we receive]
- Conver\* w/5 Note\*
- "Senior" w/5 Note\*
- Secur\* w/5 Note\*
- ("2028" OR "28" OR "2024" OR "24") w/5 (Note\* OR Noteholders)
- (Exchang\* OR trad\* OR refinanc\*) w/5 Note\*
- "Credit" w/5 ("agreement" or document\*)
- (Lien\* OR security OR guarantee) /~~10 20~~ (note OR secur\*) [OK]

- (indenture OR agreement OR loan OR contract) /10 (covenant\* OR prohibit\* OR restrict\* OR default\* OR trip)
- “Ad hoc group” OR “AHG”
- ~~Stock\* OR share\*~~ [OK subject to confirmation re: Request 21 below]
- “Term loan” OR “1L” OR “Perceptive”
- Deerfield OR “DF”
- “Project Ionic”
- “Exchange” w/5 agreement\*
- “J. Wood” OR “J Wood”
- Board w/5 (meeting OR minutes OR resolution OR committee OR agenda OR materials)
  - Search from 1/1/2019
- “Special Committee” OR Frizzley OR investigat\* OR Jill
  - From 10/18/23 onward [No – the First Day Declaration says that the Special Committee was established in September 2023. The reasons for establishing the Special Committee and who was to comprise its members are relevant to our Investigation and responsive to our requests. Further, any documents regarding Ms. Frizzley and her relationship or retention by the Debtors before October 18, 2023 are relevant to our Investigation and responsive to our requests.]
- (“D&O” or (director /3 officer)) & insurance
- (Termin\* OR quit\* OR severance OR resign\* OR (step\* /2 down)) AND (“CFO” OR “CEO” OR board OR Guyer OR George OR Werner OR Roxi OR Wen OR Gorjanc OR Dickey OR Parsons OR Scott OR Myers OR Benekgey OR Nussbaum OR Olivares OR Stueland OR Suri OR Wedgeworth OR D’Angelo)
- “Transition and Separation Agreement”
- Intercompany
- (business OR management) /20 (projection\* or plan)
- “cash flow” OR “balance sheet” or “financial statement”
- ~~Valu\* OR “TEV”~~ [OK subject to our review of documents we receive]
- “NOL” OR “net operating loss\*” OR (tax /10 (asset\* or attribute\*))
- Restructur\*
- Strategic w/5 (transactio\* OR alternativ\*)
- “minimum liquidity”
- “fairness opinion”
- solven\*
- Moelis & (bid\* OR transaction OR acqui\* OR buy\*)
- Ionic
- “Project Icon”
- TSA OR RSA OR PSA
- “Transaction Support Agreement” OR “Restructuring Support Agreement” OR “Plan Support Agreement”
- Lazard
- “Chapter 11”
- (“engage\*” OR “retention” OR “retain”) w/5 AND (“letter” OR “agreement”) [OK]
- Perella OR “PWP”
- [\\*@pwpartners.com](mailto:*@pwpartners.com)
- [\\*@jwoodcapital.com](mailto:*@jwoodcapital.com)
- [\\*@goldmansachs.com](mailto:*@goldmansachs.com)
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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Monday, April 1, 2024 6:46 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

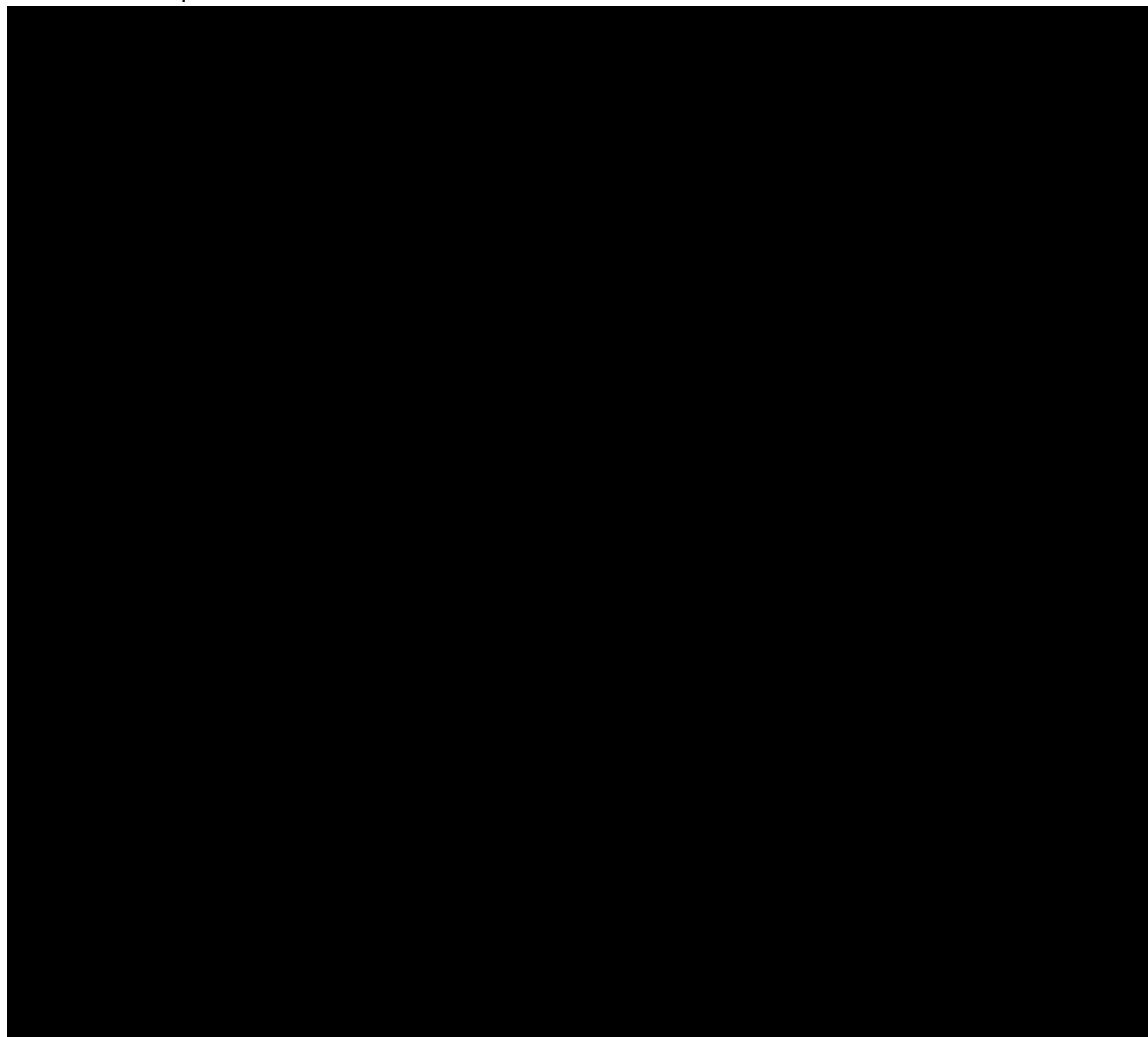
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; [fyudkin@coleschotz.com](mailto:fyudkin@coleschotz.com); [dharris@coleschotz.com](mailto:dharris@coleschotz.com)

**Subject:** RE: NVTA | Debtors' R&Os

Jeff,

As discussed, below please find our questions regarding the Debtors' interrogatory responses:

- Interrogatory 1: We are seeking the names of all individuals, not just those at the senior level. Please provide a revised response.



Please also confirm whether:

- The search terms include all relevant project names;  
In addition to Ionic and Icon, we identified the following project names:
  - Deerfield Stub (August Transaction)
  - Project Cape Town (Citizen Divestiture)
  - Project Arrow & Project Antigua (RUO Kit Assets Sale)
  - Project ONE (One Codex Divestiture)
- Any custodian sent any text messages that would be responsive to any of our requests;  
It remains our understanding that the custodians did not communicate substantively via text message regarding anything that would be responsive to the requests.
- You may be able to retrieve all documents responsive to Request 21 without having to employ any search terms; and  
We believe this to be true but are still running it down.
- We are in agreement about custodians if we remove Geoffrey Crouse.  
Confirmed.

Thanks,  
Ashley

**Ashley Chase** | Associate  
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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Sunday, March 31, 2024 7:51 PM  
**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUstatine@coleschotz.com <[WUstatine@coleschotz.com](mailto:WUstatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com  
**Subject:** RE: NVTA | Debtors' R&Os

Yes. Will send an invite shortly.

Thanks,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>  
**Sent:** Sunday, March 31, 2024 7:46 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com  
**Subject:** RE: NVT A | Debtors' R&Os

Ashley,

Are you available tomorrow at 4:30pm for the meet and confer?

