

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)
Francis Petrie (admitted *pro hac vice*)
Jeffrey Goldfine (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
joshua.sussberg@kirkland.com
nicole.greenblatt@kirkland.com
francis.petrie@kirkland.com
jeffrey.goldfine@kirkland.com

COLE SCHOTZ P.C.
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Daniel J. Harris, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
dharris@coleschotz.com

-and-

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Spencer A. Winters, P.C. (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
spencer.winters@kirkland.com

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

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

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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



241136224050600000000002

**DEBTORS' OBJECTION TO THE APPLICATION
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO SHORTEN NOTICE AND SCHEDULE EXPEDITED HEARING ON
EMERGENCY MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO EXTEND THE CHALLENGE PERIOD THROUGH JUNE 15, 2024**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), submit this objection to the Official Committee of Unsecured Creditors’ (the “Committee”) *Application for Order Shortening Time* (Dkt. No. 440) (the “Motion to Shorten”). In support of this response, the Debtors respectfully state as follows:

1. Through the Motion to Shorten (filed the evening of May 3, 2024), the Committee asks the Court to set a hearing on the Motion to Extend² on May 7, 2024, on four days’ notice. The Motion to Extend seeks an extension of the Challenge Period by one month from May 15, 2024 to June 15, 2024. The Debtors intend to object to the Motion to Extend on important, substantive grounds. And there is simply no emergency warranting a hearing on the Motion to Extend on May 7—a full 8 days prior to the expiration of the Challenge Period that the Committee expressly agreed to in connection with entry of the Debtors’ Cash Collateral Order (Dkt. No. 188)—particularly when the Court already has a full agenda scheduled for hearing in these Cases on May 7.

2. The Committee claims that emergency relief is required because it is “not possible” for the Committee to do the work it alleges is required between now and May 15, 2024 to file a standing motion. Nonsense. The Committee, which was appointed on March 1, 2024 and is represented by White & Case LLP (“W&C”) with a team of no less than 13 professionals billing time to these cases (based on those copied on every email to the Debtors and those identified in

² *The Official Committee of Unsecured Creditors’ Emergency Motion to Extend the Challenge Period Through June 15, 2024* (Dkt. No. 438) (“Motion to Extend”).

W&C's retention application), has had more than sufficient time to conduct a thorough investigation (or, at the very least, file a timely motion to extend the Challenge Period if such extension was necessary (which it is not)). While the Committee makes baseless complaints about the status of discovery, it appears unburdened by the hard facts and reality of these cases—and the very real impact its continued fishing expedition will have on stakeholder recoveries, including the Committee's own constituents.

3. *First*, the Committee has already received more than enough information to conduct a thorough investigation. In response to the Committee's expansive discovery requests, the Debtors reviewed over 115,000 documents (comprising more than 1.5 million pages), produced tens of thousands of documents, provided the Committee with access to a virtual data room containing additional thousands of documents, and provided the Committee access to the Debtors' principals in multiple interviews. Knowing that the Committee's investigation would focus on the March 2023 exchange transaction, the Debtors' prioritized their review of documents such that the Committee would receive documents relevant to that transaction as early as possible. To that end, the Committee has for weeks had all Board materials related to the transaction and substantially all email communications related to the transaction. In addition, because Invitae is a public company, the Committee has access to all documents filed with the U.S. Securities and Exchange Commission with respect to the transaction (and the company generally). And the Debtors have offered to make their CEO and Chairperson of the Board available for deposition this week (an offer the Committee has seemingly rejected). The Committee's claim that its investigation has been hampered or that it "has not been provided the same access to documents and witnesses as the Special Committee," Motion to Extend ¶ 21, is contrary to fact. The Debtors have provided

the Committee with all relevant information from the Special Committee's investigation and offered to provide access to the same parties interviewed in connection therewith.

