

**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
Joshua A. Sussberg, P.C. (admitted *pro hac vice*)  
Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)  
Francis Petrie (admitted *pro hac vice*)  
Jeffrey Goldfine (admitted *pro hac vice*)  
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.  
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

-and-

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Spencer A. Winters, P.C. (admitted *pro hac vice*)  
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.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**NOTICE OF HEARING  
ON DEBTORS' MOTION FOR  
ENTRY OF AN ORDER AUTHORIZING  
(I) REJECTION OF THAT CERTAIN UNEXPIRED LEASE OF  
NON-RESIDENTIAL REAL PROPERTY AND (II) ABANDONMENT OF**

<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' 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.



**ANY PERSONAL PROPERTY, EFFECTIVE AS OF THE REJECTION DATE**

**PLEASE TAKE NOTICE** that a hearing on the *Debtors' Motion for Entry of an Order Authorizing (I) Rejection of That Certain Unexpired Lease of Non-Residential Real Property and (II) Abandonment of Any Personal Property, Effective as of the Rejection Date* (the "Lease Rejection Motion") will be held on **April 8, 2024 at 10:00 a.m. (prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the "Hearing") before the Honorable Chief Judge Michael B. Kaplan, Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom 8, Trenton, NJ 08608.

**PLEASE TAKE FURTHER NOTICE** that the Lease Rejection Motion sets forth the relevant factual bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Lease Rejection Motion is also submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that Objections, if any, to the relief requested in the Lease Rejection Motion shall: (a) be in writing; (b) state with particularity the basis of the objection; and (c) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002 (the "General Order") and the Commentary Supplementing Administrative Procedures dated as of March 2004 (the "Supplemental Commentary") (the General Order, the Supplemental Commentary and the User's Manual for the Electronic Case Filing System can be found at [www.njb.uscourts.gov](http://www.njb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties-in-interest, on CD-ROM in Portable Document Format (PDF), and shall be served in accordance with the General Order and the Supplemental Commentary, so as to be received on or before **April 1, 2024 at 4:00 p.m. (prevailing Eastern Time)**.

**PLEASE TAKE FURTHER NOTICE** that only those responses or objections that are timely filed, served, and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Motion as requested by the Debtors.

**PLEASE TAKE FURTHER NOTICE** that unless objections are timely filed and served, the Lease Rejection Motion shall be decided on the papers in accordance with D.N.J. LBR 9013-3(d) and the relief requested may be granted without further notice or hearing.

**PLEASE TAKE FURTHER NOTICE** that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at [www.kcellc.net/invitae](http://www.kcellc.net/invitae). You may also obtain copies of any pleadings by visiting the Court's website at <https://www.njb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: February 29, 2024

*/s/ Michael D. Sirota*

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Felice R. Yudkin, Esq.  
Daniel J. Harris, Esq.  
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Hackensack, New Jersey 07601  
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**UNITED STATES BANKRUPTCY COURT  
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In re:  
  
INVITAE CORPORATION, *et al.*,  
  
Debtors.<sup>1</sup>

Chapter 11  
  
Case No. 24-11362 (MBK)  
  
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**DEBTORS' MOTION FOR  
ENTRY OF AN ORDER AUTHORIZING  
(I) REJECTION OF THAT CERTAIN UNEXPIRED LEASE OF  
NON-RESIDENTIAL REAL PROPERTY AND (II) ABANDONMENT OF**

<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' 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.

**ANY PERSONAL PROPERTY, EFFECTIVE AS OF THE REJECTION DATE**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

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

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), authorizing (a) the rejection of that certain unexpired lease, including any guaranties thereof and any amendments, modifications, supplements, or subleases thereto (the “Lease”), as set forth on Schedule 1 to **Exhibit A** attached hereto, and (b) the abandonment of certain equipment, fixtures, furniture, or other personal property that might be located at the premises and not otherwise transitioned to another laboratory or office space (collectively, the “Personal Property”), effective as of the rejection date listed on Schedule 1 to the 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, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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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”) [Docket No. 21]. Capitalized terms used but not immediately defined are defined later in this Motion or in the First Day Declaration.

