

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C. (*pro hac vice* pending)
Nicole L. Greenblatt, P.C. (*pro hac vice* pending)
Francis Petrie (*pro hac vice* pending)
Jeffrey Goldfine (*pro hac vice* pending)
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.
Court Plaza North, 25 Main Street
Hackensack, New Jersey 07601
Telephone: (201) 489-3000
msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com

-and-

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Spencer A. Winters, P.C. (*pro hac vice* pending)
300 North LaSalle
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*

*Proposed 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)

(Joint Administration Requested)

**DECLARATION OF ANDREW SWIFT IN SUPPORT
OF THE DEBTORS' BIDDING PROCEDURES MOTION**

I, Andrew Swift, hereby declare under penalty of perjury:

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' proposed claims and noticing agent at www.kccllc.net/invitae. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



1. I am a Managing Director at Moelis & Company LLC (“Moelis”), an investment banking firm with principal offices located at 399 Park Avenue, New York, New York, 10022. Moelis is the proposed investment banker for the debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases.

2. I submit this declaration in support of the *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*, filed contemporaneously herewith (the “Motion”),² specifically as it relates to the Debtors’ process to market the Assets.

3. Although Moelis is expected to be compensated for its work as the Debtors’ proposed investment banker in these chapter 11 cases, I am not being compensated separately for this declaration (this “Declaration”) or testimony. Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, the information provided to me by Moelis professionals involved in advising the Debtors in these chapter 11 cases, or information provided to me by the Debtors. If called upon to testify, I could and would testify to the facts set forth herein on that basis. I am over the age of eighteen years, and I am authorized to submit this Declaration.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion, the Bidding Procedures Order, the Bidding Procedures, or the First Day Declaration, each filed contemporaneously herewith, as applicable.

Qualifications

4. I have more than eleven years of investment banking experience. I have led engagement teams in complex bankruptcies and reorganizations across a broad spectrum of industries in a variety of capacities. In particular, I have provided services to debtors and other constituencies in numerous restructurings, including, among others, *In re Diamond Sports Group LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. 2023), *In re Cyxtera Technologies, Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. 2023), *In re Genesis Global Holdco, LLC*, No. 23-10063 (SHL) (Bankr. S.D.N.Y. 2023), *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. 2019), *In re Mattress Firm, Inc.*, No. 18-12241 (CSS) (Bankr. D. Del. 2018), *In re CJ Holding Co.*, No. 16-33590 (DRJ) (Bankr. S.D. Tex. 2016), and *In re Trinity Coal Corporation*, No. 13-50364 (TNW) (Bankr. E.D. Ky. 2013).

5. I have been with Moelis since the start of my career. I hold a Bachelor of Arts in history from the University of Michigan.

The Retention of Moelis

6. Moelis has been engaged as investment banker to Debtor Invitae Corporation (“Invitae”) since September 1, 2023. Since being engaged by Invitae, Moelis has rendered investment banking advisory services to Invitae in connection with Invitae’s evaluation of financing and strategic alternatives. Additionally, Moelis has worked with Invitae’s management and other professionals retained by Invitae, and has become familiar with Invitae’s capital structure, financial condition, liquidity needs, and business operations.

The TSA

7. As more fully described 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”), prior to the commencement of these chapter 11 cases, the

Debtors reached an agreement in principle with the Required Holders, represented by Sullivan & Cromwell LLP, as legal counsel, and Perella Weinberg Partners L.P., as investment banker, regarding the terms of a broad restructuring transaction, memorialized in that certain Transaction Support Agreement, attached as Exhibit A to the First Day Declaration (the “TSA”). The TSA contemplates a potential sale transaction of all, substantially all, or any portion of the Debtors’ assets (the “Assets,” and such transaction, the “Sale Transaction”) that will follow the conclusion of a robust marketing process designed to generate the highest or otherwise best possible bids, which will be followed by a chapter 11 plan that will have the support of the Required Holders. The TSA supports an in-court continuation of the Debtors’ prepetition marketing process and includes milestones for an expedited timeline that will allow the Debtors to move through these chapter 11 cases quickly and efficiently.

The Marketing Process

8. Prior to the commencement of these chapter 11 cases, on or about December 14, 2023, in accordance with the Second Supplemental Indenture, the Debtors, with the assistance of Moelis and their other advisors, launched a process to solicit proposals for a Sale Transaction. During this prepetition marketing process (the “Marketing Process”), the Debtors dedicated substantial time and effort to conducting outreach to a select group of strategic investors. The Debtors, in consultation with Moelis, determined which parties to contact based upon, among other criteria, the parties’ involvement in the healthcare sector, potential capacity to consummate a large-scale transaction (particularly given certain regulatory considerations), and industry knowledge and experience.

