

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

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

In re:

INVITAE CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

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’ 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.



**DEBTORS' REPLY TO
OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
TO FINAL APPROVAL OF DEBTORS' CASH COLLATERAL MOTION**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file this omnibus reply (this “Reply”) to the (a) *Objection of the Official Committee of Unsecured Creditors to Final Approval of Debtors’ Cash Collateral Motion [ECF No. 18]* [Docket No. 148] (the “Committee Objection”) filed by the Official Committee of Unsecured Creditors (the “Committee”) and (b) *MassMutual Asset Finance’s Limited Objection and Reservation of Rights With Respect To Final Approval of Debtors’ Cash Collateral Motion* [Docket No. 153] (the “MMAF Objection,” and together with the Committee Objection, the “Objections”) filed by MassMutual Asset Finance (the “MMAF”) in connection with the *Motion for Entry of Interim and Final Orders Pursuant to Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Docket No. 18] (the “Motion”) seeking entry of an order (the “Final Order”), attached hereto as **Exhibit A**, approving the Debtors’ consensual use of Cash Collateral and granting related relief. In support of the Final Order, the Debtors respectfully state as follows:²

² 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 [Docket No. 21]* (the “First Day Declaration”). Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration, the Final Order, and the TSA, as applicable.

Preliminary Statement

1. The Motion seeks entry of a customary Final Order approving the consensual use of cash collateral to fund the Debtors' going-concern sale process and their chapter 11 cases. The proposed Final Order includes no unusual or aggressive provisions, but is instead in line with final cash collateral orders customarily entered in complex cases in this district and others. No party disputes that use of cash collateral is necessary under the circumstances.

2. On March 1, 2024, the three-member Committee was formed, comprised of the indenture trustee to the Debtors' unsecured notes, an unsecured noteholder, and a vendor. The Committee engaged White & Case LLP as counsel—which until recently represented an ad hoc group of unsecured noteholders in the months leading to these chapter 11 cases. Shortly after the Committee's appointment and retention of advisors, the Debtors and Prepetition Secured Parties engaged with the Committee regarding the terms of the proposed Final Order, offering multiple concessions, including a 15-day extension of the Challenge Period (for a total of 75 days from the formation of the Committee) and a \$75,000 increase in the investigation budget (to a total of \$125,000). Despite this, the Committee rejected these concessions and the opportunity to resolve its Objection consensually as pretext to file a pleading previewing its anticipated challenge of the Debtors' 2023 transactions with the Prepetition Secured Parties.

3. But the Committee's anticipated challenge of the 2023 transactions is futile. As described more fully in the First Day Declaration, in 2023, the Debtors entered into a series of transactions with certain of its Prepetition Secured Parties that provided the Debtors with significant operational runway by deleveraging the balance sheet, extending maturities, and providing an additional \$30 million in liquidity. The 2023 transactions were a straight-forward liability management exercise in which unsecured notes were exchanged for secured notes.

Unlike other recent liability management exercises at other companies, there were no asset drop downs, no pre-existing secured debt at that time, and no other complex transactions. Notably, the 2023 transactions did not result in prepetition litigation. And rightfully so, given that the transactions were accretive to the Debtors' business and complied with the relevant debt documents in all respects.

4. In fact, in the months leading up to the filing of these cases, the Special Committee of the Debtors' board conducted a thorough investigation into these transactions and concluded that they were permitted by the underlying indenture and consistent with the Debtors' fiduciary duties. But these issues *need not* and *should not* be litigated in connection with a customary cash collateral order that fully preserves the Committee's rights to investigate and challenge the 2023 transactions, including by seeking derivative standing through a conventional standing motion.

5. By any measure, the Final Order provisions that the Committee insists on in its Committee Objection are unreasonable and inappropriate. *First*, the Final Order's proposed adequate protection liens on commercial tort claims and proceeds of avoidance actions are authorized by section 361(2) of the Bankruptcy Code and customarily approved in this district and others. These liens merely provide that the Prepetition Secured Parties will be compensated first for diminution in the value of their collateral (if any) before proceeds flow to other parties. The Committee's proposal to exclude claims against the Prepetition Secured Parties themselves from these adequate protection liens, based on an "unclean hands" theory, is unavailing. Avoidance actions do not necessarily involve—and in fact frequently do not involve—any showing of unclean hands. If the Committee has an equitable subordination theory based on a

theory of unclean hands, its right to pursue that theory is preserved by the Challenge Period. Now is not the time to pre-litigate the issue.

6. **Second**, the proposed 75-day Challenge Period and \$125,000 budget reflected in the Debtors' proposed Final Order afford the Committee ample time and resources to assert a Challenge. Such period and budget are reasonable and consistent with comparable chapter 11 cases, and the capital structure and transactions at issue here are not uniquely complex. In its Objection, the Committee cites to two cases with higher budgets—Rite Aid and WeWork—that are among the largest and most complex cases filed in recent years and multiples the size of this case. Cases that are actually comparable to this one have comparable investigation budgets. Likewise, to justify its proposed 90-day challenge period, the Committee cites three stale and outdated chapter 11 cases from prior decades, ignoring countless recent examples squarely in line with the Challenge Period duration provided under the proposed Final Order.