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), 365(a), and 554(a) of title 11 of the United States Code (the “Bankruptcy Code”), rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1 of the Local Rules of the United States Bankruptcy Court 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. A detailed description of the Debtors, their businesses, and the facts and circumstances supporting the Debtors’ chapter 11 cases are set forth in greater detail in the First Day Declaration and incorporated by reference herein.

6. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 16, 2024, the Court entered an order [Docket No. 54] authorizing 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.

### **Lease to Be Rejected**

7. In preparation for the filing of these cases, the Debtors, with the assistance of their advisors, undertook a comprehensive review of their lease portfolio, including an analysis of each of their laboratories and office spaces. The Debtors have determined in their business judgment that the costs incurred under certain Leases constitute an unnecessary burden on the Debtors’ enterprise and that the value of the Debtors’ reorganized business would be maximized by rejecting such Leases.

8. The Debtors seek to reject the Lease, set forth on Schedule 1 to **Exhibit A**, to be effective as of the later of (a) the rejection date set forth in Schedule 1 or (b) the date the Debtors relinquish control of the premises associated therewith (the “Premises”) by notifying the affected landlord in writing, with email being sufficient, of the Debtors’ surrender of the Premises and (i) turning over keys, key codes, and security codes, if any, to the affected landlord or (ii) notifying the affected landlord in writing, with email being sufficient, that the keys, key codes, and security codes, if any, are not available, but that the landlord may rekey the Premises (the “Rejection Date”).

9. The rejection of the Lease is critical for the Debtors to efficiently administer their estates during the pendency of these chapter 11 cases. As of the Rejection Date, the Debtors will have vacated the Premises related to the Lease sought to be rejected by this Motion. Therefore, absent rejection, the Debtors would be obligated to pay rent under the Lease even though they will have ceased operations at, and will no longer be in possession of, such Premises. Moreover, in addition to their obligations to pay rent under the Lease, the Debtors may be obligated to pay certain real property taxes, utilities, insurance, and other related charges associated with the Lease.

10. The Debtors’ lease portfolio has been, and continues to be, a significant source of cash burn. The Debtors can avoid unnecessary rent payments and related charges through prompt rejection of such Lease. By rejecting the Lease, the Debtors anticipate that they will save approximately \$110 million in anticipated go-forward base rent over the remaining term of the Lease, *plus* associated maintenance costs and taxes, thereby preserving significant value for the Debtors’ estates. Furthermore, the Debtors have determined in their business judgment that the cost of the Lease outweigh any current benefits or marginal benefits that could possibly be achieved from assignments or subleases of the Lease. Rejection of the Lease as of the respective



Rejection Date is warranted under the facts and circumstances. Accordingly, the Debtors respectfully request the Court grant the relief requested herein.

### **Personal Property to Be Abandoned**

11. To the extent that any Personal Property is located at the Premises, the Debtors will evaluate such remaining Personal Property located at the Premises and determine whether (a) the Personal Property is of inconsequential value or (b) the cost of removing, transporting, and storing the Personal Property for future use, marketing, or sale exceeds its value to the Debtors' estates.

12. Accordingly, to reduce postpetition administrative costs and, in the exercise of the Debtors' sound business judgment, the Debtors believe that the abandonment of Personal Property located at the Premises, if any, is appropriate and in the best interests of the Debtors, their estates, and their creditors.

