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Debtors in Possession*

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

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

Chapter 11  
  
Case No. 24-11362 (MBK)  
  
(Joint Administration Requested)

**DEBTORS' MOTION FOR  
ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):<sup>2</sup>

**Relief Requested**

1. The Debtors seek entry of orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and “Final Order”), authorizing the Debtors to (a) negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to, including or following the Petition Date), without regard to whether such obligations accrued or arose before, on, or after the Petition Date, and (b) undertake the Tax Planning Activities. In addition, the Debtors request that the Court schedule a final hearing within approximately thirty (30) days after the commencement of these chapter 11 cases to consider entry of the Final Order.

**Jurisdiction and Venue**

2. 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.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court,

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<sup>2</sup> A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in 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* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not immediately defined are defined later in this Motion, in the First Day Declaration, or in the Cash Collateral Motion, as applicable.

absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 9013-1 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

### **Background**

5. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of 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. Concurrent with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

### **Taxes and Fees Overview**

6. In the ordinary course of business, the Debtors collect, withhold, and incur income taxes; sales and use taxes; property taxes; foreign taxes; franchise taxes; and regulatory and other taxes, penalties, interests, assessments, fees, and additions to tax (collectively, “Taxes and Fees”).<sup>3</sup> The Debtors pay or remit, as applicable, Taxes and Fees to various governmental authorities

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<sup>3</sup> For the avoidance of doubt, the Taxes and Fees include Income Taxes, Sales and Use Taxes, Personal Property Taxes, Foreign Taxes, Franchise Taxes, Regulatory, and Other Taxes and Fees. This Motion does not seek relief with respect to the Debtors’ collection and remittance of employee-related taxes and withholdings, which are instead addressed in the *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (II) Continue Employee Benefits Programs*, filed contemporaneously herewith.

(each, an “Authority,” and collectively, the “Authorities”) on a periodic basis (monthly, quarterly, semi-annually, annually, or as otherwise applicable) depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. A schedule identifying the Authorities is attached hereto as **Exhibit C**.<sup>4</sup> The Debtors generally pay and remit Taxes and Fees via ACH transfers, wire transfers, through third-party service providers, or directly to the Authorities via their online portals. The Debtors may also receive tax credits for overpayments or refunds in respect of Taxes and Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes and Fees or cause the amount of such credits to be refunded to the Debtors.

7. The Debtors indirectly pay certain Taxes and Fees in the ordinary course of business through their third-party tax administrator, CT Corporation (the “Tax Administrator”). To do so, certain of the Debtors’ employees provide the Tax Administrator with information related to amounts owed to the applicable Authorities and the required timing for payment. The Debtors remit funds to the Tax Administrator via ACH transfer that pulls funds directly into the Tax Administrator’s bank account. In turn, the Tax Administrator remits such tax payments to the applicable Authorities once the funds are received from the Debtors. As of the Petition Date, the Debtors estimate that they owe the Tax Administrator less than \$1,000 on account of its services. The Debtors request authority to pay such fees due and owing as of the Petition Date and further seek authority to continue honoring such fees as they become due and owing in the ordinary course of business during their chapter 11 cases.

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<sup>4</sup> Although **Exhibit C** is intended to be comprehensive, the Debtors may have inadvertently omitted Authorities from **Exhibit C**. The Debtors request relief with respect to Taxes and Fees payable to all Authorities, regardless of whether such Authority is specifically identified in **Exhibit C**.

8. Additionally, the Debtors may become subject to routine audit investigations on account of tax returns and/or tax obligations in respect of prior years (“Audits”) during these chapter 11 cases. Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors (such additional Taxes and Fees, “Assessments”).<sup>5</sup> The Debtors seek authority to pay or remit tax obligations on account of any Assessments as they arise in the ordinary course of the Debtors’ business, including as a result of any resolutions of issues addressed in an Audit.

9. The Debtors seek authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees (including any obligations subsequently determined upon Audit or otherwise to be owed), including: (a) Taxes and Fees that accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition or were paid in an amount less than actually owed; (c) payments made prepetition by the Debtors that were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of these chapter 11 cases, including as a result of Audits. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees for so-called “straddle” periods.<sup>6</sup>

10. Finally, the Debtors seek authority to undertake certain typical activities related to tax planning, and to pay Taxes and Fees related thereto, including: (a) converting Debtor entities from one form to another (*e.g.*, converting an entity from a corporation to a limited liability company) via conversion, merger, or otherwise (“Entity Conversions”); (b) making certain tax

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<sup>5</sup> Nothing in this Motion, or any related order, constitutes or should be construed as an admission of liability by the Debtors with respect to any Audit or Assessment. The Debtors expressly reserve all rights with respect to any Audit and the right to contest any Assessments claimed to be due as a result of any Audit.