**Jeffrey R. Goldfine**

---

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M +1 609 923 8853  
F +1 212 446 4900

[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Friday, March 29, 2024 10:45 AM  
**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com  
**Subject:** RE: NVT A | Debtors' R&Os

Jeff,

Our proposed additions to adequately capture our requests are in red below. We also have proposed revisions to the custodian list. Since Randy Scott was on the Special Committee until January 1, 2024, we see no reason to limit the date range from which to search his materials. If your limitation was due to an ESI issue on your end, please explain.

Let us know when you are available on Monday for a meet and confer regarding your responses and objections. We are happy to address any issues with our proposal below during that time, as well.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Thursday, March 28, 2024 8:59 PM  
**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>; \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>; \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>; fyudkin@coleschotz.com; dharris@coleschotz.com  
**Subject:** RE: NVTa | Debtors' R&Os

Thanks. We will review and revert.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>  
**Date:** Thursday, Mar 28, 2024 at 8:57 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>, Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>, Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>, Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>, #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>, \*MSirota@coleschotz.com <[MSirota@coleschotz.com](mailto:MSirota@coleschotz.com)>, \*WUsatine@coleschotz.com <[WUsatine@coleschotz.com](mailto:WUsatine@coleschotz.com)>, fyudkin@coleschotz.com <[fyudkin@coleschotz.com](mailto:fyudkin@coleschotz.com)>, dharris@coleschotz.com <[dharris@coleschotz.com](mailto:dharris@coleschotz.com)>  
**Subject:** NVTa | Debtors' R&Os

Counsel,

Please see attached. Additionally, as discussed, below please find our proposal with respect to search start date, custodians, and search terms. Happy to discuss.

Best,  
Jeff

\*\*\*\*

Search Start Period: ~~January 1, 2022~~ June 1, 2021

Custodians:

- Ken Knight
- Roxi Wen
- Hoki Luk
- Ana Schrank
- Randy Scott (~~Invitae files/email only, active through mid-2022~~)
- Jill Frizzley
- Eric Aguiar
- Christine Gorjanc
- Geoffrey Crouse

Search Terms:

- “uptier” or “up-tier”
- “indenture” OR loan OR fund\*
- Conver\* w/5 Note\*
- “Senior” w/5 Note\*
- Secur\* w/5 Note\*
- (“2028” OR “28” OR “2024” OR “24”) w/5 (Note\* OR Noteholders)
- (Exchang\* OR trad\* OR refinanc\*) w/5 Note\*
- “Credit” w/5 (“agreement” or document\*)
- (Lien\* OR security OR guarantee) /20 (note OR secur\*)
- (indenture OR agreement OR loan OR contract) /10 (covenant\* OR prohibit\* OR restrict\* OR default\* OR trip)
- “Ad hoc group” OR “AHG”
- Stock\* OR share\*
- “Term loan” OR “1L” OR “Perceptive”
- Deerfield OR “DF”
- “Project Ionic”
- “Exchange” w/5 agreement\*
- “J. Wood” OR “J Wood”
- Board w/5 (meeting OR minutes OR resolution OR committee OR agenda OR materials)
  - Search from 1/1/2019
- “Special Committee” OR Frizzley OR investigat\* OR Jill
- (“D&O” or (director /3 officer)) & insurance
- (Termin\* OR quit\* OR severance OR resign\* OR (step\* /2 down)) AND (“CFO” OR “CEO” OR board OR Guyer OR George OR Werner OR Roxi OR Wen OR Gorjanc OR Dickey OR Parsons OR Scott OR Myers OR Benekgey OR Nussbaum OR Olivares OR Stueland OR Suri OR Wedgeworth OR D’Angelo)
- “Transition and Separation Agreement”
- Intercompany
- (business OR management) /20 (projection\* or plan)
- “cash flow” OR “balance sheet” or “financial statement”
- Valu\* OR “TEV”
- “NOL” OR “net operating loss\*” OR (tax /10 (asset\* or attribute\*))
- Restructur\*
- Strategic w/5 (transactio\* OR alternativ\*)
- “minimum liquidity”
- “fairness opinion”
- solven\* w/5 (~~report\*~~ OR ~~opinion\*~~ OR ~~analy\*~~)
- Moelis w/10- & (bid\* OR bidder OR transaction OR acqui\* OR buy\*)
- Ionic
- “Project Icon”
- TSA OR RSA OR PSA
- “Transaction Support Agreement” OR “Restructuring Support Agreement” OR “Plan Support Agreement”
- Lazard
- “Chapter 11”
- (“engage\*” OR “retention” OR “retain”) AND (“letter” OR “agreement”)
- Perella OR “PWP”
- [\\*@pwpartners.com](mailto:*@pwpartners.com)
- [\\*@jwoodcapital.com](mailto:*@jwoodcapital.com)
- [\\*@goldmansachs.com](mailto:*@goldmansachs.com)
- [\\*@moelis.com](mailto:*@moelis.com)

Jeffrey R. Goldfine

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Thank you.

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Thank you.

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**EXHIBIT 9**

**Unredacted Document Filed Under Seal**

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**From:** Chase, Ashley  
**Sent:** Wednesday, May 1, 2024 10:25 PM  
**To:** Goldfine, Jeffrey Ross; Colodny, Aaron; Hershey, Samuel; Petrie, Francis  
**Cc:** Eck, Trevor; Greenblatt, Nicole L.; Winters, Spencer A.; Invitae UCC - W&C Team; Gavey, Nikki; Acuna, Olivia; #Invitae Litigation Team  
**Subject:** RE: Invitae - K&E Retention Application

Jeff,

If the Debtors will make Mr. Scott and Mr. Knight available only for depositions (not interviews), while we will be mindful of their time, we will not agree to a deposition for less than the time allowed under applicable rules. Accordingly, if you insist on our proceeding by deposition, please let us know when both gentlemen have a full day available.

Alternatively, as we proposed, we would be willing to interview Mr. Knight and Mr. Scott in a manner consistent with the Special Committee's investigation. Thus, if the Special Committee completed each witness interview within 3 hours, we will do the same. Please let us know.

Best,  
Ashley

**Ashley Chase** | Associate  
**T** +1 212 819 7624 **M** +1 631 926 1797 **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Goldfine, Jeffrey Ross <jeffrey.goldfine@kirkland.com>  
**Sent:** Wednesday, May 1, 2024 1:28 PM  
**To:** Colodny, Aaron <aaron.colodny@whitecase.com>; Chase, Ashley <ashley.chase@whitecase.com>; Hershey, Samuel <sam.hershey@whitecase.com>; Petrie, Francis <francis.petrie@kirkland.com>  
**Cc:** Eck, Trevor <trevor.eck@kirkland.com>; Greenblatt, Nicole L. <ngreenblatt@kirkland.com>; Winters, Spencer A. <spencer.winters@kirkland.com>; Invitae UCC - W&C Team <InvitaeWCAI@whitecase.com>; Gavey, Nikki <nikki.gavey@kirkland.com>; Acuna, Olivia <olivia.acuna@kirkland.com>; #Invitae Litigation Team <invitaelitigationteam@kirkland.com>  
**Subject:** RE: Invitae - K&E Retention Application

Thanks, Aaron. Please send us the revised draft when ready. In addition, please confirm your agreement that the Debtors' and Kirkland's interrogatory responses will be admitted consistent with Ashley's initial email. Please also confirm that the admission of the Winters and Chase declarations includes the exhibits and schedules thereto. I believe you also owe us a response confirming that the Invitae engagement letter will be admitted. We expect that is not an issue.

We're producing Mr. Knight and Mr. Scott voluntary for depositions in aid of your investigation. Let's start with 3 hours as proposed. Please let us know if those times do not work. If it turns out that additional time is necessary, we can work to find additional time on their calendars.

Happy to discuss.

**Jeffrey R. Goldfine**

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**M** +1 609 923 8853  
**F** +1 212 446 4900

[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

---

**From:** Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>

**Sent:** Wednesday, May 1, 2024 11:30 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Jeff,

We just got off the phone with the UST and have some inserts to include based on that discussion. We will circulate a revised draft of the stipulation later today. The UST is in agreement with submitting stipulated facts and not live testimony. They also agree that the Winters and Chase declaration can be admitted, provided that there will be no live testimony from both declarants.

With respect to your proposals for two three hour depositions of Mr. Knight and Mr. Scott, we had previously requested to conduct interviews with both gentleman. We believe that it is appropriate for the Committee to have the same access as part of its investigation that K&E had prior to the petition date. We will try to be efficient with our time, but anticipate that we will need more than 3 hours with both gentlemen.

Regards,

Aaron

**Aaron Colodny** | Partner  
T +1 213 620 7706 M +1 412 860 5095  
Short Dial \*8 014 7706

---

**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Wednesday, May 1, 2024 5:43 AM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Ashley,

Following up. Please let us know when we can expect your comments, if any, to the stipulated facts. Also, circling back to your request from Friday, Mr. Knight is available for deposition on May 9 from 9am – 12pm ET and Mr. Scott is available for deposition on May 10 at 9am -12pm ET. Please let us know if those times work.