4. *Second*, the Committee ignores that the Debtors—guided by a newly-appointed disinterested director that had no involvement in the March 2023 transaction—have already evaluated whether there are any viable estate causes of action and have determined that no viable claims or causes of action can be successfully prosecuted. The Committee's investigation to date seemingly confirms that conclusion. Unsatisfied with the apparent lack of evidence of any viable claims in the discovery it has already received, the Committee claims that it needs additional time to locate a needle in a haystack that in reality simply does not exist. If the Committee is unable to bring a standing motion asserting viable claims by May 15, 2024 as required by the current schedule, another month is not going to change anything. This is especially true because the Committee's counsel began examining potential claims months prior to the commencement of these cases on behalf of its then-client, an ad hoc group of unsecured noteholders of the Debtors. Giving Committee counsel unfettered runway to chase hypothetical claims is especially inappropriate given the posture of these cases and the depleting sources of cash available for stakeholder distributions.

5. *Third*, the Committee claims that “[t]he Debtors have not articulated any prejudice that would result from the requested one-month extension.” However, in the Motion to Extend, the Committee quotes the Debtors' explanation: needless expense and a delay of these cases to the detriment of stakeholder distributions. Motion to Extend ¶ 21. Indeed, the Debtors' sale hearing is scheduled for May 7, 2024, pursuant to which they seek authority to sell substantially all of the Debtors' assets to a third party for a purchase price that injects \$239 million in cash (plus additional non-cash considerations) into the Debtors' Estates. Those sale proceeds, plus the

Debtors' balance sheet cash—which is funding these chapter 11 cases—and ability to collect accounts receivable, are the only sources of cash available for distribution to stakeholders in these chapter 11 cases. Mindful that time is of the essence, the Debtors are working expeditiously with their senior secured lenders to file a plan that will facilitate distributions to the Debtors' stakeholders in accordance with the terms negotiated in the TSA; namely, to confirm a chapter 11 plan that distributes all remaining estate assets and covers all administrative claims, claims of unsecured creditors against Invitae's subsidiaries, and all claims of unsecured creditors less than \$250,000 by amount or election (a structure to which the Debtors' secured lenders voluntarily consented to facilitate the efficient implementation of that plan). Consistent therewith, the Debtors intend to file a proposed plan, disclosure statement, and motion approving the disclosure statement by May 9, 2024 and to seek approval of the disclosure statement on regular notice at a hearing on June 11, 2024. The Committee will have every opportunity to raise objections to confirmation of the plan and approval of the disclosure statement on the timeline afforded to all parties in interest under the Bankruptcy Code and Bankruptcy Rules. But a one-month extension of the Challenge Period will only serve to needlessly extend the confirmation timeline and these chapter 11 cases and force the Debtors to incur unnecessary costs that will diminish the recoveries of their stakeholders, including the Committee's own constituents.

6. The Court should reject the Motion to Shorten. The Debtors respectfully request that the Court hold a status conference on May 7, 2024 to discuss the Motion to Shorten and any attendant scheduling issues.

7. Alternatively, if the Court grants the Motion to Shorten, the Debtors respectfully request sufficient time to prepare and file a substantive objection to the Motion to Extend, which makes numerous misleading and inaccurate factual allegations about the status of these cases and

the Committee's discovery efforts. Accordingly, if the Court grants the Motion to Shorten, the Debtors respectfully request that a hearing on the Motion to Extend be scheduled no earlier than Tuesday, May 14, 2024, and the Debtors' and other objecting parties' deadline to file a written objection to the Motion to Extend be set for 5:00 p.m. (prevailing Eastern Time) on the day before any such scheduled hearing. The Debtors further request permission for all objecting parties to supplement their objection to the Motion to Extend on the record at such hearing.

8. The Debtors expressly reserve all rights with respect to the Motion to Shorten and the Motion to Extend, including the right to supplement or add to the legal and factual arguments in this response and to file any objection to the Motion to Extend. The Debtors further reserve all rights to supplement this response and any objection to the Motion to Extend in writing or at a hearing on either or both motions.

[Remainder of Page Intentionally Left Blank]

Dated: May 6, 2024

/s/ Michael D. Sirota

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Daniel J. Harris, Esq.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
Email: msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
dharris@coleschotz.com

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)
Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)
Francis Petrie (admitted *pro hac vice*)
Jeffrey Goldfine (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com
nicole.greenblatt@kirkland.com
francis.petrie@kirkland.com
jeffrey.goldfine@kirkland.com

-and-

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Spencer A. Winters, P.C. (admitted *pro hac vice*)
333 West Wolf Point Plaza
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
spencer.winters@kirkland.com

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