<sup>6</sup> The Debtors reserve their rights with respect to the proper characterization of any “straddle” Taxes and Fees and to seek reimbursement of any portion of any payment made that ultimately is not entitled to administrative or priority treatment.

elections (including with respect to the tax classification of Debtor entities) (“Tax Elections”); (c) changing the position of Debtor entities within the Debtors’ corporate structure (“Entity Movements”); (d) modifying or resolving intercompany claims and moving assets or liabilities among Debtor entities if doing so will not alter the substantive rights of the Debtors’ stakeholders in these chapter 11 cases (“Asset and Liability Movements”); and (e) filing one or more requests for a private letter ruling with the Internal Revenue Service (a “Ruling Request” and, together with the Entity Conversions, Tax Elections, Entity Movements, and Asset and Liability Movements, the “Tax Planning Activities”).

11. The Debtors estimate that approximately \$3.12 million in Taxes and Fees is outstanding as of the Petition Date.<sup>7</sup>

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date
Income Taxes	Income taxes incurred in the ordinary course of business based on the jurisdictions in which the Debtors do business, generally payable on a quarterly and annual basis.	\$100,000
Sales and Use Taxes	Taxes on goods and services sold or used, assessed based on the value of such goods and services, generally payable on a monthly basis.	\$20,000
Personal Property Taxes	Taxes related to personal property, payable as such taxes come due in the ordinary course, generally on a semi-annual or annual basis.	\$1,200,000
Foreign Taxes	Taxes due to Authorities in foreign jurisdictions, including foreign corporate income taxes and value added taxes, generally payable on a monthly, quarterly, semi-annual, or annual basis.	\$100,000
Franchise Taxes	Franchise, business, and related taxes required to conduct business in the ordinary course based on the jurisdictions in which the Debtors do business, generally payable on a monthly, quarterly, semi-annual, or annual basis.	\$1,000,000

<sup>7</sup> The Debtors cannot predict the amounts of any potential Assessments that may result from Audits, if any. Accordingly, the Debtors’ estimate of outstanding Taxes and Fees as of the Petition Date does not include any amounts relating to potential Assessments.

Category	Description	Approximate Amount Accrued and Unpaid as of Petition Date
Regulatory and Other Taxes and Fees	Taxes and Fees related to compliance with regulatory requirements, including periodic environmental fees, reporting fees, intellectual property fees, licensing and accreditation fees, NYSE listing fees, regulatory fees, and similar requirements generally payable on semi-annual or annual bases, depending on the specific Taxes and Fees.	\$700,000
<b>Total</b>		<b>\$3,120,000</b>

12. Any failure by the Debtors to pay Taxes and Fees could materially disrupt the Debtors’ business operations in several ways, including, but not limited to: (a) the Authorities may initiate Audits of the Debtors, which would unnecessarily divert the Debtors’ attention from these chapter 11 cases; (b) the Authorities may attempt to suspend the Debtors’ operations, file liens, seek to lift the automatic stay, and/or pursue other remedies that will harm the Debtors’ estates; and (c) in some instances, certain of the Debtors’ directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtors’ restructuring. Taxes and Fees not timely paid as required by law may result in fines and penalties, the accrual of interest, or both. In addition, nonpayment of Taxes and Fees may give rise to priority claims under section 507(a)(8) of the Bankruptcy Code. Finally, the Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors’ estates. Risking any of these negative outcomes is unnecessary. Accordingly, the Debtors seek authority to pay, in their sole discretion, Taxes and Fees (including Assessments) in the ordinary course of business as they become due, and to engage in Tax Planning Activities as necessary.

**I. Income Taxes.**

13. The Debtors incur and are required to pay to the relevant Authorities various state, local, and federal income taxes (collectively, “Income Taxes”) in the jurisdictions where the

Debtors operate.<sup>8</sup> The Debtors generally remit Income Taxes to the relevant Authorities in accordance with the statutory requirements of each applicable jurisdiction (*e.g.*, on a quarterly or annual basis). In some jurisdictions, the Debtors remit to the relevant Authorities estimated amounts with respect to Income Taxes, resulting in tax credits or overpayments that may be refunded to the Debtors in certain circumstances.