Best,  
Jeff

**Jeffrey R. Goldfine**

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F +1 212 446 4900

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

---

**From:** Goldfine, Jeffrey Ross

**Sent:** Tuesday, April 30, 2024 12:36 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Ashley. Clean and redline attached. This remains subject to ongoing review. We agree that we should get the UST involved in the discussion.

Happy to discuss.

**Jeffrey R. Goldfine**

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Tuesday, April 30, 2024 12:56 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Jeff,

Attached please find our draft stipulation of facts, which we are sending in the interest of time. We reserve all rights. We would like to send this to the US Trustee in the morning, as well.

We have no issue with your requesting judicial notice of the documents you noted below. As for the Winters Declaration, we are still considering whether we have questions related to the declaration and will see if we can reach agreement on the stipulated facts and then revert.

Let us know if you'd like to discuss.

Best,  
Ashley

**Ashley Chase** | Associate

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>  
**Sent:** Monday, April 29, 2024 10:51 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Thanks, Ashley. We look forward to seeing your draft. Below are the documents we'd ask the Court to take judicial notice of. We also wanted to clarify your position with respect to the admission of the Winters declaration. Please confirm that the admission of the Winters declaration would include the Invitae engagement letter as well as all of the schedules to the Winters declaration.

- TSA – Exhibit B to the First Day Declaration [Docket No. 21]
- Interim Cash Collateral Order [Docket No. 47]
- Bidding Procedures Order [Docket No. 57]
- Final Cash Collateral Order [Docket No. 188]
- Sale Notice [Docket No. 364]

#### Jeffrey R. Goldfine

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Monday, April 29, 2024 6:11 PM  
**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Jeff,

Yes, we would be amenable to the submission of stipulated facts in lieu of depositions. We are working on proposed stipulated facts and intend to send you a draft this evening. Our position, however, is contingent on reaching agreement on those facts on or before May 1 given Ms. Frizzley is only available for a deposition on May 2. We also reserve our rights with regard to the individual deposition notice we served should we not reach agreement on stipulated facts on or before May 1.

What documents would you ask the Court to take judicial notice of?

Best,  
Ashley

Ashley Chase | Associate

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Monday, April 29, 2024 5:21 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Ashley,

Following up on the below. Please let us know if you'd be amenable to the submission of stipulated facts in addition to the documents mentioned in your below email. We'd also need the Court to take judicial notice of certain documents filed in the cases, which we don't expect will create an issue.

Happy to discuss.

Best,  
Jeff

**Jeffrey R. Goldfine**

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**From:** Goldfine, Jeffrey Ross

**Sent:** Friday, April 26, 2024 6:53 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Ashley. Attached please find the responses and objections to the interrogatories. We're considering your proposal with respect to a non-evidentiary hearing, but if we go that route, we believe we'd still need to submit a limited set of stipulated facts in addition to the documents you mention below. Let us know if you'd be amenable to that.

Next week is tough for me due to some other depositions, but I can make Tuesday after 4:30 work for a meet and confer.

**Jeffrey R. Goldfine**

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Friday, April 26, 2024 1:57 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Jeff,

We noticed you requested the Court move the hearing on K&E's retention application to May 7th and do not believe we consented to that date. However, we can adjust our schedules and be available for a hearing that day if the hearing is non-evidentiary. We propose that neither party objects to the admission of the Winters Declaration, the Chase Declaration, any of K&E's or the Debtors' interrogatory responses (many of which still remain outstanding), and that neither party seeks to admit any testimony at the hearing. This would also obviate the need to depose Ms. Frizzley and Ms. Greenblatt next week. Let us know if this works for you.

Additionally, please let us know when we can meet and confer next week on the discovery withheld as privileged related to K&E's retention application.

Best,  
Ashley

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Thursday, April 25, 2024 12:08 PM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Jeff,

We will respond to your proposals regarding depositions related to K&E's retention application tomorrow, as we expect your reply will inform our position.

Best,  
Ashley

**Ashley Chase** | Associate

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Wednesday, April 24, 2024 3:27 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Ashley,

We'll be making another production this week that will include documents responsive to the Committee's second set of document requests. We are targeting end of next week to finish our document production, with the caveat that there will likely be a relatively small production that follows as a result of our privilege review. As I mentioned on our call, interrogatory responses will be coming this week.

Additionally, as discussed last week, Ms. Frizzley is available for deposition on May 2 from 12-3pm. Please let us know if that works. As to the Kirkland deposition, given the voluminous information that we have already provided to the Committee with respect to the retention application, we believe the more efficient route would be agreed upon stipulated facts that are filed in advance of the hearing. Please let us know if you would be amenable to that and we'd be happy to work with you on the content of that stipulation.

Happy to discuss.

Best,  
Jeff

**Jeffrey R. Goldfine**

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Wednesday, April 24, 2024 10:20 AM

**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Jeff,

When we discussed last week, you indicated we would receive responses to the rest of the discovery requests we served on April 12, 2024 in connection with K&E's retention application by early this week. We note that three of the pending interrogatories were initially sent nearly three weeks ago, on April 4, 2024. When can we expect responses?



Additionally, regarding the Rule 2004 document requests served on March 14, 2024, please provide an estimated percent of completion and the expected date of the Debtors' next production.

Best,  
Ashley

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**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>

**Sent:** Friday, April 19, 2024 9:23 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Sure, that works

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**WHITE & CASE**

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Friday, April 19, 2024 9:22 AM

**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Sam. Just filled that time. Can we do 5?

**Jeffrey R. Goldfine**

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**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>

**Sent:** Friday, April 19, 2024 9:20 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team

<[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Jeff. Ashley and I can give you a call at 4:30. If your timing changes let us know.

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**WHITE & CASE**

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**From:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>

**Sent:** Thursday, April 18, 2024 6:36 PM

**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>; #Invitae Litigation Team <[invitaelitigationteam@kirkland.com](mailto:invitaelitigationteam@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Sam,

Please see the attached responses and objections to the Committee's second set of document requests. I understand that our restructuring folks will be talking tonight, including with respect to scheduling. We should touch base tomorrow on that after they have had a chance to connect. I'm in a deposition tomorrow, but should be able to talk after 4:30. Let me know if that works on your end.

Best,  
Jeff

**Jeffrey R. Goldfine**

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M +1 609 923 8853  
F +1 212 446 4900

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[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

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**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>

**Sent:** Friday, April 12, 2024 10:00 PM

**To:** Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Francis,

We appreciate your responses thus far to our informal requests regarding K&E's retention application. Now that our objection has been filed, and to preserve our ability to seek relief from the Court should we come to any disagreement on discovery, attached please find limited formal requests regarding this issue. Indeed, many of the interrogatories are the questions that remain outstanding from our informal requests that were sent on or before April 4. Given that the hearing is scheduled for April 29, we would appreciate your responses to these requests no later than April 19. We are available if you would like to discuss. Have a good weekend.

Best,  
Sam

**Samuel P. Hershey** | Partner  
T +1 (212) 819-2699 M +1 (914) 582-1628 E [sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)  
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**WHITE & CASE**

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**From:** Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Sent:** Thursday, April 4, 2024 12:22 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Cc:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>  
**Subject:** Re: Invitae - K&E Retention Application

You will not have responses by 6 pm

**Francis Petrie**

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T +1 212 390-4552  
M +1 646 573-7959  
F +1 212 446 4900

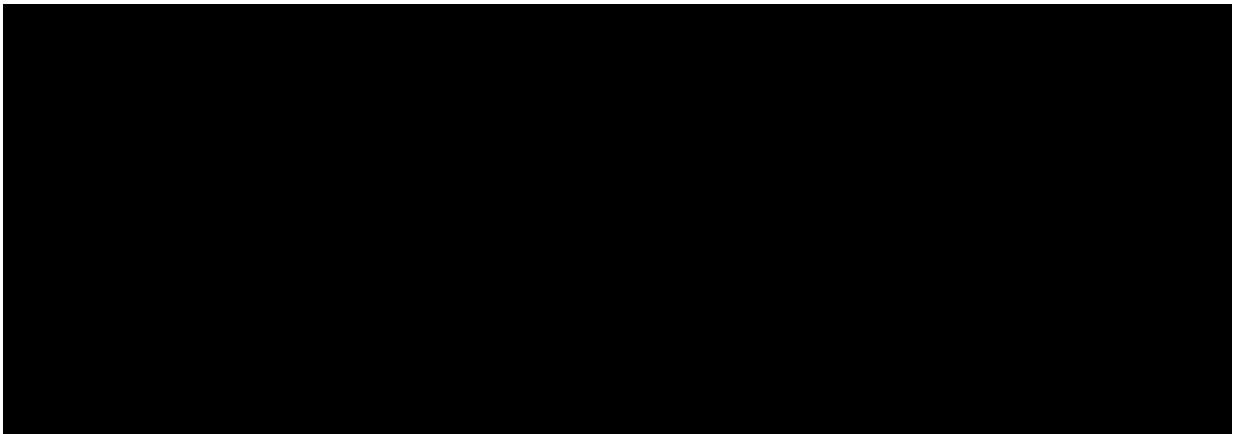
---

[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)

On Apr 4, 2024, at 12:19 PM, Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)> wrote:

Trevor,

In anticipation of tomorrow's deadline, we have a few additional follow up questions. Please send us your responses by **6pm**.