### **Basis for Relief**

#### **I. Rejection of the Lease Reflects the Debtors' Sound Business Judgment and Is in the Best Interest of the Debtors' Estates.**

13. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The decision to assume or reject executory contracts or unexpired leases is a matter within the "business judgment" of the debtor. *See NLRB v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982) *aff'd*, 465 U.S. 513 (1984) ("The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test." (citation omitted)); *see also Glenstone Lodge, Inc. v. Buckhead Am. Corp. (In re Buckhead Am. Corp.)*, 180 B.R. 83, 88 (D. Del. 1995). Application of the business judgment standard requires a court to approve a debtor's business decision unless the decision is the product of bad faith, whim, or caprice. *See, e.g., In re HQ Glob. Holdings, Inc.*, 290 B.R. 507,

511–12 (Bankr. D. Del. 2003). Further, “[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citation omitted).

14. Rejection of a contract or unexpired lease is appropriate where such rejection would benefit the estate. *See Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 39–40 (3d Cir. 1989). Upon finding that a debtor has exercised its sound business judgment in determining that rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under section 365(a). *See In re Fed. Mogul Glob., Inc.*, 293 B.R. 124, 126 (D. Del. 2003); *In re Bradlees Stores, Inc.*, 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996), *appeal dismissed*, 210 B.R. 506 (S.D.N.Y. 1997); *In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that absent extraordinary circumstances, court approval of a debtor’s decision to assume or reject an executory contract “should be granted as a matter of course”).

15. Rejection of the Lease is well within the Debtors’ business judgment and is in the best interest of their estates. The Debtors seek to reject the Lease, pursuant to section 365(a) of the Bankruptcy Code, to avoid the incurrence of any additional unnecessary expenses related to the Lease and the maintenance of the Premises. The Debtors have concluded that the costs of maintaining the Premises outweigh any revenue that such Premises currently generates or that they are likely to generate in the near future. Absent rejection, the Lease will continue to burden the Debtors’ estates with meaningful administrative rent and related expenses, without sufficient marginal revenue to justify the incurrence of such costs. Rejecting the Lease will help increase the Debtors’ liquidity and otherwise facilitate the efficient administration of the Debtors’ estates.

16. Moreover, the Debtors have determined that there is no net benefit likely to be realized from efforts to market the Lease for potential assignment or sublease, and that there is little if any likelihood that the Debtors will be able to realize value from the Lease. Accordingly, the Debtors have determined that the Lease constitutes an unnecessary drain on the estates' resources and, therefore, rejection of the Lease reflects the Debtors' exercise of sound business judgment and is in the best interests of the Debtors' estates, creditors, and other parties in interest.

**II. Abandonment of Any Personal Property Is Authorized by Section 554(a) of the Bankruptcy Code.**

17. The abandonment of the Personal Property is appropriate and authorized by the Bankruptcy Code. *See* 11 U.S.C. § 554(a). Section 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” Courts generally give a debtor in possession great deference to its decision to abandon property. *See, e.g., In re Vel Rey Props., Inc.*, 174 B.R. 859, 867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). The right to abandon property is virtually unfettered, unless: (a) abandonment of the property will contravene laws designed to protect public health and safety; or (b) the property poses an imminent threat to the public’s welfare. *See In re Midlantic Nat’l Bank*, 474 U.S. 494, 501 (1986). Neither of these limitations are relevant under the instant facts.

18. Before deciding to abandon the Personal Property, if any, the Debtors will determine whether the costs of removing, transporting, and storing such Personal Property outweigh any benefit to the Debtors’ estates. Further, any efforts by the Debtors to move or market the Personal Property could unnecessarily delay the Debtors’ surrender of the Premises and the rejection of the Lease giving rise to additional incurrence of administrative rent and other lease

obligations. Accordingly, it is in the best interests of the Debtors and their estates for the Debtors to abandon Personal Property located on the Premises.