14. In 2023, the Debtors remitted approximately \$100,000 in Income Taxes to the applicable Authorities. As of the Petition Date, the Debtors estimate that they owe approximately \$100,000 on account of prepetition Income Taxes to the applicable Authorities. The Debtors request authority to satisfy any amounts owed on account of such Income Taxes due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

## **II. Sales and Use Taxes.**

15. The Debtors incur, collect, or remit to the relevant Authorities sales and use taxes in connection with the sale, purchase, and use of goods and services (including interest and penalties on any late payments, collectively, “Sales and Use Taxes”). Sales and Use Taxes are general consumption taxes charged at either the point of purchase for goods and services or the point of sale of goods and services, which are usually set by the relevant Authority as a percentage of the retail price of the good or service purchased. When sales taxes are incurred at the point of purchase, vendors frequently include the applicable sales taxes on the invoices payable by the

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<sup>8</sup> In the ordinary course of business, the Debtors pay or remit certain Taxes and Fees on behalf of certain of their non-Debtor affiliates. While the Debtors believe that they have the authority to continue paying such Taxes and Fees as intercompany ordinary course transactions as set forth in the *Debtors’ Motion for Entry of Interim and Final Orders Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, and (D) Perform Intercompany Transactions*, filed contemporaneously herewith, out of an abundance of caution, the Debtors seek authority to pay Taxes and Fees on behalf of their non-Debtor affiliates, including any prepetition obligations related thereto, in the ordinary course of business during these chapter 11 cases.



Debtors. The process by which the Debtors remit Sales and Use Taxes varies depending on the Authority. The Debtors generally remit Sales and Use Taxes on a monthly basis.

16. In 2023, the Debtors remitted approximately \$80,000 in Sales and Use Taxes to the applicable Authorities, including interest and penalties, if any. As of the Petition Date, the Debtors estimate that they have incurred or collected approximately \$20,000 in Sales and Use Taxes that have not been remitted to the relevant Authorities. The Debtors request authority to satisfy any amounts owed on account of such Sales and Use Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

### **III. Personal Property Taxes.**

17. State and local laws in the jurisdictions where the Debtors operate generally grant Authorities the power to levy property taxes against the Debtors' personal property ("Personal Property Taxes").<sup>9</sup> To avoid the imposition of statutory liens on their personal property, the Debtors pay Personal Property Taxes as they come due in the ordinary course of business, generally on a semi-annual or annual basis, depending on the applicable Authority.

18. In 2023, the Debtors remitted approximately \$1.5 million in Personal Property Taxes to the applicable Authorities, including interest and penalties, if any. As of the Petition Date, the Debtors estimate that they have incurred approximately \$1.2 million in Personal Property Taxes that have not been remitted to the relevant Authorities. The Debtors request authority to

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<sup>9</sup> The Debtors do not own any real property. The Debtors' landlords remit real estate taxes on properties that the Debtors lease to the applicable Authorities, which the Debtors pay pursuant to the terms of the respective leases with such landlords. Accordingly, as of the Petition Date, the Debtors do not directly owe any real estate taxes. Nevertheless, the Debtors seek authority to honor any real estate taxes as they become due and owing in the ordinary course of business during their chapter 11 cases, if any.

satisfy any amounts owed on account of such Personal Property Taxes that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

#### **IV. Foreign Taxes.**

19. Because part of the Debtors' business is conducted outside of the United States, the Debtors incur various income and value added taxes from foreign jurisdictions (collectively, "Foreign Taxes"). The Debtors generally remit Foreign Taxes on a monthly, quarterly, semi-annual, or annual basis, depending on the applicable Authority.

20. In 2023, the Debtors remitted approximately \$400,000 in Foreign Taxes to the applicable Authorities, including interest and penalties, if any. As of the Petition Date, the Debtors estimate that they owe approximately \$100,000 to the applicable Authorities on account of prepetition Foreign Taxes. The Debtors request authority to satisfy any amounts owed on account of such Foreign Taxes, including amounts owed related to Audits and/or Assessments,<sup>10</sup> that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

#### **V. Franchise Taxes.**

21. The Debtors incur and are required to pay various state and local franchise taxes, business taxes, gross receipts taxes, and business registration and related fees for the privilege of doing business within such jurisdictions (collectively, "Franchise Taxes"). The Debtors generally remit Franchise Taxes on a monthly, quarterly, semi-annual, or annual basis.

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<sup>10</sup> Non-Debtor Orbicule BVBA d/b/a Diploid has an ongoing audit in Belgium related to 2020 and 2021 payroll tax estimates.

22. In 2023, the Debtors remitted approximately \$900,000 in Franchise Taxes to the applicable Authorities. As of the Petition Date, the Debtors believe that they owe approximately \$1 million in Franchise Taxes to the Authorities. The Debtors request authority to pay all Franchise Taxes due and owing as of the Petition Date and further seek authority to continue honoring Franchise Taxes as they become due and owing in the ordinary course of business during their chapter 11 cases.

#### **VI. Regulatory and Other Taxes and Fees.**

23. The Debtors incur, in the ordinary course of business, certain environmental fees, reporting fees, intellectual property fees, licensing and accreditation fees, NYSE listing fees, regulatory fees, and similar requirements (collectively, “Regulatory and Other Taxes and Fees”). The Debtors typically remit Regulatory and Other Taxes and Fees to the relevant Authorities on semi-annual or annual bases, as they come due, depending on the specific Taxes and Fees.

