

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

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In re:

INVITAE CORPORATION, *et al.*,
Debtors.¹

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

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



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

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in these chapter 11 cases (the “**Chapter 11 Cases**”), by and through its undersigned counsel, hereby submits this motion (the “**Motion**”) for entry of an order, pursuant to section 107(b)(1) of title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “**Local Rules**”), authorizing the filing under seal of *The Official Committee of Unsecured Creditors’ Emergency Motion to Extend the Challenge Period Through June 15, 2024* [ECF No. 438] (the “**Motion to Extend**”), 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* [ECF No. 438-1] (the “**Chase Decl.**”) and Exhibits 6-10 thereto (collectively, the unredacted versions of the Motion to Extend, Chase Decl., and Exhibits 6-10 thereto shall be referred to as the “**Unredacted Motion to Extend Documents**”). In support of this Motion, the Committee respectfully represents as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of New Jersey (the “**Court**”) has jurisdiction over this Motion 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 matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Committee confirms its consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties,

cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code section 107(b)(1), Bankruptcy Rule 9018, and Local Rule 9018-1.

BACKGROUND

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

4. On March 1, 2024, the United States Trustee appointed the Committee pursuant 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.

5. On March 18, 2024, the Court approved the Cash Collateral Order, 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**”).

6. On March 9, 2024, the Committee began contacting the Debtors notifying them of the Committee’s intent to serve formal discovery requests in the near term and attaching nineteen initial discovery requests. Motion at ¶ 17 (citing Chase Decl. ¶ 4)). The Committee has diligently pursued its investigation in the months following. *See id.* ¶¶ 18-46.

7. On April 19, 2024, the Committee, the Debtors, and Deerfield submitted the agreed upon *Stipulated Confidentiality Agreement and Protective Order* [ECF No. 339] (the “**Protective Order**”) for this Court’s approval. The Protective Order allows a party to designate discovery material “Confidential” or “Highly Confidential” (the “**Designated Material**”). Protective Order ¶ 7(b). “[A]ll portions of pleadings, motions or other papers filed with the Court that disclose, quote or reference Designated Material, shall be filed under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules, with a version of the filing redacting or omitting the Designated Material filed publicly by the next day.” *Id.* ¶ 14.

8. On May 3, 2024, contemporaneously with the filing of this Motion, the Committee filed its Motion to Extend, requesting that the Court extend the Challenge Period to June 15, 2024. The Motion to Extend references certain material that Debtors have designated Confidential pursuant to the Protective Order. *See* Protective Order ¶ 7(b).

RELIEF REQUESTED

9. The Committee seeks entry of an order, substantially in the form of the proposed order submitted herewith, (i) authorizing the Committee to file the Unredacted Motion to Extend Documents under seal, and (ii) directing that the Unredacted Motion to Extend Documents shall remain under seal and confidential and not be made available to anyone, except for the Court, until such time that a hearing can be held regarding redactions; and (iii) granting related relief.

BASIS FOR RELIEF

10. Bankruptcy Rule 9018 provides, in relevant part, that on a motion, “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr.

P. 9018; *see also* Local Bankruptcy Rule 9018-1 (setting out the procedure for obtaining a sealing order by filing a motion to seal).

11. Section 107(b) of the Bankruptcy Code provides an exception to the general rule that court records should be publicly accessible by granting bankruptcy courts the power to issue orders that will protect entities from potential harm. Specifically, section 107(b) provides that “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b); *see also* 11 U.S.C. § 105(a) (codifying the bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title”). Commercial information is material which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *In re Orion Pictures Corp.*, 21 F.3d at 27)). Commercial information need not constitute a “trade secret.” *In re Orion Pictures*, 21 F.3d at 28; *see also In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *In re Northstar Energy, Inc.*, 325 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.”)). Protections under section 107(b) extend to commercial information that, if disclosed to the public, could be used by parties or competitors for an unfair advantage. *In re Orion Pictures*, 21 F.3d at 27-28.

12. Once the Court determines that the information sought to be protected from disclosure falls within one of the categories enumerated in section 107(b), “the court is *required*

to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original). In other words, an interested party must only demonstrate that the information it wishes to seal is “confidential” and “commercial” in nature. *Id.* at 28.

13. The Unredacted Motion to Extend Documents reference certain material that the Debtors have designated as Confidential pursuant to the Protective Order. *See* Protective Order ¶ 7(b). As such, the Protective Order requires the Committee to file any reference to the Designated Material under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules. *See* Protective Order ¶ 14. The Committee does not take a position as to the propriety of the Debtors’ confidentiality designations but files this Motion to comply with the terms of the Protective Order.

14. Accordingly, the Committee respectfully requests that this Court enter an order authorizing the Committee to file the Unredacted Motion to Extend Documents, which disclose or reference Designated Material, under seal in accordance with Bankruptcy Rule 9018. Consistent with the Protective Order, the Committee has filed redacted versions of the Motion to Extend and supporting documents.

NOTICE, PRIOR REQUEST, AND WAIVER OF BRIEF

15. Notice of this Motion will be provided to the following parties and/or their respective counsel, as applicable: (a) the office of the United States Trustee for the District of New Jersey; (b) the Debtors’ thirty (30) largest unsecured creditors (on a consolidated basis); (c) counsel to the agent to the Secured Notes; (d) the indenture trustee to the 2024 Convertible Notes; (e) the indenture trustee to the 2028 Convertible Notes; (f) Sullivan & Cromwell LLP, as counsel to the Required Holders; (g) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (h)

counsel to the 2028 Convertible Noteholders; (i) the U.S. Securities and Exchange Commission; (j) the United States Attorney's Office for the District of New Jersey; (k) the attorneys general in the states where the Debtors conduct their business operations; (l) the Internal Revenue Service; (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Committee submits that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

16. No prior request for the relief sought herein has been made to this or to any other court.

17. The Committee respectfully requests that the Court waive the requirement under Local Rule 9013-2 to file a separate memorandum of law because the relevant authorities relied upon by the Committee are set forth herein and the Committee's request does not raise any novel issues of law.

WHEREFORE, the Committee requests entry of an Order, substantially in the form submitted herewith, authorizing the relief requested herein and for such other relief as is just and proper.

Dated: May 3, 2024

By: /s/ John S. Mairo

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Chapter 11

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ORDER CONCERNING REQUEST TO SEAL DOCUMENTS

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

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

On request of the Official Committee of Unsecured Creditors (the “**Committee**”), to seal the following documents, *The Official Committee of Unsecured Creditors’ Emergency Motion to Extend the Challenge Period through June 15, 2024* (the “**Motion to Extend**”), 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* (the “**Chase Decl.**”), and Exhibits 6-10 thereto (the “**Motion**”); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found the Committee’s notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having considered the request and any objection there to, it is:

☐ ORDERED that the request is denied and the underlying document(s) shall be deleted from the court’s electronic filing system.

☒ ORDERED that the request is granted and the document(s) shall be sealed until the expiration of the judiciary records retention period at which time the document will be permanently deleted.