9. The Debtors, with Moelis’ assistance, prepared a confidential information memorandum with extensive information on the Assets and populated a virtual data room containing significant diligence documentation. The Debtors, with the assistance of Moelis, then

reached out to a group of twenty-five (25) parties, comprising strategic investors experienced in investing in the healthcare sector in addition to certain special situations investors. Outreach included nineteen (19) introductory calls, execution of thirteen (13) non-disclosure agreements with access granted to virtual data rooms, financial models, and business segment standalone models, and the granting of further access to clean team virtual data rooms to a subset of these parties.

10. In January 2024, efforts to identify a potential buyer intensified and diligence continued. The Debtors and Moelis shared diligence materials and financial projections, discussed the structuring of potential transactions, and conducted in-person or telephonic meetings with certain of the strategic investors and the Debtors' management. As the Marketing Process progressed, Moelis and the Debtors' other advisors kept the Required Holders and the 2028 Convertible Noteholders advised of important developments and took input from them on the Marketing Process where appropriate. However, based on the proposals and initial indications of interest received by Moelis and the Debtors, it became apparent that the Marketing Process was unlikely to yield a Sale Transaction partner that could facilitate an out-of-court Sale Transaction. Thus, the Debtors determined that pivoting to an in-court Sale Transaction as contemplated by the TSA was the best option available to reach a value-maximizing transaction.

11. With the foundation for a successful marketing process in place and several proposals indicative of a competitive auction in hand, the Debtors plan to utilize chapter 11 to "market test" the interest they have received to attempt to consummate a Sale Transaction for the highest or otherwise best possible bid in an effort to maximize value for all stakeholders. Accordingly, the Marketing Process will continue during these cases so that the Debtors can determine if and which of its potential purchasers should be signed up as a Stalking Horse Bidder,

host an auction (the “Auction”), if necessary, and solicit the highest or otherwise best possible bid in an effort to maximize value for the Debtors’ estates and exit these chapter 11 cases as quickly as possible.

The Bidding Procedures

12. As described in the Motion, the Debtors seek approval of the Bidding Procedures to establish an open process for the solicitation, receipt, and evaluation of bids in a fair, accessible, and expeditious manner. The Bidding Procedures will facilitate the continuation of an ongoing marketing process to solicit interest in a Sale Transaction, which process the Debtors have been diligently progressing with the assistance of Moelis.

13. I understand from my conversations with the Debtors’ management and other advisors that the timeline set forth in the Bidding Procedures and laid out below is calculated to balance the need to provide adequate notice to Potential Bidders with the need to run an expeditious and efficient sale process and comply with the milestones set forth in the TSA. I also understand from my conversations with the Debtors’ management and other advisors that the Bidding Procedures are designed to generate the highest or otherwise best available recoveries for the Debtors’ stakeholders by encouraging prospective bidders to submit competitive, value-maximizing bids. I believe that the Bidding Procedures and the timeline set forth therein will appropriately market the Assets and provide interested parties with sufficient opportunity to participate. Importantly, I understand that the Bidding Procedures recognize the Debtors’ fiduciary obligations to seek to maximize value, and, as such, do not impair the Debtors’ ability to consider all Qualified Bid proposals, and preserve the Debtors’ right to modify the Bidding

Procedures in accordance with their terms as necessary or appropriate to seek to maximize value for the Debtors’ estates.

14. The Debtors are seeking approval of the following proposed timeline for the Sale Transaction (the dates set forth below, the “Sale Schedule”) to establish a clear and open process for the solicitation, receipt, and evaluation of third-party bids on a timeline that allows the Debtors to seek to consummate a Sale Transaction that is value maximizing:

The Sale Schedule		
Action	Description	Deadline
Stalking Horse Deadline	The deadline by which the Debtors may choose a Stalking Horse Bidder and enter into a Stalking Horse APA.	March 29, 2024, at 4:00 p.m., prevailing Eastern Time.
Stalking Horse Notice Deadline (if applicable)	The deadline by which the Debtors must file a Stalking Horse Notice.	Within two (2) business days after entry into a Stalking Horse APA.
Bid Deadline	The deadline by which all binding Bids must be actually received pursuant to the Bidding Procedures.	April 10, 2024, at 4:00 p.m., prevailing Eastern Time.
Auction (if any)	The date and time of the Auction, if one is needed, which will be held at the offices of Kirkland & Ellis, LLP, 601 Lexington Avenue, New York, New York, 10022.	April 17, 2024, at 10:00 a.m. prevailing Eastern Time, if needed.
Notice of Successful Bidder	Within two (2) business days upon the conclusion of the Auction, the Debtors will file on the docket, but not serve, the Notice of Successful Bidder, identifying the applicable Successful Bidder, Assets, and key terms of the agreement.	Within two (2) business days upon the conclusion of the Auction (if any).
Sale Objection and Adequate Assurance of Future Performance Objection Deadline	The deadline by which objections to the Successful Bidder and Sale Transactions, if any, or to dispute the ability of the Successful Bidder to provide adequate assurance of future performance with respect to any Executory Contract or Unexpired Lease, must be made.	April 28, 2024, at 4:00 p.m., prevailing Eastern Time.
Sale Hearing	The hearing, if any, before the Court to consider approval of the Successful Bid or Successful Bids, pursuant to which the Debtors and the Successful Bidder or Successful Bidders will consummate the Sale Transaction(s).	May 2, 2024, or as soon thereafter as the Debtors may be heard.