7. **Third**, it is wholly inappropriate to grant the Committee derivative standing in a cash collateral order merely because the Debtors have granted customary stipulations. Derivative standing requires the *movant* to show (a) that there are colorable claims and (b) that the debtor has unjustifiably refused to bring them. The Committee should be required to make this showing before being granted standing, and the cash collateral order fully preserves its ability to do just that. Accordingly, the Debtors respectfully request that the Court overrule the Objections for the reasons set forth herein.

Reply

I. Liens on Commercial Tort Claims and Proceeds of Avoidance Actions Are Customary and Appropriate to Protect Against Diminution in Value.

8. The Bankruptcy Code entitles secured parties to adequate protection in exchange for use of their cash collateral. *See, e.g.*, 11 U.S.C. § 363(c)(2), (e). Although the Bankruptcy

Code does not define “adequate protection,” section 361 provides a non-exhaustive list of what may constitute adequate protection, including expressly providing for additional or replacement liens to the extent that imposition of the automatic stay or the debtor’s use of a secured party’s collateral results in a diminution in value. *See* 11 U.S.C. § 361(2). What constitutes adequate protection is decided on a case by case basis and is heavily dependent on the facts of the case. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); *In re Columbia Gas Sys., Inc.*, No. 91-803, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (“[W]hat constitutes adequate protection must be decided on a case-by-case basis.”); *see also In re SCO Group, Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003).

9. The facts of these chapter 11 cases support providing the Prepetition Secured Parties with the adequate protection package set forth in the Final Order. In accordance with the Bankruptcy Code, the proposed Final Order grants Adequate Protection Liens only to the extent of diminution of the value of the Prepetition Collateral. If there is no diminution, there are no Adequate Protection Liens. That said, the Approved Budget contemplates the use of approximately \$60 million of \$142 million of Cash Collateral by the end of the case.

10. But the Committee asserts that Adequate Protection Liens should exclude proceeds of avoidance actions or commercial tort claims against the Prepetition Secured Parties. Committee Obj. ¶¶ 25-28. But that argument is unpersuasive.

11. As a threshold matter, unsecured creditors do not hold exclusive rights to the proceeds of avoidance actions or commercial tort claims. Rather, these causes of action are estate assets that may be utilized in accordance with the Debtors’ business judgment.

See 11 U.S.C. §§ 550(a) (preserving recoveries on avoidance actions “for the benefit of the estate”), 541(a)(3), 541(a)(4). Indeed, the Seventh Circuit has stated:

Lest this way of resolving the issue be taken to assume that § 550(a) requires that some benefit flow to unsecured creditors, we add that the statute does not say this. Section 550(a) speaks of benefit to the estate—which in bankruptcy parlance denotes the set of all potentially interested parties—rather than to any particular class of creditors.

Mellon Bank, N.A. v. Dick Corp., 351 F.3d 290, 293 (7th Cir. 2003); *In re Fleming Packaging Corp.*, No. 03-82408, 2007 WL 4556985, at *6 (Bankr. C.D. Ill. 2007) (“This Court does not consider Section 550(a)’s ‘for the benefit of the estate’ phraseology as a statutory requirement that the unsecured creditors benefit directly from the recovery of an avoided transfer . . .”); *see also In re Enserv Co.*, 64 B.R. 519, 521 (B.A.P. 9th Cir. 1986) (“Section 547 specifically gives the debtor in possession the right to bring an action to recover preferences. This is a decision subject to its discretion.”); *Cambridge Realty West, L.L.C. v. NOP, L.L.C.*, No. 10-2791, 2010 WL 4668436, (Bankr. E.D. La. Nov. 8, 2010) (“[T]he fact that [the debtor] will then be compelled to distribute [avoidance action recoveries] according to ‘contractual and statutory entitlements’ does not mean that the original recovery does not benefit the estate.”); *In re C.W. Min. Co.*, 477 B.R. 176, 189 (B.A.P. 10th Cir. 2012) (noting in the context of section 550(a) actions, that “[t]his Court has specifically rejected the position that ‘benefit of the estate’ means ‘payment to general unsecured creditors’ and has held that ‘benefit of the estate’ should be interpreted broadly.”).

12. The law is clear that proceeds of avoidance actions are property of the Debtors’ estates under section 541(a)(3) of the Bankruptcy Code. As with any estate asset, the Debtors may grant Adequate Protection Liens on those assets as adequate protection for the use of Cash Collateral. *See* 11 U.S.C. §§ 361(2), 363(c)(2); *see also In re AppliedTheory Corp.*,

No. 02-11868, 2008 WL 1869770, at *1 (Bankr. S.D.N.Y. Apr. 24, 2008) (“Of course those assets started out unencumbered. But those assets can thereafter be encumbered (or made available to satisfy superpriority claims), if necessary to provide adequate protection. That’s expressly authorized under section 361(2).”); 11 U.S.C. § 361(2) (“such adequate protection may be provided by . . . (2) providing . . . an additional or replacement lien . . .”).