24. In 2023, the Debtors remitted approximately \$700,000 in Regulatory and Other Taxes and Fees to the applicable Authorities. As of the Petition Date, the Debtors estimate that approximately \$700,000 in Regulatory and Other Taxes and Fees will have accrued and remain unpaid to the relevant Authorities. The Debtors request authority to satisfy any amounts owed on account of such Regulatory and Other Taxes and Fees that are due and owing as of the Petition Date or may become due and owing in the ordinary course of business during their chapter 11 cases.

#### **Basis for Relief**

##### **I. Certain Taxes and Fees May Not Be Property of the Debtors’ Estates.**

25. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the

extent of the debtors' legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold." Certain Taxes and Fees are collected or withheld by the Debtors on behalf of the applicable Authorities and are held in trust by the Debtors. *See, e.g.*, 26 U.S.C. § 7501 (stating that certain taxes and fees are held in trust); *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); *In re Shank*, 792 F.2d 829, 833 (9th Cir. 1986) (holding that a sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and "not released by bankruptcy discharge"). For example, all U.S. federal internal revenue taxes withheld are considered to be held in a "special fund in trust for the United States." *Begier*, 496 U.S. at 60 (quoting 26 U.S.C. § 7501). Because the Debtors may not have an equitable interest in funds held on account of such "trust fund" Taxes and Fees, the Debtors should be permitted to pay those funds to the applicable Authorities as they become due.<sup>11</sup>

## **II. Certain Taxes and Fees May Be Priority Claims Entitled to Priority Treatment Under the Bankruptcy Code.**

26. Claims on account of certain Taxes and Fees may be priority claims entitled to payment before general unsecured claims. *See* 11 U.S.C. § 507(a)(8) (describing taxes entitled to priority treatment). Courts have authorized early payment of priority claims when such early payment is intended to prevent some harm or to procure some benefit for the estate. *See, e.g., In re Lehigh & N. Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding courts may authorize payment of prepetition claims under the "necessity of payment" doctrine when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000)

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<sup>11</sup> For clarity, the Debtors are requesting authority to pay the Taxes and Fees as provided herein regardless of whether such Taxes and Fees constitute trust fund obligations.

(stating that the court may authorize pre-plan payment of priority claims because “the need to pay these claims in an ordinary course of business time frame is simple common sense”).

27. Moreover, to the extent that such amounts are entitled to priority treatment under the Bankruptcy Code, the respective Authorities may attempt to assess fees, interest, and penalties if such amounts are not paid. *See* 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”). Claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full under a confirmable plan pursuant to section 1129(a)(9)(C) of the Bankruptcy Code. Therefore, payment of certain Taxes and Fees at this time only affects the timing of the payment for the amounts at issue and will not unduly prejudice the rights and recoveries of junior creditors. *See In re Equalnet*, 258 B.R. at 369 (“[C]ertain types of claims enjoy a priority status in addition to being sometimes critical to the ongoing nature of the business. For instance . . . certain tax claims are both priority claims in whole or in part. The need to pay these claims in an ordinary course of business time-frame is simple common sense.”). Payment of such Taxes and Fees likely will give Authorities no more than that to which they would otherwise be entitled under a chapter 11 plan and will save the Debtors the potential interest expense, legal expense, and penalties that might otherwise accrue on such Taxes and Fees during these chapter 11 cases.

28. It is also possible that at least some Taxes and Fees may be entitled to secured status with respect to the property that the Debtors own. As secured claims, these Taxes and Fees would be entitled to priority treatment if and when the Debtors sell the property that these Taxes and Fees are recorded against or when the Debtors confirm a plan of reorganization. *See* 11 U.S.C. §§ 506(a); 1129(a)(9)(C); 1129(b)(2)(A) (requiring that any plan of reorganization

“crammed down” over a class of secured creditors pay those creditors in full or allow those creditors to retain their liens). As with priority tax claims, payment of secured tax claims only affects the timing of payments and will not unduly prejudice the rights and recoveries of other creditors of the Debtors.

**III. Payment of Taxes and Fees and Undertaking the Tax Planning Activities as Provided Herein Is a Sound Exercise of the Debtors’ Business Judgment.**

29. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business’s going-concern value. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

30. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). “In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *see also Armstrong World*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *In re Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify

payment of certain prepetition wages); *In re Phx. Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring the debtor to show a “good business reason” for a proposed transaction under section 363(b)).

31. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a 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.” 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s businesses. *See In re Just for Feet*, 242 B.R. at 825–26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., In re Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Ry Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the business). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497.