Thanks,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>  
**Sent:** Monday, April 1, 2024 8:30 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Please see attached for Kirkland's engagement letter with Deerfield – note that it is confidential. [REDACTED]

Best,

**Trevor Eck**

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F +1 212 446 4900

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Monday, April 1, 2024 3:40 PM  
**To:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Thanks. As requested on Saturday, could you also please (i) send the [REDACTED] engagement letter with Deerfield; and (ii) send any separate engagement letter by or between Kirkland and Jill Frizzley or the Special Committee, or confirm that there is no separate engagement letter for these parties?

Best,  
Ashley

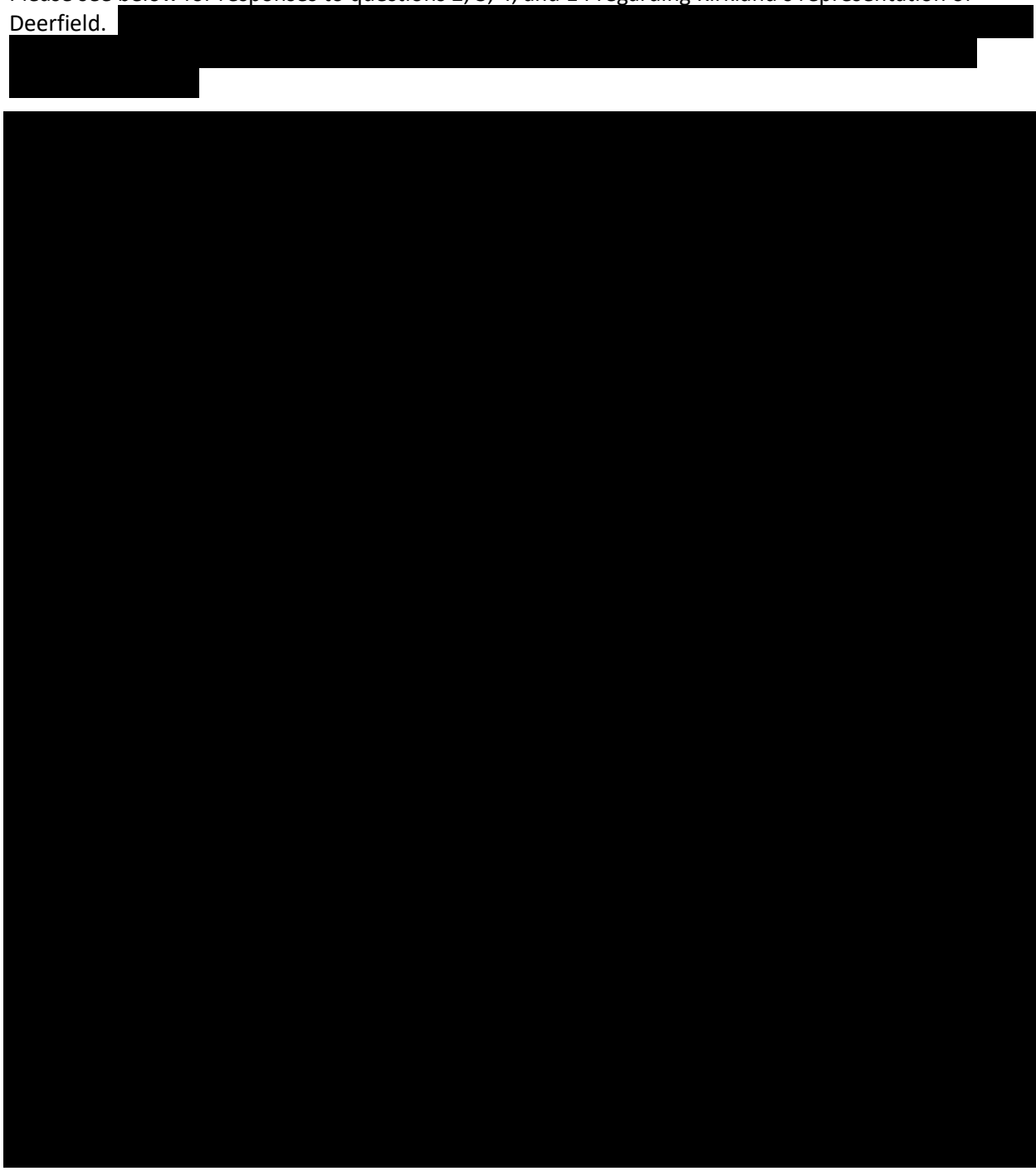
**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>  
**Sent:** Monday, April 1, 2024 2:53 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Ashley,

Please see below for responses to questions 2, 3, 4, and 14 regarding Kirkland's representation of Deerfield.



**Trevor Eck**

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Eck, Trevor

**Sent:** Saturday, March 30, 2024 8:54 AM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross

<[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC -

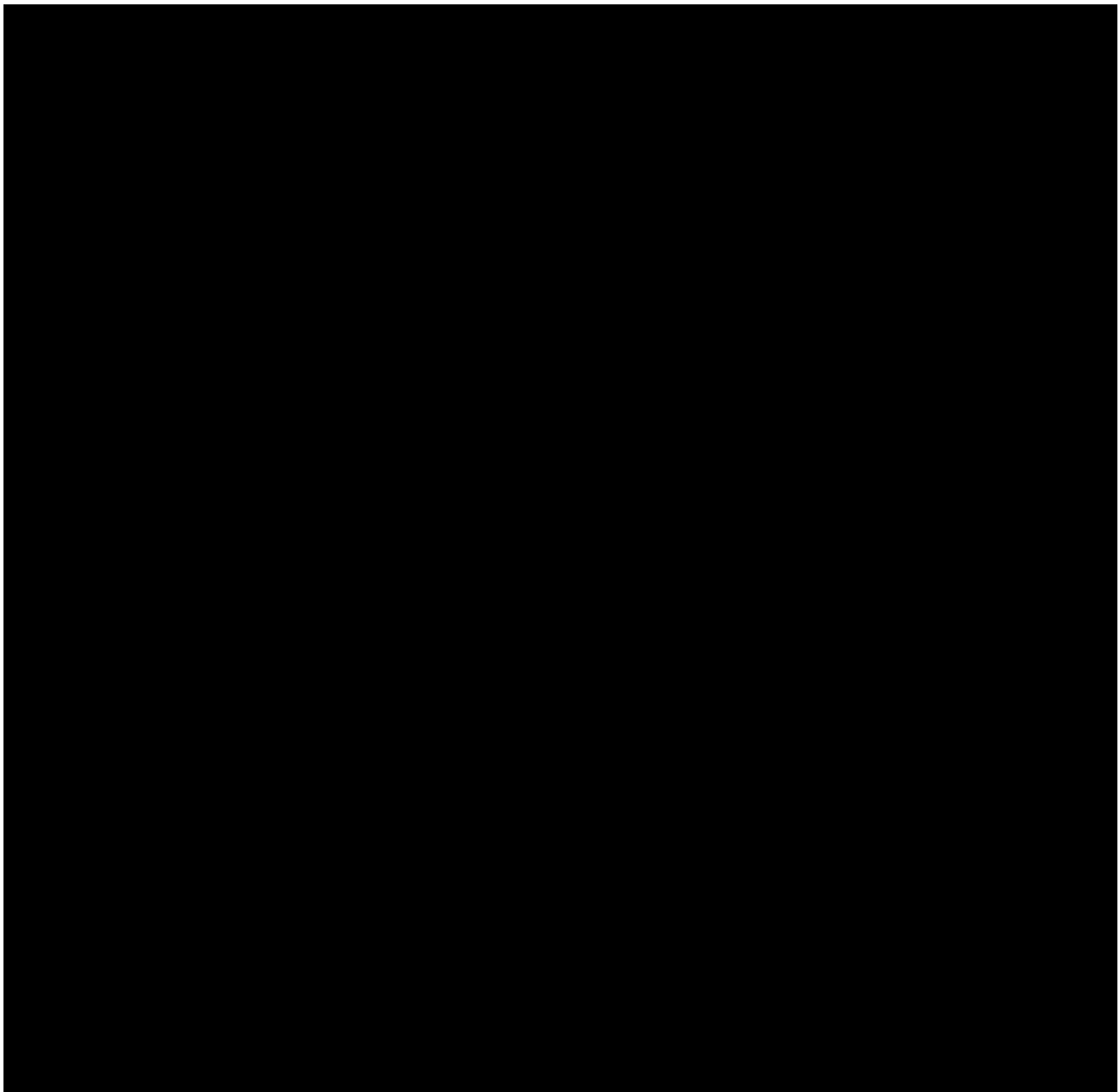
W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia

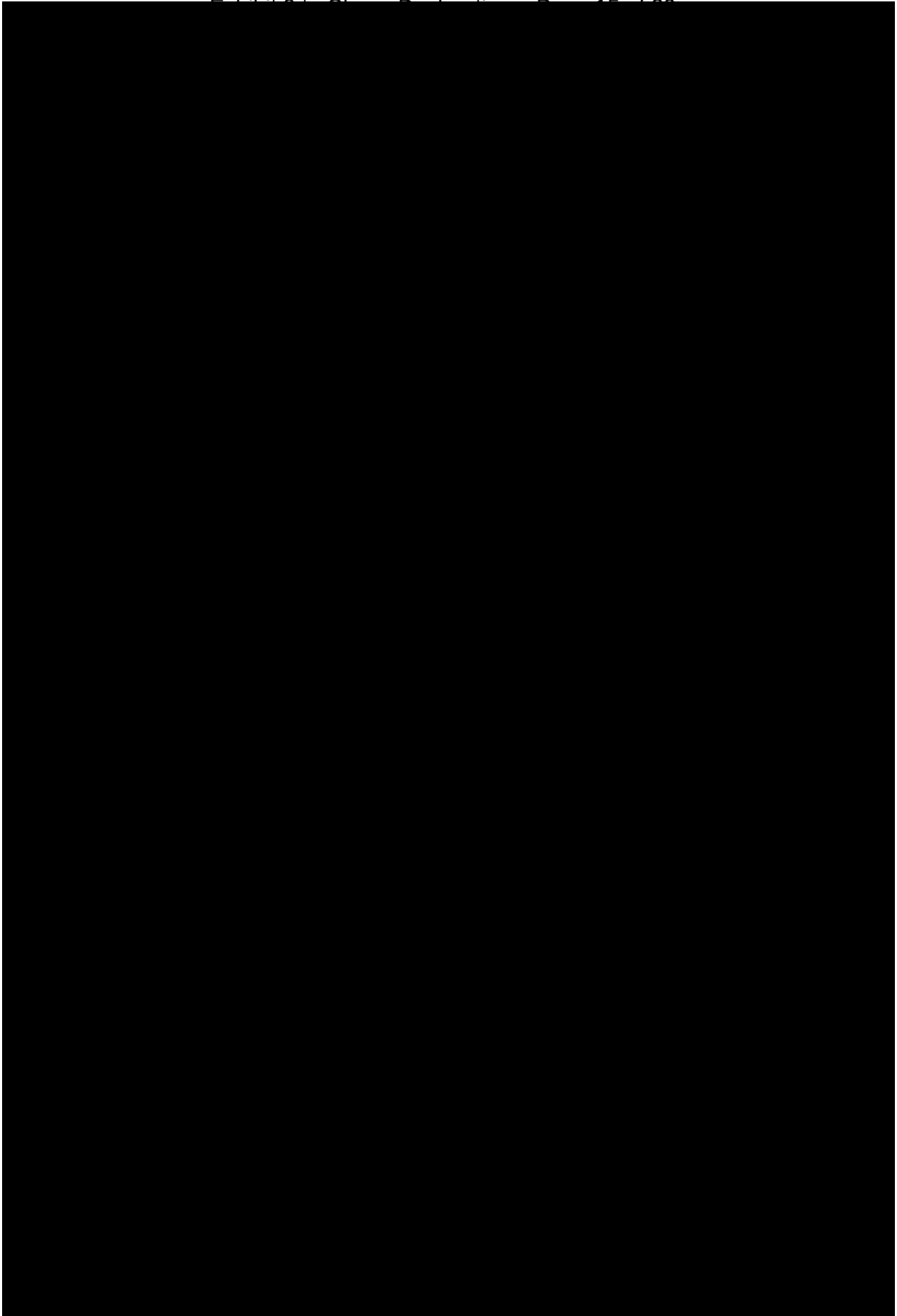
<[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Ashley,

Please see below for our responses to your questions regarding Kirkland's' retention application. We will follow up with answers to 2, 3, 4, and 14 as soon as we receive the required approvals from our internal conflicts team.





## Trevor Eck

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Friday, March 29, 2024 8:48 AM

**To:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Trevor – following up on the below. It has been a week since we sent the first set of additional questions. Please send the answers that you have and follow up with the remaining responses as soon as possible.

Thanks,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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**From:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>

**Sent:** Wednesday, March 27, 2024 11:56 AM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Ashley. We sent your questions to Kirkland's internal teams and they are running them down. Will provide responses as soon as the information is available.

Best,

## Trevor Eck

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Wednesday, March 27, 2024 11:44 AM  
**To:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Trevor,

Please let us know when we can expect responses to our questions. We would welcome responses on a rolling basis for those you have answers to today.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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**From:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>  
**Sent:** Sunday, March 24, 2024 1:20 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>  
**Subject:** RE: Invitae - K&E Retention Application

Thanks, Ashley. We will review and revert.

**Trevor Eck**

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F +1 212 446 4900

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Sunday, March 24, 2024 12:04 PM  
**To:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>  
**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia

<[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Trevor. We have a few additional questions, which we have added below as questions 9-15.

**Ashley Chase** | Associate

**T** +1 212 819 7624 **M** +1 631 926 1797 **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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**From:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>

**Sent:** Friday, March 22, 2024 6:03 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross

<[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC -

W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia

<[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Thanks, Ashley. Confirming your objection deadline is extended to April 5, 2024. We will put together responses to the below.

Best,

**Trevor Eck**

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Friday, March 22, 2024 5:25 PM

**To:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross

<[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC -

W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia

<[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Trevor,

Thanks for providing the information below.

As discussed with your colleagues, please confirm that our objection deadline is extended to April 5, 2024. We also have some follow up questions we would appreciate responses to as soon as possible.

1. What is the earliest date any attorney at Kirkland communicated with the Debtors regarding any matters identified in the First Day Declaration?
2. Please identify Kirkland's matters since September 1, 2023 for Deerfield, any of its businesses or portfolio companies (including any business where Deerfield is a majority owner), or any company for which an employee or representative of Deerfield serves on the board.

3. Please identify which of the matters identified in response to question 2 are still active.
4. For each matter identified in response to question 2, please identify whether any Kirkland lawyer who performed work on that matter has also performed work for the Debtors. If so, please identify the relevant Kirkland lawyers for each matter.
5. Please provide a copy of any written conflicts waiver received from Deerfield in connection with Kirkland's representation of the Debtors.
6. To the extent Kirkland received a conflicts waiver from Deerfield not in writing, please identify when, in what form and by whom.
7. Please provide a copy of any written conflicts waiver received from Invitae in connection with Kirkland's work for Deerfield and its related entities.
8. To the extent Kirkland received a conflicts waiver from Invitae not in writing, please identify when, in what form and by whom.
9. How did the Invitae matter come into the firm? In other words, who made the call or email, and who received it?
10. Who is on the Kirkland billing and/or origination team for the Invitae matter?
11. Are there any Kirkland attorneys associated with this matter in a client administration or management role?
12. Is this matter associated in Kirkland's system with any client or client group other than Invitae?
13. How many boards has Jill Frizzly worked on where Kirkland was company counsel? What is her total compensation from those engagements?
14. Has Kirkland ever accepted an engagement to litigate against Deerfield or any of its portfolio companies?
15. Please answer the following questions regarding the relationship among Deerfield and Kirkland.
  1. Has Kirkland ever placed a secondees at Deerfield?
  2. Has Kirkland ever hired a lawyer from Deerfield?
  3. Has Kirkland ever invited Deerfield employees to its annual ski trip?
  4. Has Kirkland ever invited Deerfield to a client educational event?
  5. Has Deerfield ever hosted a Kirkland client educational event?

