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**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)

**DEERFIELD PARTNERS L.P.'S OBJECTION AND JOINDER TO THE DEBTORS'
OBJECTION TO THE COMMITTEE'S MOTION TO SHORTEN NOTICE ON
EMERGENCY MOTION TO EXTEND THE CHALLENGE PERIOD**

Deerfield Partners L.P. ("Deerfield"), by its attorneys, hereby submits this joinder to the Debtors' objection (the "Debtors' Objection") [Dkt. No. 448] to the *Application for Order Shortening Time* filed by the Official Committee of Unsecured Creditors [Dkt. No. 440] (the "Motion to Shorten") with respect to the *Official Committee of Unsecured Creditors'*

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.



Emergency Motion to Extend the Challenge Period Through June 15, 2024 [Dkt. No. 438] (the “Motion to Extend”).² In support hereof, Deerfield states as follows:

1. Deerfield joins in, adopts as its own, and hereby incorporates by reference the arguments made by the Debtors in the Debtors’ Objection.

2. The Bankruptcy Code and Bankruptcy Rules require specific notice and timing of motions to provide integrity and transparency to the bankruptcy process. *See, e.g.*, Fed. R. Bankr. P. 2002. Requests to shorten notice and hearing periods should not be taken lightly and must be based on true exigencies. (*See* Dkt. No. 62 (Case Mgmt. Procs.) at § B3(f) (“Requests for expedited hearings will only be granted under emergency or exigent circumstances.”).) Notwithstanding these fundamental process requirements, the Committee here has identified no basis for shortening notice, especially in the extraordinary manner it has requested.

3. The Committee was appointed on March 1, 2024 [Dkt. No. 131], and was given 75 days from its appointment under the Final Cash Collateral Order to conduct its investigation and file a timely motion to extend the Challenge Period if it felt that such extension was necessary (which it is not). The Committee agreed to the 75-day period at the Second Day Hearing (*see* Mar. 15, 2024 Hr’g Tr. at 14:17-20), and the Committee’s own failure to seek an extension thereafter in a timely fashion does not constitute “cause” to shorten notice now, *see, e.g., In re Villareal*, 160 B.R. 786, 787-88 (Bankr. W.D. Tex. 1993) (“Cause is not shown when the cause for expedited hearing is one of the movant’s own making.”); *In re A.H. Coombs, LLC*, 2016 WL 7985367, at *4 (Bankr. D. Utah Dec. 22, 2016) (denying a motion to shorten notice, in part, to discourage “‘clever ploy[s]’ to get around proper noticing requirements”); *In re Schindler*, 2011

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them set forth in the Motion to Shorten and in the Motion to Extend, as applicable.

WL 1258531, at *3 (Bankr. E.D.N.Y. Mar. 31, 2011); *In re Fort Wayne Assocs.*, 1998 WL 928419, at *1 (Bankr. N.D. Ind. Dec. 16, 1998) (“This failure to plan ahead does not rise to the level of a genuine emergency justifying shortened notice or expedited relief.”).

4. Not only is the Committee seeking an extension of the Challenge Period to mask its own “failure to plan ahead,” it is also seeking an extension on an extraordinarily expedited timeframe—having filed the Motion to Extend and Motion to Shorten at 8 p.m. E.T. ***on Friday***, May 3, 2024, and requesting a merits hearing before the Court at 10 a.m. E.T., ***the following Tuesday***, May 7, 2024. There is no reason to have the Motion to Extend heard on ***86 hours’ notice (60 of which were over the weekend)***, while depriving the Debtors, Deerfield, and all other parties in interest of any meaningful opportunity to respond to the Motion to Extend, which itself is fundamentally flawed, and to which Deerfield should be given the opportunity to object in full.

5. Moreover, the Committee’s filings make clear that there is no true emergency here warranting the requested shortened notice: the Challenge Period does not expire until May 15, 2024—***12 days*** from the date of filing of the Motion to Extend and ***more than a week*** from the date of the requested hearing.

6. The Committee’s half-page application does not even attempt to put forward any justification for shortened notice. As a threshold matter, the Committee cannot repurpose its purported need for an extension of the Challenge Period as its basis for a hyper-expedited hearing on the same motion, especially given the ample time remaining before the expiration of the Challenge Period. Taken to its (il)logical conclusion, the Committee’s position is that every motion, without more, is entitled to a hyper-expedited hearing, running roughshod of the intricate notice and timing requirements imposed by the Bankruptcy Code, Bankruptcy Rules, and Case Management Order.

