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

**In re:**

**INVITAE CORPORATION, *et al.*,**

**Debtors<sup>1</sup>**

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**Chapter 11**

**Case No. 24-11362 (MBK)**

**(Jointly Administered)**

**NOTICE OF CONDITIONAL WITHDRAWAL OF THE  
LIMITED OBJECTION AND RESERVATION OF RIGHTS OF MASSMUTUAL ASSET  
FINANCE, LLC WITH RESPECT TO DEBTORS' MOTION FOR ENTRY OF AN  
ORDER (I) APPROVING BIDDING PROCEDURES AND BID PROTECTIONS, (II)  
SCHEDULING CERTAIN DATES AND DEADLINES WITH RESPECT THERETO,  
(III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV)  
ESTABLISHING NOTICE AND PROCEDURES FOR THE ASSUMPTION AND  
ASSIGNMENT OF CONTRACTS AND LEASES, (V) AUTHORIZING THE  
ASSUMPTION AND ASSIGNMENT OF ASSUMED CONTRACTS, AND (VI)  
AUTHORIZING THE SALE OF ASSETS AND LIMITED OBJECTION OF  
MASSMUTUAL ASSET FINANCE, LLC TO NOTICE TO CONTRACT PARTIES TO  
POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
(Related to ECF No. 413)**

<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.



MassMutual Asset Finance, LLC (“**MMAF**”), a prepetition over-secured lender under that certain *Master Lease Agreement No. WCT305202*, Equipment Schedule 1 thereto, and documents executed in connection therewith and relating thereto (collectively, the “**Financing Agreement**”) between MMAF, as assignee of Western Capital Technologies, LLC, and Debtor, Invitae Corporation (the “**Debtor**”), submits this *Conditional Withdrawal of its Limited Objection and Reservation of Rights of MassMutual Asset Finance, LLC with Respect to Debtors' Motion for Entry of an Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets and Limited Objection of MassMutual Asset Finance, LLC to Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Dkt. No. 413] (the “**MMAF Limited Objection**”).

In support thereof, MMAF respectfully states as follows:

### **I. General Background**

1. On February 13, 2024 (the “**Petition Date**”), Invitae Corporation and affiliated debtors (collectively, the “**Debtors**”) each filed a voluntary petition for bankruptcy relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of New Jersey (the “**Court**”).

2. On April 24, 2024, the Debtors filed the *Notice of Successful Bidder with Respect to the Auction Held on April 17 and 24, 2024* [ECF No. 362] identifying Labcorp Genetics Inc. as the “Successful Bidder.”

3. On April 25, 2024, the Debtors filed their *Notice of (I) Filing of the Asset Purchase Agreement and Proposed Sale Order with Respect to the LabCorp Sale Transaction, (II) Modified Cure Objection Deadline, and (III) Rescheduled Sale Hearing* [ECF No. 364] (the “**Labcorp Sale Notice**”).

3. The Debtors seek, among other things, authority to enter into a sale transaction with Labcorp Genetics Inc. pursuant to the Asset Purchase Agreement and Proposed Sale Order attached to the LabCorp Sale Notice (the “**Labcorp Sale Transaction**”).

4. On May 2, 2024, MMAF timely filed the MMAF Objection.

5. After filing the MMAF Objection, MMAF and the Debtors – through their respective counsel – engaged in discussions to resolve the issues raised in the MMAF Objection.

6. The Debtors agreed to include the following language in each revised proposed order approving the Labcorp Sale Transaction submitted to the Court:

MassMutual Asset Finance (“MMAF”) holds Permitted Prior Liens, as that phrase is used in the Final Cash Collateral Order, on certain of the Acquired Assets that are being sold free and clear under this Sale Order pursuant to section 363(f) of the Bankruptcy Code, subject only to a reservation of rights as to the validity of the liens by the Debtors. Upon the closing of the Sale Transaction, MMAF’s valid Permitted Prior Liens will attach to the net cash proceeds of the Purchase Price attributable to the Acquired Assets upon which MMAF holds such Permitted Prior Liens, with the same validity, force, and effect that such Permitted Prior Liens had prior to the Sale Transaction, subject only to the aforementioned reservation of rights. Upon the closing of the Sale Transaction, \$1,700,000 of the net cash proceeds of the Purchase Price—an amount attributable to the value of the Acquired Assets upon which MMAF asserts such Permitted Prior Liens—shall be deemed to be segregated from the Debtors’ other assets and payable to MMAF to the extent of its allowed secured claim, subject only to a challenge to the validity of MMAF’s Permitted Prior Liens (the “MMAF Escrow”). No other liens may be granted on the MMAF Escrow other than those granted pursuant to the Final Cash Collateral Order. The MMAF Escrow shall remain segregated and will not be used or distributed until there

is an agreement between MMAF and the Debtors as to distribution or upon Court order as to such distribution.

This paragraph shall be referred to herein as the “**MMAF Escrow Language**.”

7. Debtor’s counsel has advised MMAF that all parties required to approve the MMAF Escrow Language, i.e., the Debtor, the secured noteholders, and the Buyer, have done so and that there are no known objections to the MMAF Escrow Language being included in each revised proposed order approving the Labcorp Sale Transaction submitted to the Court.

**THEREFORE**, based on the following premises, MMAF hereby agrees to withdraw the MMAF Limited Objection conditioned upon:

- A. the MMAF Escrow Language being included in the Order the Court enters approving the Labcorp Sale Transaction;
- B. no language that is inconsistent with the MMAF Escrow Language is included in the Order the Court enters approving the Labcorp Sale Transaction; and
- C. with the understanding that all parties required to approve such language have consented to such language including, without limitation, the Debtors, U.S. Bank Trust Company, National Association, as indenture trustee and collateral agent (including any successors thereto), and LabCorp.
- D. this conditional withdrawal being submitted without prejudice to, and with full reservation of, MMAF’s
  - i. rights, claims, defenses, and remedies, including the right to supplement or refile the MMAF Objection or modify, amend, or withdraw this conditional withdrawal, to seek discovery, to raise additional objections and to introduce evidence at any hearing related to the Labcorp Sale Transaction except as

otherwise expressly set forth herein, and without in any way limiting any other rights, claims, or objections of MMAF to other matters in this case; and

- ii. right to seek entry of an order granting to MMAF further or additional adequate protection pursuant to sections 361 and 363(e) of the Bankruptcy Code and other related relief.

Dated: May 7, 2024  
Philadelphia, Pennsylvania

Respectfully submitted,

By: /s/ Holly S. Miller  
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