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Eck, Trevor <[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>

**Sent:** Friday, March 22, 2024 10:30 AM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross

<[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Acuna, Olivia <[olivia.acuna@kirkland.com](mailto:olivia.acuna@kirkland.com)>

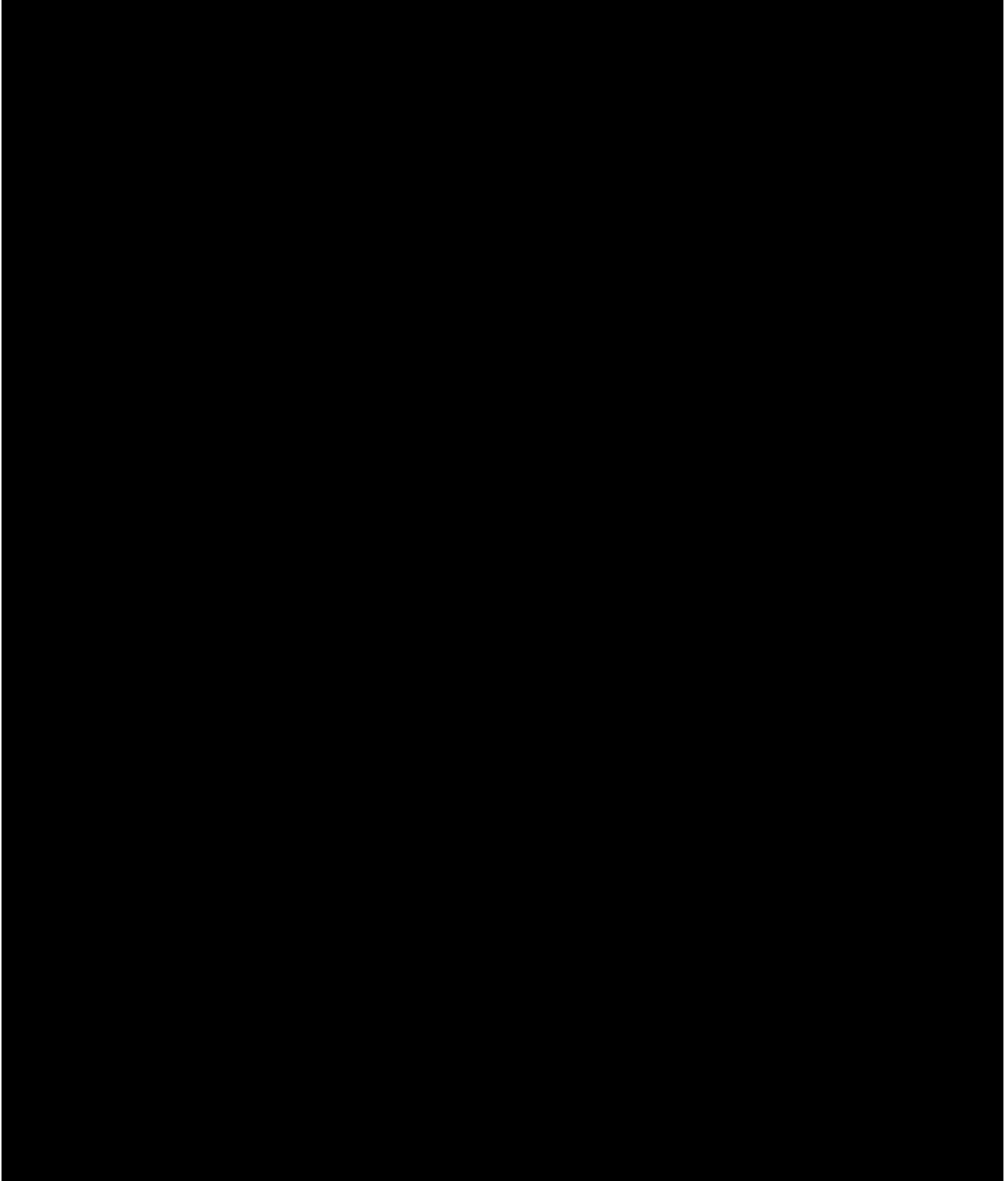
**Subject:** RE: Invitae - K&E Retention Application