32. The Debtors' timely payment of Taxes and Fees is critical to their continued and uninterrupted operations. If certain Taxes and Fees remain unpaid, the Authorities may seek to recover such amounts directly from the Debtors' directors, officers, or employees, thereby distracting such key personnel from the administration of these chapter 11 cases. *See, e.g., Schmehl v. Helton*, 662 S.E.2d 697, 707 (W. Va. 2008) (noting that corporate officers may be held responsible for payment of certain corporate taxes); *In re Am. Motor Club, Inc.*, 139 B.R. 578, 581–83 (Bankr. E.D.N.Y. 1992) (citing *United States v. Energy Res. Co.*, 495 U.S. 545 (1990)) (stating “[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax” and finding director personally liable for unpaid taxes). Any collection action on account of such amounts, and any potential ensuing liability, would distract the Debtors and their personnel to the detriment of all parties in interest. The dedicated and active participation of the Debtors' officers and employees is integral to the Debtors' continued operations and essential to the orderly administration, and ultimately the success, of these chapter 11 cases.<sup>12</sup>

33. Finally, the Debtors' failure to timely pay Taxes and Fees may result in increased tax liability for the Debtors if interest and penalties accrue on unpaid Taxes and Fees. Such a result would be contrary to the best interests of the Debtors' estates and all stakeholders.

34. For the foregoing reasons, the Court should authorize the Debtors to pay all prepetition and postpetition obligations on account of Taxes and Fees, including any Assessments, and undertake Tax Planning Activities. Courts in this district and elsewhere routinely approve

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<sup>12</sup> Nothing herein is a concession that the Debtors' officers, directors, or employees would have personal liability for unpaid taxes. However, the intent of such collection efforts, even if ultimately unwarranted, would be a critical distraction. In addition, such individuals may be entitled to indemnification by the Debtors' estates which would be an unnecessary cost to incur.



relief similar to that requested herein. *See, e.g., In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Jan. 24, 2024) (authorizing the debtors to pay prepetition taxes and fees in the ordinary course of business and to conduct tax planning activities on an interim basis); *In re WeWork Inc.*, No.23-19865 (JKS) (Bankr. D.N.J. Dec. 6, 2023) (authorizing the debtors to pay prepetition taxes and fees in the ordinary course of business and to conduct tax planning activities on a final basis); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 20, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 29, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 31, 2023) (authorizing the debtors to pay prepetition taxes and fees in the ordinary course of business).<sup>13</sup>

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

35. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The Debtors’ payment of Taxes and Fees and Assessments is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the

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<sup>13</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors’ proposed counsel.

“immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

36. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Waiver of Memorandum of Law**

37. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

**Reservation of Rights**

38. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors’ estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors

or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

**No Prior Request**

39. No prior request for the relief sought in this Motion has been made to this or any other court.

**Notice**

40. The Debtors will provide notice of this Motion 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) the Authorities; (n) the Tax Administrator; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

**WHEREFORE**, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, and granting the relief requested herein.

Dated: February 14, 2024

*/s/ Michael D. Sirota*

---

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

**Exhibit A**

**Proposed Interim Order**

Caption in Compliance with D.N.J. LBR 9004-1(b)

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
In re:  INVITAE CORPORATION, <i>et al.</i> ,  Debtors. <sup>1</sup>	Chapter 11  Case No. 24-11362 (MBK)  (Joint Administration Requested)

**INTERIM ORDER AUTHORIZING  
THE PAYMENT OF CERTAIN TAXES AND FEES**

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The relief set forth on the following pages, numbered three (3) through eight (8), is **ORDERED.**

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

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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Upon the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Payment of Certain Taxes and Fees* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Interim Order") (a) authorizing the Debtors to (i) negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to, on, or following the Petition Date), without regard to whether such obligations accrued or arose before or after the Petition Date, and (ii) undertake the Tax Planning Activities, and (b) scheduling a final hearing (the "Final Hearing") to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and the 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 that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; 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 upon all of the proceedings had before the

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.



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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on an interim basis as set forth herein.

2. The Final Hearing on the Motion will be held on \_\_\_\_\_, **2024, at \_\_\_\_\_**

**(Eastern Time)**. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by (i) the Debtors' proposed counsel; (ii) the office of the United States Trustee for the District of New Jersey; (iii) the agent to the Secured Notes; (iv) the indenture trustee to the 2024 Convertible Notes; (v) the indenture trustee to the 2028 Convertible Notes; (vi) counsel to the Required Holders; (vii) counsel to the 2028 Convertible Noteholders; and (viii) counsel to any statutory committee appointed in these chapter 11 cases on or before \_\_\_\_\_, **2024, at 4:00 p.m. (Eastern Time)**. If no objections are filed to the Motion, the Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.

3. The Debtors are authorized on an interim basis to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy Taxes and Fees (including corresponding Assessments) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business until the date a Final Order on the Motion is entered in accordance with applicable law; and (b) negotiate, pay and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business during the interim period on a postpetition basis—until the date of the Final Order is entered including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits or Assessments; *provided* that the Debtors shall not be required to pay any Taxes and Fees before such Taxes and

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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Fees are due to the applicable Authority. Notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any “straddle” period amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may seek an order from the Court requiring a return of such amounts, and the payment of such amount shall, upon order of the Court, be refunded to the Debtors.