7. And it is especially important for Deerfield and the Debtors to have a full opportunity to object to the Motion to Extend because the relief the Committee seeks through that motion is entirely unwarranted and would negatively impact the Debtors and *all* of their stakeholders, including the unsecured creditors that the Committee purports to represent. These cases and all distributions to creditors are being funded from the Debtors' cash, and the Committee's wasteful fantasy of a strategy in these cases is only serving to diminish that value available for distribution (including to their own clients).

8. Rule 9006(b)(1) of the Bankruptcy Rules provides that "when an act is required or allowed to be done at or within a specified period . . . by order of court, the court *for cause shown* may . . . order the period enlarged if the request therefor is made before the expiration of the period originally prescribed." Fed. R. Bankr. P. 9006(b)(1) (emphasis added). As the movant, the Committee bears the burden of demonstrating "cause" to justify an extension. *See In re Bajan Resorts, Inc.*, 71 B.R. 52, 54 (Bankr. D. Utah 1987) ("[B]y the clear construction of [Rule 9006(b)(1)] the movant must sustain a threshold burden of demonstrating sufficient 'cause'" to extend a time period). As Deerfield will make clear in its objection to the Motion to Extend, the Committee has failed to meet its burden here for the following reasons, among others:

- The Challenge Period Termination Date was part of a bargain struck with the Debtors and approved by the Court through which Deerfield consented to the Debtors' access to the Cash Collateral during these Chapter 11 Cases. The Committee agreed to that Challenge Period Termination Date at the Second Day Hearing. (*See* Mar. 15, 2024 Hr'g Tr. at 14:17-20 ("With respect to the investigation budget and the challenge period, the Committee will accept what the debtors have proposed, which is a \$125,000 investigation budget and a challenge

deadline of 75 days from formation.”). “[T]he Challenge Deadline exists for the benefit of the prepetition secured lenders and is part of a larger bargain struck by the parties and approved by the Court.” *In re AOG Ent., Inc.*, 558 B.R. 98, 108 (Bankr. S.D.N.Y. 2016). In exchange, “[t]he purpose of the Challenge [Period] is to prevent guesswork and provide finality” for Deerfield, while allowing the Committee to have a reasonable opportunity to investigate and “take up the fight should [it] wish.” *In re MRPC Christiana, LLC*, 2019 WL 6652237, at *11-13 (Bankr. D.N.J. Dec. 5, 2019). The Committee is fully capable of doing so on the timeline set out in the Final Cash Collateral Order, and “there is no reason to deprive [Deerfield] of the benefit of the bargain embodied in the [Final Cash Collateral] Order that induced [it] to consent to the use of [its] cash collateral.” *AOG*, 558 B.R. at 108.

- The Committee’s suggestion that the Debtors and Deerfield “slow[ly]walked” their production is baseless. (Mot. to Extend at ¶ 25.) After the Committee sent its discovery requests to Deerfield and the Debtors on March 14, 2024, Deerfield and the Debtors have since been moving forward with the collection and production of documents on a rolling basis, as the Committee has admitted. (*Id.*) Deerfield anticipates completing its production on May 6, 2024—10 days before the expiration of the Challenge Period.
- The Committee has had more than enough time and information to seek standing and bring a Challenge, including given that Debtor Invitae Corporation was a publicly listed company at all relevant times, and the Committee has had access to ample public information regarding the Debtors’ prepetition transactions. White &

Case LLP (“White & Case”), the Committee’s counsel, also has had continuous access to a vast amount of confidential information to formulate its position, including as counsel to an ad hoc group of unsecured convertible noteholders prior to the Petition Date, which included a participant in the exchange transaction that the Committee now finds so objectionable.

- The Committee has already taken a clear, fully formed, and on-the-record position that it is appropriate to bring a Challenge to the 2023 exchange transactions through its filings in these cases, including its objections to the cash collateral motion and the retention of Kirkland & Ellis LLP as counsel to the Debtors. [Dkt. Nos. 148 (“To ensure that the Committee has the full initial Challenge Period to complete its investigation and mount a Challenge, the Committee should be given automatic standing to pursue challenges and claims that the Debtors are waiving.”), 283, 379]. The Committee cannot now turn around and say it needs more time to conduct investigations for its predetermined position.

9. The Committee’s Motion to Shorten should be denied, as it is simply yet another step in its sabotage strategy in these cases to the detriment of Deerfield and the Committee’s own constituents.

RESERVATION OF RIGHTS

10. Due to the short notice provided to the Debtors and Deerfield, Deerfield reserves the right to amend or supplement this objection and joinder to Debtors’ Objection, and to make additional arguments through an objection to the Motion to Extend or at any hearing.

CONCLUSION

11. For the foregoing reasons, Deerfield respectfully joins in the Debtors' Objection requesting that this Court deny the Motion to Shorten.

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Dated: May 6, 2024

/s/ James N. Lawlor

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