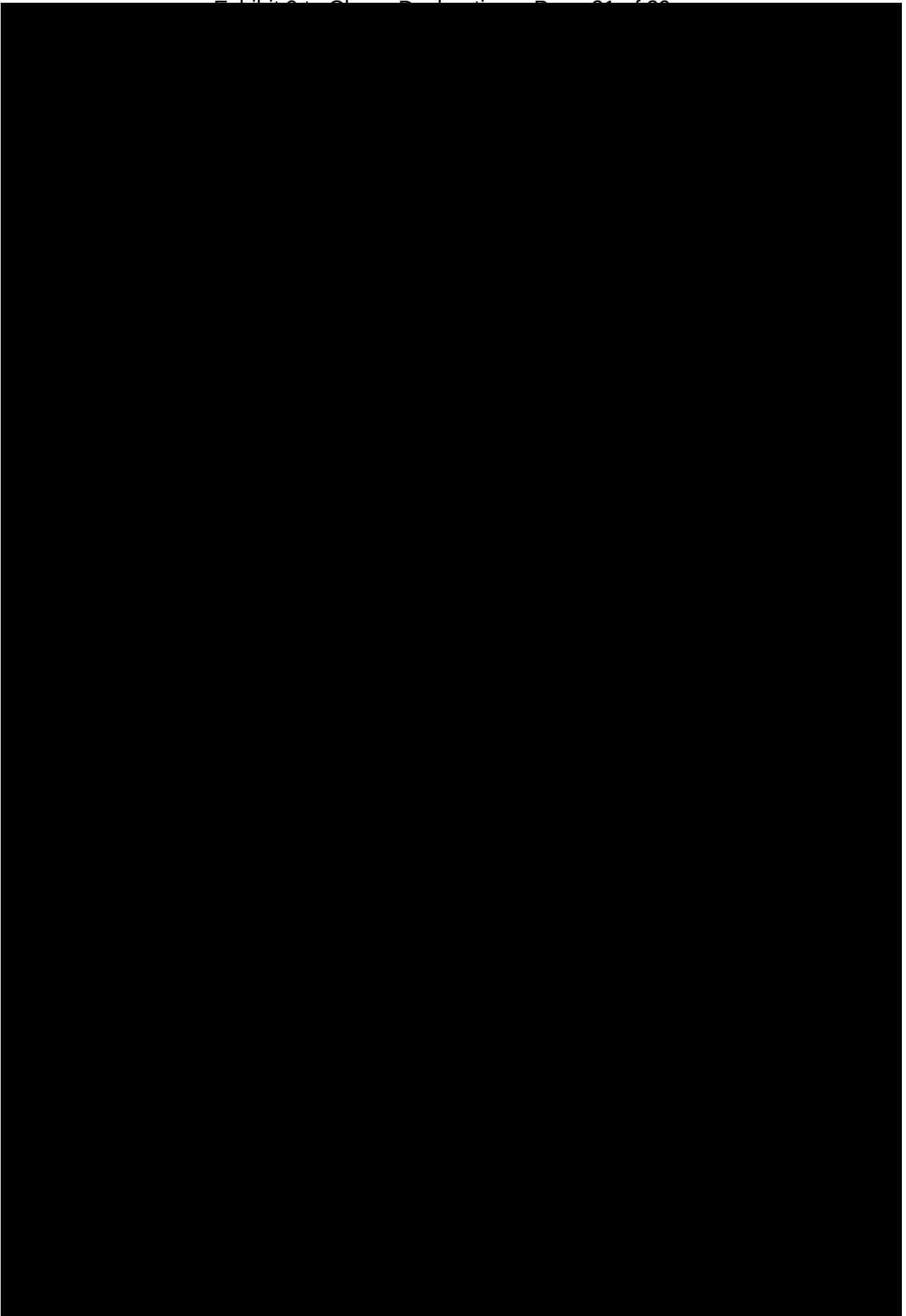
***Confidential / Subject to FRE 408***

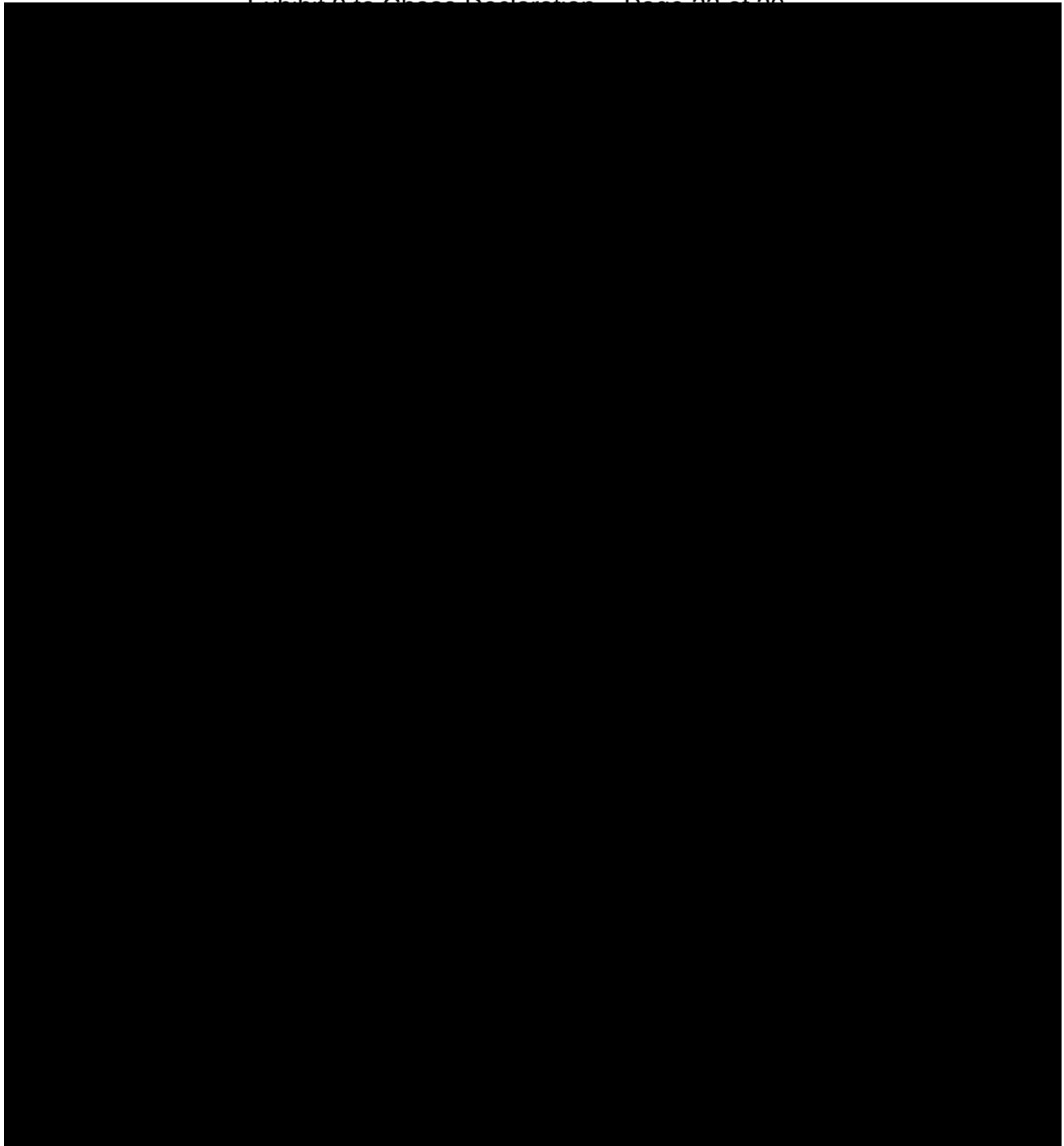
Ashley,

Please see below and attached for responses to your diligence questions regarding Kirkland's retention application.

\*\*\*







**Trevor Eck**

---

**KIRKLAND & ELLIS LLP**

601 Lexington Avenue, New York, NY 10022

**T** +1 212 341 7499 **M** +1 917 287 6892

**F** +1 212 446 4900

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[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)

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**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Wednesday, March 20, 2024 1:44 PM

To: Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

Cc: Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross  
<[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC -  
W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Eck, Trevor  
<[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>

**Subject:** RE: Invitae - K&E Retention Application

Francis,

Following up on the below. When can we expect responses?

Thanks,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Sent:** Monday, March 18, 2024 7:27 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Cc:** Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Goldfine, Jeffrey Ross  
<[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Invitae UCC -  
W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; Gavey, Nikki <[nikki.gavey@kirkland.com](mailto:nikki.gavey@kirkland.com)>; Eck, Trevor  
<[trevor.eck@kirkland.com](mailto:trevor.eck@kirkland.com)>

**Subject:** Re: Invitae - K&E Retention Application

Ashley - confirming receipt.

We will work to pull together answers, and will agree to extend your objection deadline through Friday at 4 pm.

**Francis Petrie**

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**KIRKLAND & ELLIS LLP**

601 Lexington Avenue, New York, NY 10022

T +1 212 390-4552

M +1 646 573-7959

F +1 212 446 4900

---

[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)

On Mar 18, 2024, at 5:15 PM, Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)> wrote:

K&E:

In light of your pending retention application, we ask that you answer the below questions (some of which were included in the interrogatories we served last week). As our objection deadline to your application is this Wednesday, we will need answers to these questions by 12pm ET tomorrow, or let us know if you will agree to extend our objection deadline. We do not believe the defined terms below are ambiguous, but for the avoidance of doubt they have the meanings set forth in our interrogatories.

1. Since 2021, what is the earliest date on which any attorney at Kirkland formally or informally advised any of the Debtors?
2. Prior to September 1, 2023, did any Kirkland attorney communicate with any of the Debtors (or anyone acting at their direction or on their behalf, including any other advisors to the Debtors) regarding the 2023 Exchange Transactions?
3. Prior to September 1, 2023, did any Kirkland attorney communicate with Deerfield (or anyone acting at their direction or on their behalf, including any other advisors to Deerfield) regarding the 2023 Exchange Transactions?
4. Prior to September 1, 2023, did any Kirkland attorney communicate with Perceptive Advisors or its affiliates, including but not limited to Perceptive Credit Holdings III, LLP, (or anyone acting at their direction or on their behalf, including any other advisors to Perceptive Advisors or its affiliates) regarding the 2023 Exchange Transactions or the 2020 Term Loan?
5. Prior to September 1, 2023, did any Kirkland attorney communicate with any lender to the Debtors other than Deerfield and Perceptive Advisors (or anyone acting at their direction or on their behalf, including any other advisors to such lenders) regarding the 2023 Exchange Transactions?
6. If the answer to question 2-5 is yes, please identify:
  1. The attorney(s) at Kirkland;
  2. The person(s) with whom they communicated;
  3. Whether the communications were conducted orally or in writing; and
  4. Whether the Kirkland attorneys were formally engaged by the party with whom they communicated in connection with such communications.
7. Identify with specificity the current engagements by and among Kirkland and Deerfield, including the Kirkland partners who have worked on those engagements.
8. Identify Kirkland's revenue percentage attributable to Deerfield on an annual basis.
9. Identify Kirkland's revenue percentage attributable to Perceptive Advisors in connection with the ArcherDX acquisition, as disclosed in paragraph 39 the Winters Declaration.
10. Identify all "affiliates, subsidiaries, and entities associated with the Debtors' current and recent former officers and directors" as disclosed in paragraph 35 of the Winters Declaration, including the subject of such representation, and the dates of such representation.
11. Identify Jill Frizzley's current and former "management and/or director capacities of Kirkland clients or affiliates thereof" as disclosed in paragraph 36 of the Winters Declaration, including the dates during which Ms. Frizzley served in these capacities.
12. Identify all parties marked "Confidential" in Schedule 2 of the Winters Declaration.

Thanks,  
Ashley

**Ashley Chase** | Associate



T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**EXHIBIT 10**

**Unredacted Document Filed Under Seal**

---

**From:** Chase, Ashley  
**Sent:** Monday, April 29, 2024 11:32 AM  
**To:** DeCamp, Justin J.; Hershey, Samuel; Souza, Matthew T.; Beller, Benjamin S.; Blaut, Ari B.  
**Cc:** Colodny, Aaron; Invitae UCC - W&C Team  
**Subject:** RE: [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Justin,

We have not received a production from Deerfield since April 19 and, again, we have only received 854 documents in total over the last six weeks. Considering the challenge deadline is May 15 and we are still awaiting a “substantial” production (plus any “final” production) and a privilege log from Deerfield, we encourage you to please produce all remaining responsive documents this week.

Best,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Sent:** Sunday, April 28, 2024 3:10 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>  
**Cc:** Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>; Branson, Ariell <[ariell.branson@whitecase.com](mailto:ariell.branson@whitecase.com)>  
**Subject:** [EXT] RE: [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

As I said, we will make another production this week (which is, of course, the week of April 28) and a final production next week (which is the week of May 5). We are doing our best to get as much as we can produced this week.

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Date:** Sunday, Apr 28, 2024 at 15:02  
**To:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>, Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>, Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>, Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>, Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>  
**Cc:** Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>, Branson, Ariell <[ariell.branson@whitecase.com](mailto:ariell.branson@whitecase.com)>  
**Subject:** RE: [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Justin,

Does your email indicate that you will be substantially complete this week or are you suggesting that you will not be substantially complete until May 3—a week and a half before the challenge deadline?

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Sent:** Sunday, April 28, 2024 2:11 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>

Cc: Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>; Branson, Ariell <[ariell.branson@whitecase.com](mailto:ariell.branson@whitecase.com)>

Subject: [EXT] RE: [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Ashley,

We expect to make another substantial production this week and a final production next week.

Justin

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Date:** Friday, Apr 26, 2024 at 13:49

**To:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>, Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>, Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>, Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>, Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>

**Cc:** Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>, Branson, Ariell <[ariell.branson@whitecase.com](mailto:ariell.branson@whitecase.com)>

**Subject:** [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Justin – please let us know when we can expect the next production and the date on which you expect to be substantially complete. We have only received a total of 854 documents to date and it has been over six weeks since we served our requests.