4. The Debtors are authorized to continue paying Taxes and Fees on behalf of certain of their non-Debtor affiliates, including any prepetition amounts related thereto, in the ordinary course of business during these chapter 11 cases, consistent with historical practices, *provided that* the Debtors keep clear records of all such payments.

5. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

6. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

7. During the interim period, the Debtors are authorized to undertake certain typical activities related to tax planning, including any Tax Planning Activities; *provided that* the Debtors will give the U.S. Trustee and advisors to any statutory committee appointed in these chapter 11 cases five (5) business days’ notice before effectuating any such Tax Planning Activity, during which time the U.S. Trustee or any such statutory committee may object to such Tax Planning Activities and request a hearing before the Court.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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8. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to Audits that have been completed, are in progress, or arise from prepetition periods.

9. Nothing contained in the Motion or this Interim Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Interim Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Interim Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Interim Order.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

12. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

13. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

17. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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18. The Debtors shall serve by regular mail a copy of this Interim Order and the Motion on all parties required to receive such service pursuant to Local Rule 9013-5(f) within two (2) business days after the entry of this Interim Order.

19. Any party may move for modification of this Interim Order in accordance with Local Rule 9013-5(e).

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

**Exhibit B**

**Proposed Final Order**

Caption in Compliance with D.N.J. LBR 9004-1(b)

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
In re:  INVITAE CORPORATION, <i>et al.</i> ,  Debtors. <sup>1</sup>	Chapter 11  Case No. 24-11362 (MBK)  (Joint Administration Requested)

**FINAL ORDER AUTHORIZING  
THE PAYMENT OF CERTAIN TAXES AND FEES**

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The relief set forth on the following pages, numbered three (3) through seven (7), is **ORDERED.**

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

**Caption in Compliance with D.N.J. LBR 9004-1(b)**

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(Page | 3)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

---

Upon the *Debtors' Motion for Entry of Interim and Final Orders Authorizing the Payment of Certain Taxes and Fees* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") authorizing the Debtors to (a) negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to, on, or following the Petition Date), without regard to whether such obligations accrued or arose before or after the Petition Date, and (b) undertake the Tax Planning Activities, all as more fully set forth in the Motion; and upon the First Day Declaration; and the 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 that sufficient cause exists for the relief set forth herein; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this 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>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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granted herein; 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** on a final basis as set forth herein.
2. The Debtors are authorized to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy Taxes and Fees (including corresponding Assessments) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these chapter 11 cases at such time when Taxes and Fees are payable in accordance with applicable law; and (b) negotiate, pay and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits or Assessments; *provided* that the Debtors shall not be required to pay any Taxes and Fees before such Taxes and Fees are due to the applicable Authority. Notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any “straddle” period amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may seek an order from the Court requiring a return of such amounts, and the payment of such amount shall, upon order of the Court, be refunded to the Debtors.
3. The Debtors are authorized to continue paying Taxes and Fees on behalf of certain of their non-Debtor affiliates, including any prepetition amounts related thereto, in the ordinary

(Page | 5)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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course of business during these chapter 11 cases, consistent with historical practices, provided that the Debtors keep clear records of all such payments.

4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

5. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

6. The Debtors are authorized to undertake certain typical activities related to tax planning, including any Tax Planning Activities; *provided* that the Debtors will give the U.S. Trustee and advisors to any statutory committee appointed in these chapter 11 cases five (5) business days' notice before effectuating any such Tax Planning Activity, during which time the U.S. Trustee or any such statutory committee may object to such Tax Planning Activities and request a hearing before the Court.

7. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to Audits that have been completed, are in progress, or arise from prepetition periods.

8. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in

(Page | 6)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

---

interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in the Motion or this Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

10. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

11. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

(Page | 7)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER AUTHORIZING THE PAYMENT OF CERTAIN TAXES AND FEES

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12. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

14. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

15. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

16. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

**Exhibit C**

**Authorities**

<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Income Tax	Arizona Department of Revenue	Arizona Department of Revenue PO Box 29085 Phoenix, AZ 85038
Income Tax	California Franchise Tax Board	Franchise Tax Board PO Box 942857 Sacramento, CA 94257-0501
Income Tax	Colorado Department of Revenue	Colorado Department of Revenue Denver, CO 80261-0004
Income Tax	Connecticut Department of Revenue Services	Connecticut Department of Revenue Services P.O. Box 2977 Hartford, CT 06104-2977
Income Tax	District of Columbia Office of Tax and Revenue	Office of Tax and Revenue PO Box 96019 Washington, DC 20090-6019
Income Tax	Florida Department of Revenue	Florida Department of Revenue 5050 W Tennessee Street Tallahassee, FL 32399-0135
Income Tax	Georgia Department of Revenue	Georgia Dept. of Revenue PO Box 740397 Atlanta, GA 30374-0397
Income Tax	State of Hawaii – Department of Taxation	Hawaii Department of Taxation PO Box 1530 Honolulu, HI 96806-1530
Income Tax	Idaho State Tax Commission	Idaho State Tax Commission PO Box 56 Boise, ID 83756-0056
Income Tax	Illinois Department of Revenue	Illinois Department of Revenue PO Box 19038 Springfield, IL 62794-9038
Income Tax	Indiana Department of Revenue	Indiana Department of Revenue PO Box 7224 Indianapolis, IN 46207-7224