15. I understand that the Debtors, in their business judgment, reserve the right to alter the timing of the Sale Schedule as necessary under the circumstances, or to conduct multiple Sale

Transactions across one or more Auctions in order to seek to maximize the value of their estates, in each case in accordance with the Bidding Procedures.

16. Additionally, I understand that the Debtors also seek authorization of certain Bid Protections. Specifically, the Debtors seek approval of a break-up fee and expense reimbursement in an aggregate amount combined not to exceed three (3) percent of the Purchase Price in the event the Debtors decide in their business judgement to offer the Bid Protections to a Stalking Horse Bidder in connection with a Stalking Horse APA. I understand that to the extent a Stalking Horse Bidder submits a Credit Bid, the Bid Protections shall not be permitted.

The Proposed Bidding Procedures, Bid Protections, and Sale Schedule are Reasonable

17. Based on my experience, I believe that the proposed Bidding Procedures are designed with an intent to seek to maximize the value received for the Assets under the circumstances by facilitating an open and competitive bidding process in which Potential Bidders are encouraged to participate and submit competing bids within the specified timeframe (and within the timeframe required by the milestones in the TSA).

18. Additionally, given the anticipated duration and scope of the Debtors' contemplated marketing process (taking into account both the prepetition process described above, as well as the postpetition marketing process contemplated), it is my view, based on my experience, that the proposed Bidding Procedures, including, without limitation, the Sale Schedule and Bid Protections, are reasonable under the circumstances of these chapter 11 cases.

19. With respect to the Sale Schedule, as noted above, the Debtors, with the assistance of Moelis, initially reached out to a group of strategic investors and special situations investors over two months ago and will continue the Marketing Process with respect to those strategic parties, including any such parties who previously declined to pursue a bid, as well as any other parties who express interest in the Assets. In my opinion, the Sale Schedule provides appropriate

time for the Debtors to run their comprehensive marketing process, receive and evaluate bids, and, if necessary, hold an Auction. The proposed dates and deadlines are critical to the Debtors' efforts to drive their restructuring to an efficient and value-maximizing resolution, particularly in light of the Debtors' liquidity constraints, which necessitate a timely process. Under the circumstances of these cases, I believe that, based on my experience, this timeline, although expedited with respect to the continued postpetition marketing efforts, provides the Debtors with an appropriate amount of time to conduct a marketing process for the Assets and to solicit and identify competitive, value-maximizing bids.

20. To the extent the Debtors seek to appoint a Stalking Horse Bidder, the Bid Protections identified in the Motion are, in my view and based on my experience, customary and reasonable and are in line with bid protections that stalking horse bidders typically require in similar situations based on fee comparisons reviewed by myself and the Moelis team. In the event the Debtors seek to appoint a Stalking Horse Bidder, such appointment will be sought on notice to parties in interest in these chapter 11 cases. I believe that the allowance of the Bid Protections is in the best interest of the Debtors' estates and their creditors, as a Stalking Horse Bidder, if designated, would establish a floor for bidding that may ultimately increase the consideration received by Debtors in exchange for the Assets. I believe the ability to appoint a Stalking Horse Bidder and provide such bidder with Bid Protections provides the Debtors the necessary flexibility to pursue a value maximizing transaction.

21. Furthermore, I understand that the Bidding Procedures and Sale Schedule were heavily negotiated with the Required Holders as part of the TSA. In my view, and based on observations made by myself and members of the Moelis team who participated in and observed such negotiations, I believe that such negotiations were conducted at arm's length and in good

faith, and that the Bidding Procedures and Sale Schedule are reasonable under the circumstances of these chapter 11 cases.

[Remainder of page intentionally left blank.]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: February 14, 2024

/s/ Andrew Swift

Name: Andrew Swift

Title: Managing Director

Moelis & Company LLC