Thanks,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Sent:** Tuesday, April 23, 2024 12:59 PM

**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>

**Cc:** Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Branson, Ariell <[ariell.branson@whitecase.com](mailto:ariell.branson@whitecase.com)>

**Subject:** [EXT] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Those are redactions of sensitive business information unrelated to Invitae (e.g., concerning Deerfield's other portfolio companies).

---

**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>

**Sent:** Tuesday, April 23, 2024 12:57 PM

**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Cc:** Colodny, Aaron <[aaron.colodny@whitecase.com](mailto:aaron.colodny@whitecase.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Branson, Ariell <[ariell.branson@whitecase.com](mailto:ariell.branson@whitecase.com)>

**Subject:** [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Hi guys,

Can you explain the basis for the redactions in the attached document? This is just one example; we have identified dozens of documents with similar "redactions for sensitivity" that do not appear to implicate any privilege issues (no lawyers on the chain, etc.).

Thanks,



Sam

**Samuel P. Hershey** | Partner  
T +1 (212) 819-2699 M +1 (914) 582-1628 E [sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

**WHITE & CASE**

---

**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Sent:** Friday, April 19, 2024 8:44 PM

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** [EXT] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

The password for the zip file is:

[REDACTED]

**Matthew T. Souza**  
[+1 212 558 4109](tel:+12125584109) (T)

---

**From:** Souza, Matthew T.

**Sent:** Friday, April 19, 2024 8:43 PM

**To:** 'Chase, Ashley' <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall <[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl <[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

**Cc:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed via the link below.

[REDACTED]

Thank you,  
Matthew

**Matthew T. Souza**  
[+1 212 558 4109](tel:+12125584109) (T)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Thursday, April 18, 2024 4:43 PM

**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>; Cowan, Clint

<[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall  
<[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl  
<[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

Cc: Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J.  
<[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** [EXTERNAL] RE: In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Matthew,

When can we expect the next production?

Thanks,  
Ashley

**Ashley Chase** | Associate  
T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Sent:** Friday, April 12, 2024 8:26 PM

**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Invitae UCC -  
W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>;  
Cowan, Clint <[clint.cowan@kirkland.com](mailto:clint.cowan@kirkland.com)>; zzExt-jeffrey.goldfine <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Sander, Ian Marshall  
<[ian.sander@kirkland.com](mailto:ian.sander@kirkland.com)>; Burcher-DuPont, Aulden <[aulden.burcher-dupont@kirkland.com](mailto:aulden.burcher-dupont@kirkland.com)>; Lawrence, Carl  
<[carl.lawrence@kirkland.com](mailto:carl.lawrence@kirkland.com)>

Cc: Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J.  
<[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Subject:** [EXT] In re Invitae Corp., Case No. 24-11362 (MBK) (Bankr. D.N.J.)

Good evening,

On behalf of Deerfield, I've attached a production letter in the above-captioned case. The production can be accessed  
via the link below.

[REDACTED]

Thank you,  
Matthew

**Matthew T. Souza**  
**SULLIVAN & CROMWELL LLP**  
125 Broad Street | New York, NY 10004-2498  
+1 212 558 4109 (T)  
[souzam@sullcrom.com](mailto:souzam@sullcrom.com) | [www.sullcrom.com](http://www.sullcrom.com)

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\*\*This is an external message from: [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com) \*\*

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**EXHIBIT 11**

---

**From:** Goldfine, Jeffrey Ross <jeffrey.goldfine@kirkland.com>  
**Sent:** Thursday, May 2, 2024 4:06 PM  
**To:** Chase, Ashley; Greenblatt, Nicole L.; Winters, Spencer A.; Petrie, Francis  
**Cc:** Invitae UCC - W&C Team; W&C Invitae UCC Litigation; #Invitae Litigation Team  
**Subject:** RE: Invitae Challenge Deadline

Ashley,

The Debtors will substantially complete their production today and we do not see, nor have you provided, any rationale for the requested extension. The Committee has had ample time and documents to thoroughly investigate the uptier transaction (and any other transactions). From the Debtors, you have (1) received thousands of documents and tens of thousands of pages in response to nearly all of your document requests and search terms, (2) access to thousands of files in the virtual data room with more files being added on a near-daily basis, (3) access to all of Invitae's public filings, and (4) had two interviews with personnel of the Debtors spanning multiple hours. You've also received thousands of pages of documents from Deerfield.

In addition, the Debtors have offered to make available for deposition Mr. Knight on May 9 from 9am – 12pm ET and Mr. Scott on May 10 at 9am -12pm ET. And we understand that the Committee has issued third-party subpoenas for additional depositions next week.

In short, the Committee has had every opportunity to conduct a thorough investigation. There is no need for additional time, which will not serve to generate anything beyond the ample information already available for the Committee's evaluation of the uptier transaction but will only result in needless expense and a delay of these cases to the detriment of stakeholder distributions. The Debtors cannot responsibly and do not consent to a one-month extension of the Challenge Period. If the Committee believes it can assert viable causes of action as it has represented to the Court, then it should file its standing motion by the current May 15 deadline.

Best,  
Jeff

**Jeffrey R. Goldfine**

---

**KIRKLAND & ELLIS LLP**

601 Lexington Avenue, New York, NY 10022  
**T** +1 212 390 4124  
**M** +1 609 923 8853  
**F** +1 212 446 4900

---

[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)

---

**From:** Chase, Ashley <ashley.chase@whitecase.com>  
**Sent:** Thursday, May 2, 2024 10:53 AM  
**To:** Goldfine, Jeffrey Ross <jeffrey.goldfine@kirkland.com>; Greenblatt, Nicole L. <ngreenblatt@kirkland.com>; Winters, Spencer A. <spencer.winters@kirkland.com>; Petrie, Francis <francis.petrie@kirkland.com>  
**Cc:** Invitae UCC - W&C Team <InvitaeWCAI@whitecase.com>; W&C Invitae UCC Litigation <InvitaeWCLitigation@whitecase.com>  
**Subject:** RE: Invitae Challenge Deadline

Jeff,

Following up on the below. Please let us know whether the Debtors consent to extend the Challenge Deadline to June 15, 2024.

Thanks,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Tuesday, April 30, 2024 11:59 AM

**To:** Goldfine, Jeffrey Ross <[jeffrey.goldfine@kirkland.com](mailto:jeffrey.goldfine@kirkland.com)>; Greenblatt, Nicole L. <[ngreenblatt@kirkland.com](mailto:ngreenblatt@kirkland.com)>; Winters, Spencer A. <[spencer.winters@kirkland.com](mailto:spencer.winters@kirkland.com)>; Petrie, Francis <[francis.petrie@kirkland.com](mailto:francis.petrie@kirkland.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCAI@whitecase.com](mailto:InvitaeWCAI@whitecase.com)>; W&C Invitae UCC Litigation <[InvitaeWCLitigation@whitecase.com](mailto:InvitaeWCLitigation@whitecase.com)>

**Subject:** Invitae Challenge Deadline

Jeff,

In light of the Debtors' and Deerfield's statements that neither party will be substantially complete with document production before Friday and that we will receive privilege logs thereafter, the Committee requests that the Debtors consent to a one-month extension to adjourn the Challenge Period to June 15. This will provide the Committee with the necessary time to review the productions expected this week, interview and/or depose witnesses based on those documents, and resolve any concerns over the Debtors and/or Deerfield's privilege designations, including receiving and reviewing any de-designated documents. Please let us know whether the Debtors consent to this request.

Best,  
Ashley

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

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**Exhibit A**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

---

**ORDER EXTENDING THE CHALLENGE PERIOD THROUGH JUNE 15, 2024**

---

Upon *The Official Committee of Unsecured Creditors' Emergency Motion to Extend the Challenge Period Through June 15, 2024* (the “**Motion**”)<sup>2</sup> seeking entry of an order extending the Challenge Period through and including June 15, 2024 for cause shown, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, from the United States District Court for the District of New Jersey, dated September 18, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Committee’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other or further notice need be provided; and this Court having held a hearing, if necessary, to consider the relief requested in the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief

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<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.

<sup>2</sup> Capitalized terms used herein but not otherwise defined herein shall have the meaning ascribed to them in the Motion.



granted herein; and it appearing that good cause exists to extend the Challenge Period as requested and the relief requested in the Motion is otherwise in the best interests of the Debtors, their estates, creditors, and all parties in interest; 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 Challenge Period is extended through and including June 15, 2024.
3. This Challenge Period extension is without prejudice to the right of the Committee to seek further extensions of the Challenge Period for any reason.
4. All references to the Challenge Period in the Cash Collateral Order shall refer to the Challenge Period as so extended.
5. Except as expressly provided herein, the remaining terms of the Cash Collateral Order shall remain unchanged and in full force and effect.
6. This Order shall be effective immediately upon entry.
7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael B. Kaplan  
United States Bankruptcy Judge