<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Income Tax	Kansas Department of Revenue	Kansas Department of Revenue PO Box 750260 Topeka, KS 66699-0260
Income Tax	Kentucky Department of Revenue	Kentucky Department of Revenue Frankfort, KY 40620-0021
Income Tax	Maine Revenue Services	Maine Revenue Services PO Box 1064 Augusta, ME 04332
Income Tax	Maryland Department of Revenue	Comptroller Of Maryland Revenue Administration Division 110 Carroll Street Annapolis, Maryland 21411-0001
Income Tax	Massachusetts Department of Revenue	Mass. DOR PO Box 7025 Boston, MA 02204
Income Tax	Michigan Department of Treasury	Michigan Department of Treasury PO Box 30804 Lansing, MI 48909
Income Tax	Minnesota Department of Revenue	Minnesota Revenue Mail Station 5140 600 N. Robert St. St. Paul, MN 55146-5140
Income Tax	Missouri Department of Revenue	Missouri Department of Revenue PO Box 3365 Jefferson City, MO 65105-3365
Income Tax	Nebraska Department of Revenue	Nebraska Department of Revenue PO Box 94818 Lincoln, NE 68509-4818
Income Tax	New Hampshire Department of Revenue Administration	New Hampshire Department of Revenue Administration PO Box 1265 Concord, NH 03302
Income Tax	New Jersey Division of Taxation	NJ Division of Taxation PO Box 248 Trenton, NJ 08646-0248



Tax Type	Tax Authority	Address
Income Tax	NYS Corporation Tax	NYS Corporation Tax PO Box 15180 Albany, NY 12212-5180
Income Tax	NYC Department of Finance	NYC Department of Finance PO Box 3653 New York, NY 10008-3653
Income Tax	Oregon Department of Revenue	Oregon Department of Revenue PO Box 14780 Salem, OR 97309
Income Tax	Rhode Island Division of Taxation	RI Division of Taxation One Capitol Hill Providence, RI 02908
Income Tax	South Carolina Department of Revenue	South Carolina Department of Revenue Corporate Taxable PO Box 100151
Income Tax	Alabama Department of Revenue	Alabama Department of Revenue Business Privilege Tax Section PO Box 327320 Montgomery, AL 36132-7320
Income Tax	City of Bowling Green, Kentucky Treasury	City of Bowling Green PO Box 1410 Bowling Green, KY 42102-1410
Income Tax	Louisiana Department of Revenue	Louisiana Department of Revenue PO Box 3138 Baton Rouge, LA 70821
Income Tax	Mississippi Secretary of State	Mississippi Secretary of State Business Service 125 S. Congress Street Jackson, MS 39201
Income Tax	North Carolina Department of Revenue	N.C. Department of Revenue PO Box 25000 Raleigh, NC 27640-0520
Income Tax	Pennsylvania Department of Revenue	Pennsylvania Department of Revenue PO Box 280427 Harrisburg, PA 17128-0427

Tax Type	Tax Authority	Address
Income Tax	Tennessee Department of Revenue	Tennessee Department of Revenue Andrew Jackson State Office Building 500 Deaderick Street Nashville, TN 37242
Income Tax	Utah State Tax Commission	Utah State Tax Commission 210 N 1950 W Salt Lake City, UT 84134-0300
Income Tax	Virginia Department of Taxation	Virginia Department of Taxation PO Box 760 Richmond, VA 23218-0760
Income Tax	Wisconsin Department of Revenue	Wisconsin Department of Revenue PO Box 3028 Milwaukee, WI 53201
Sales and Use Tax	California Department of Tax and Fee Administration	California Department of Tax and Fee Administration PO Box 942879 Sacramento, CA 94279-8062
Sales and Use Tax	Georgia Department of Revenue	Georgia Dept. of Revenue PO Box 105408 Atlanta, GA 30348
Sales and Use Tax	North Carolina Department of Revenue	N.C. Department of Revenue PO Box 25000 Raleigh, NC 27640-0520
Property Tax	San Francisco Treasurer and Tax Collector	Office of the Treasurer & Tax Collector PO Box 7426 San Francisco, CA 94120-7426
Property Tax	County of Orange Treasurer and Tax Collector	County of Orange Attn: Treasurer-Tax Collector PO Box 1438 Santa Ana, CA 92702-1438
Property Tax	County of Santa Clara Department of Tax and Collections	Department of Tax and Collections 110 West Tasman Drive San Jose, CA 95134-1700
Property Tax	Alameda County Treasurer and Tax Collector	Alameda County Treasurer & Tax Collector 1221 Oak Street, Room 131 Oakland, CA 94612