### **III. Rejection of the Lease as of the Rejection Date Is Appropriate.**

19. Section 365 of the Bankruptcy Code does not restrict a bankruptcy court from applying rejection retroactively. *See Constant L.P. v. Jamesway Corp. (In re Jamesway Corp.)*, 179 B.R. 33, 37 (S.D.N.Y. 1995) (stating that section 365 does not include “restrictions as to the manner in which the court can approve rejection”); *see also Stonebriar Mall L.P. v. CCI Wireless, LLC (In re CCI Wireless, LLC)*, 297 B.R. 133, 138 (D. Colo. 2003) (noting that section 365 “does not prohibit the bankruptcy court from allowing the rejection of [leases] to apply retroactively”). Courts have held that a bankruptcy court may, in its discretion, authorize rejection retroactively to a date prior to entry of an order authorizing such rejection where the balance of equities favors such relief. *See Thinking Machs. Corp. v. Mellon Fin. Servs. Corp. #1 (In re Thinking Machs. Corp.)*, 67 F.3d 1021, 1028–29 (1st Cir. 1995) (“[R]ejection under section 365(a) does not take effect until judicial approval is secured, but the approving court has the equitable power, in suitable cases, to order a rejection to operate retroactively.”); *In re Chi-Chi’s, Inc.*, 305 B.R. 396, 399 (Bankr. D. Del. 2004) (“[T]he court’s power to grant retroactive relief is derived from the bankruptcy court’s equitable powers so long as it promotes the purposes of § 365(a).”); *CCI Wireless*, 297 B.R. at 140 (holding that a “court has authority under section 365(d)(3) to set the effective date of rejection at least as early as the filing date of the motion to reject”); *BP Energy Co. v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.)*, No. 02 CIV. 6419 (NRB), 2002 WL 31548723, at \*3 (S.D.N.Y. Nov. 15, 2002) (“We cannot conclude . . . that a bankruptcy court’s assignment of a retroactive rejection date falls outside of its authority when the balance of the equities favors this solution.”); *see also Pacific Shores Dev., LLC v. At Home Corp. (In re At Home*

*Corp.*), 392 F.3d 1064, 1065–66 (9th Cir. 2004) (“[A] bankruptcy court may approve retroactively the rejection of an unexpired nonresidential lease.”).

20. The balance of equities favors rejection of the Lease effective as of the Rejection Date. Without such relief, the Debtors will incur unnecessary administrative expenses related to such Lease, since they do not provide corresponding and commensurate benefits to the Debtors’ estates in light of the rent and related charges the Debtors are obligated to pay thereunder. The landlord of the Lease will not be unduly prejudiced if the rejection is deemed effective as of the Rejection Date. Contemporaneously with the filing of this Motion, the Debtors will cause notice of this Motion to be served on the landlord of the Lease, thereby allowing such party sufficient opportunity to respond accordingly. Possession of the Premises will be promptly delivered to the landlords, along with an unequivocal and irrevocable statement of surrender and abandonment of the Premises.

21. Courts in this district have approved relief similar to that requested herein. *See, e.g., In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Nov. 6, 2023) (authorizing rejection of unexpired leases effective as of a specified date); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D. N.J. Oct. 15, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 4, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. May 17, 2023) (same); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 28, 2022) (same).<sup>3</sup> Accordingly, the Debtors respectfully submit that the Court deem the Lease rejected effective as of the Rejection Date.

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<sup>3</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.

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

22. 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**

23. 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**

24. 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) 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 (f) 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**

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

**Notice**

26. 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 counterparty to the Lease listed on Schedule 1 to **Exhibit A**; and (n) 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 that the Court enter the Order, substantially in the form attached hereto as **Exhibit A** granting the relief requested herein.

