



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)

Order Filed on February 16, 2024  
by Clerk  
U.S. Bankruptcy Court  
District of New Jersey

**INTERIM ORDER  
(I) AUTHORIZING THE DEBTORS  
TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) CRITICAL VENDORS, (B) 503(B)(9) CLAIMANTS, (C) LIEN  
CLAIMANTS AND (D) FOREIGN VENDORS, AND (II) CONFIRMING  
ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS**

The relief set forth on the following pages, numbered three (3) through ten (10), is  
**ORDERED.**

**DATED: February 16, 2024**

  
Honorable Michael B. Kaplan  
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.



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**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

-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

**COLE SCHOTZ P.C.**

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Daniel J. Harris, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

Telephone: (201) 489-3000

msirota@coleschotz.com

wusatine@coleschotz.com

fyudkin@coleschotz.com

dharris@coleschotz.com

*Proposed Co-Counsel for Debtors and Debtors in Possession*

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Upon the *Debtors' Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (A) Critical Vendors, (B) 503(b)(9) Claimants, (C) Lien Claimants, and (D) Foreign Vendors and (II) Confirming Administrative Expense Priority of Outstanding Orders* (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 pay prepetition amounts in the ordinary course owing on account of (i) Critical Vendors, (ii) 503(b)(9) Claimants, (iii) Lien Claimants, and (iv) Foreign Vendors; (b) confirming the administrative expense priority status of Outstanding Orders and authorizing the payment of such obligations in the ordinary course of business; and (c) 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

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

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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 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 **March 15, 2024, at 10:00 a.m. (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 committees appointed in these chapter 11 cases, on or before **March 8, 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. Subject to the Approved Budget and to this Interim Order, the Debtors are authorized to pay the prepetition Trade Claims described in the Motion, in an aggregate amount not to exceed \$9.31 million on an interim basis as set forth in the categories and amounts in the Motion.
4. The Debtors are authorized to condition payment of Trade Claims upon each Trade Claimant's written agreement to (a) continue—or recommence—providing goods and services to

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the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve (12) months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the “Customary Trade Terms”), and (b) agree that such specified Trade Claimants shall not cancel on less than ninety (90) days’ notice any contract or agreement pursuant to which they provide goods or services to the Debtors. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. The Debtors reserve the right to require, in their sole discretion, that the Customary Trade Terms be made in writing, including by email, as a condition to payment.

5. Subject to the Approved Budget, the Debtors are authorized to permit the setoff of any prepetition cash deposits held by a Trade Claimant against prepetition obligations. Solely for the purposes of determining compliance with the amounts set forth in the Motion and in the Approved Budget, any payment of prepetition claims to a Trade Claimant by the Debtors shall be subtracted by the amount of any prepetition deposit released to the Debtors in connection therewith.

6. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Interim Order including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category, nature, or type of payment; (d) the payment due; and (e) the Debtor or Debtors that made the payment. The Debtors shall provide a copy of such matrix/schedule to (i) the U.S. Trustee, (ii) Sullivan & Cromwell LLP,

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as counsel to the Required Holders, and (iii) counsel to any statutory committees appointed in these chapter 11 cases, every thirty (30) days beginning upon entry of this Interim Order.

7. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code; *provided* however that the Debtors can terminate any Outstanding Orders prior to delivery and any canceled orders are not afforded administrative priority.

8. Subject to the Approved Budget, the Debtors are authorized to pay all undisputed amounts relating to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

9. Prior to entry of a Final Order, the Debtors shall not pay any obligations under this Interim Order unless they are due and deemed necessary to be paid in the Debtors' reasonable business judgment to ensure ongoing provision of goods or services or otherwise to avoid an adverse effect on operations.

10. Any party that accepts payment from the Debtors on account of a Trade Claim or any of the obligations of the kind set forth in the Motion shall be provided with a copy of this Interim Order and shall be deemed to have agreed to the terms and provisions of this Interim Order.

11. Regardless of whether the parties have agreed in writing that Customary Trade Terms are a condition to payment, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as the Customary Trade Terms then, subject to the entry of the Final Order on the

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Motion from this Court: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to immediately repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

12. Nothing herein shall impair or prejudice the ability of the Debtors and any other party in interest to contest, in their discretion, the extent, perfection, priority, validity, or amounts of the Trade Claims. Neither the Debtors nor any party in interest concede that any claims satisfied pursuant to this Interim Order are valid, and the Debtors and all parties expressly reserve all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.

13. 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

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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 except as otherwise provided in 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; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief authorized in this Interim Order are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. Nothing herein shall impair or prejudice the rights of the U.S. Trustee or any statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this Interim Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or any affiliate of an insider to the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall provide five (5) business days' advance notice to, and opportunity to



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object by, the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; *provided* that if any party objects to a payment, the Debtors shall not make such payment without further order of this Court.

15. 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.

16. 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.

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

18. 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.

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

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

21. 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.

22. 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.

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

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