<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Property Tax	San Diego County Treasurer and Tax Collector	San Diego County Admin. Center San Diego, CA 92101
Property Tax	Jefferson County Treasurer	Jefferson County Treasurer 100 Jefferson County Pkwy, Ste 2520 Golden, CO 80419-2520
Property Tax	Boulder County Treasurer	Boulder County Treasurer PO Box 471 Boulder, CO 80306-0471
Property Tax	Wake County Tax Administration	Wake County Tax Administration PO Box 2331 Raleigh, NC 27602
Property Tax	King County Treasury	King Street Center 201 South Jackson Street #710 Seattle, WA 98104
Foreign Tax	Australian Taxation Office	Australian Taxation Office PO Box 9977 Civic Square ACT 2608, Australia
Foreign Tax	India Income Tax Department	409-410 Ashoka Estate Building Barakhamba Road New Delhi, India
Foreign Tax	Brazil Ministry of Finance	Esplanada dos Ministérios-Bloco P 3rd Floor 70048-900 Brasília-DF, Brazil
Foreign Tax	Canada Revenue Agency	9755 King George Boulevard Surrey BC V3T 5E1, Canada
Foreign Tax	National Tax Agency Japan	3-1-1 Kasumigaseki Chiyoda-ku Tokyo 100-8978, Japan
Foreign Tax	Israel Tax Authority	125 Menachem Begin Road Tel Aviv 6701201, Israel

Tax Type	Tax Authority	Address
Foreign Tax	Belastingdienst / Apeldoorn	Belastingdienst / Apeldoorn Postbus 90358 1006 BJ, Amsterdam, Netherlands
Foreign Tax	Inland Revenue Authority of Singapore	55 Newton Road Revenue House Singapore 307987
Foreign Tax	Federal Public Service Finances of Belgium	Boulevard du Roi Albert II 33 1030 Bruxelles, Belgium
Foreign Tax	Latvia State Revenue Service	Talejas iela 1 Vidzemes Priekšpilsēta Rīga, LV-1014, Latvia
Franchise Tax	State of Delaware – Division of Corporations	Division of Corporations John G. Townsend Bldg. 401 Federal Street, – Suite 4 Dover, DE 19901
Franchise Tax	Washington State Department of Revenue	Washington State Department of Revenue Executive Office PO Box 47450 Olympia, WA 98504-7450
Franchise Tax	Ohio Department of Taxation	Ohio Department of Taxation PO Box 182101 Columbus, OH 43218
Franchise Tax	City and County of San Francisco Treasurer-Tax Collector	Office of the Treasurer & Tax Collector PO Box 7426 San Francisco, CA 94120-7426 1 Dr Carlton B Goodlett Pl San Francisco, CA 94102
Regulatory and Other Tax and Fee	California Department of Tax and Fee Administration	California Department of Tax and Fee Administration 3321 Power Inn Road, Suite 250 Sacramento, CA 95826-3893
Regulatory and Other Tax and Fee	New York Stock Exchange	New York Stock Exchange 11 Wall Street New York, NY 10005
Regulatory and Other Tax and Fee	California Department of Public Health	California Department of Public Health Division of Laboratory Science Laboratory Field Services 320 W 4th St Suite 890 Los Angeles, CA 90013-2398

<b>Tax Type</b>	<b>Tax Authority</b>	<b>Address</b>
Regulatory and Other Tax and Fee	US Patent and Trademark Office	US Patent and Trademark Office 600 Dulany Street Alexandria, Virginia 22314
Regulatory and Other Tax and Fee	College of American Pathologists	College of American Pathologists 325 Waukegan Road Northfield, IL 60093-2750
Regulatory and Other Tax and Fee	NYS Department of Health	NYS Department of Health Clinical Laboratory Evaluation Program Biggs Laboratory Wadsworth Center NYS Department of Health Empire State Plaza Albany, NY 12237
Regulatory and Other Tax and Fee	Pennsylvania Department of Health	Pennsylvania Department of Health Bureau of Laboratories 110 Pickering Way Exton, PA 19341
Regulatory and Other Tax and Fee	Rhode Island Department of Health	Rhode Island Department of Health Division of Facilities Regulation 3 Capitol Hill, Room 306 Providence, RI 02908
Regulatory and Other Tax and Fee	New Jersey Department of Health	New Jersey Department of Health Clinical Laboratory Improvement Service P.O. Box 361 Trenton, NJ 08625-0361