Dated: February 29, 2024

*/s/ Michael D. Sirota*

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



**Exhibit A**

**Proposed 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)  
(Jointly Administered)

**ORDER AUTHORIZING  
(I) REJECTION OF THAT CERTAIN UNEXPIRED LEASE OF  
NON-RESIDENTIAL REAL PROPERTY AND (II) ABANDONMENT OF  
ANY PERSONAL PROPERTY, EFFECTIVE AS OF THE REJECTION DATE**

The relief set forth on the following pages, numbered three (3) through six (6), 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’ 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)**

**KIRKLAND & ELLIS LLP  
KIRKLAND & ELLIS INTERNATIONAL LLP**

Joshua A. Sussberg, P.C. (admitted *pro hac vice*)

Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)

Francis Petrie (admitted *pro hac vice*)

Jeffrey Goldfine (admitted *pro hac vice*)

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. (admitted *pro hac vice*)

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*

**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 to the Debtors and  
Debtors in Possession*

(Page | 3)

Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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Upon the *Debtors' Motion for Entry of an Order Authorizing (I) Rejection of That Certain Unexpired Lease of Non-Residential Real Property and (II) Abandonment of Any Personal Property, Effective as of the Rejection Date* (the "Motion"),<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") authorizing (a) the rejection of the Lease at the Premises set forth on **Schedule 1** attached hereto and (b) the abandonment of the Personal Property that may be located at the Premises, if any, effective as of the Rejection Date; 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 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:**

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

(Page | 4)

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Case No. 24-11362 (MBK)

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1. The Motion is **GRANTED** as set forth herein.
2. Pursuant to section 365 of the Bankruptcy Code, the Lease identified on **Schedule 1** attached hereto is hereby rejected, to be effective as of the later of (a) the Rejection Date set forth on **Schedule 1** or (b) the date the Debtors relinquish control of the Premises by notifying the affected landlord in writing, with email being sufficient, of the Debtors' surrender of the Premises and (i) turning over keys, key codes, and security codes, if any, to the affected landlord or (ii) notifying the affected landlord in writing, with email being sufficient, that the keys, key codes, and security codes, if any, are not available, but that the landlord may rekey the leased Premises (the "**Rejection Date**").
3. The Debtors shall not be liable for any additional administrative expenses arising after the Rejection Date with respect to the Lease.
4. The Debtors are authorized to abandon any Personal Property located at the Premises and all such property is deemed abandoned as of the Rejection Date. The counterparty to the Lease may utilize or dispose of such Personal Property without liability to any third parties, and without further notice to any party claiming an interest in such abandoned Personal Property. The automatic stay, to the extent applicable, is modified to allow for such utilization or disposition.
5. Notwithstanding any other provision of this Order, (a) the Debtors are not authorized to abandon, and are directed to remove, any hazardous materials as defined under applicable law from any leased premises as and to the extent they are required to do so by applicable law and (b) to the extent the Debtors seek to abandon Personal Property that contain any "personally identifiable information," as that term is defined in section 101(41A) of the

(Page | 5)

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Case No. 24-11362 (MBK)

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Bankruptcy Code, or other personal and/or confidential information about the Debtors' employees and/or customers, or any other individual (the "Confidential Information"), the Debtors shall remove the Confidential Information from such Personal Property before abandonment.

6. Nothing contained in the Motion or this Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this 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 Order; (e) 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 (f) 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.

7. Nothing in the Motion or this Order shall be deemed or construed as an approval of an assumption of any lease, sublease, or contract pursuant to section 365 of the Bankruptcy Code, and all such rights are reserved.

8. 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.

(Page | 6)

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

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

11. 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.

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

**Schedule 1**

**Lease to Be Rejected<sup>1</sup>**

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<sup>1</sup> For the avoidance of doubt, the Lease referenced herein includes any ancillary documents, including guaranties or assignments thereof, and any amendments, modifications, subleases, or termination agreements related thereto.



<b>No.</b>	<b>Title / Description of Lease</b>	<b>Property Address</b>	<b>Landlord</b>	<b>Landlord Address</b>	<b>Rejection Effective Date</b>	<b>Abandoned Personal Property</b>
1.	Lease	1001 Airport Blvd., Morrisville, NC 27560	APB Owner LLC	c/o Equator Capital Management 1251 Avenue of the Americas 34th Floor New York, NY 10020	February 29, 2024	Miscellaneous FF&E