13. Additionally, liens on the proceeds of avoidance actions are also routinely granted by courts in this district. *See, e.g., In re Thrasio Holdings Inc.*, No. 24-11840 (Bankr D.N.J. Mar. 1, 2024); *In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Feb. 29, 2024); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Mar. 1, 2024); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 11, 2023); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. July 19, 2023).

14. Here, the lien on commercial tort claims and proceeds of avoidance actions serves as adequate protection for the Prepetition Secured Parties. It is inappropriate and unnecessary to carve out proceeds of claims against the Prepetition Secured Parties from the Adequate Protection Liens. If the Prepetition Secured Parties experience a diminution in value of their collateral, they should be compensated first for that diminution before unsecured creditors receive a recovery. The Bankruptcy Code contemplates as much, and is entirely consistent with orders in this district and beyond.

15. Further, the Committee’s attempt to prospectively apply an “unclean hands” doctrine or to assume inequitable conduct is unavailing. The most typical claw back actions (for example, constructive fraudulent transfer actions and preference actions) include no element of unclean hands or inequitable conduct. *See, e.g.,* 11 U.S.C. §§ 547, 548(a)(1)(B). If the

Committee has a viable theory involving unclean hands or inequitable conduct, its right to assert that theory is preserved as a Challenge action subject to the Challenge Period.

II. The Proposed Final Order Does Not Prejudice the Committee and Appropriately Permits the Committee to Challenge the Liens.

A. The Secured Parties Agreed to Increase the Committee's Budget to \$125,000, Consistent with Comparable Cases.

16. The Secured Parties have already agreed to permit the Committee to use their Cash Collateral to investigate claims against the Prepetition Liens in the amount of \$125,000, which is increased from the \$50,000 included in the Interim Order and is otherwise without prejudice to the Committee's ability to assert administrative claims for such amounts.

17. The \$125,000 budget is squarely within range for the budget amount in cases of comparable size and complexity as that of the Debtors' approximately \$1.5 billion of prepetition funded debt obligations. *See e.g. In re Caresmatic Brands, LLC*, No. 24-10561 (VPF) (authorizing an investigation budget for the committee of \$50,000 when the debtors had debt obligations of approximately \$257 million); *In re Bed Bath & Beyond, Inc.*, No. 23-13359 (VPF) (Bankr. D.N.J. June 15, 2023) (authorizing an investigation budget of \$150,000 when the debtors had debt obligations of approximately \$1.8 billion); *In re Modells Sporting Goods, Inc.* No. 20-14179-(VFP) (Bankr. D. N.J. June 11, 2020) (authorizing an investigation budget for the committee of \$25,000 when the debtors had debt obligations of approximately \$288 million); *In re Lannett Company, Inc.*, No. 23-10559 (JKS) (Bankr. D. Del June 2, 2023) (authorizing an investigation budget for the committee of \$50,000 when the debtors had debt obligations of approximately \$657 million).

18. The two cases the Committee cites for its proposed \$400,000 investigation budget are outliers that involve debtors with multi-billion dollar capital structures with numerous

tranches of debt that are significantly more complex than the Debtors' capital structure. *See, e.g., In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Dec. 22, 2023) [Docket No. 1159] (authorizing an investigation budget for the committee of \$500,000 when the debtors had debt obligations of approximately \$4 billion); *In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 11, 2023) [Docket No. 428] (authorizing an investigation budget for the committee of \$300,000 when the debtors had debt obligations of approximately \$4.2 billion).

B. The Secured Parties Agreed to Extend the Challenge Period to 75 Days from the Committee's Appointment, Consistent with Comparable Cases.

19. The Committee argues that the proposed duration of the Challenge Period (and budget related thereto) "improperly hamstrings the Committee's ability to perform its fiduciary duties." Committee Obj. ¶ 30. Yet the Committee only cites a few cases over the past few decades that include a longer duration of the Challenge Period. *See id.* at 35. And the Committee ignores that the Secured Parties have already agreed to extend the Challenge Period from the originally proposed 60 days from Committee formation to 75 days from the Committee's formation. This is more than enough time for the Committee to investigate the straightforward transaction with which its counsel is already intimately familiar and has been "laser focused" on since engagement. *See* Committee Obj. ¶ 4.

20. Notably, the 75-day Challenge Period already agreed to by the Debtors and the Prepetition Secured Parties is actually at the upper bounds of challenge periods granted in this District. *See, e.g., In re Caresmatic Brands, LLC*, No. 24-10561 (VPF) (Bankr. D.N.J. Feb. 29, 2024) (establishing a challenge period of 60 days after formation of the creditors' committee); *In re Rite Aid Corporation*, No. 23-18993 (MBK) (Bankr. D. N.J. Dec. 22, 2023) (establishing a challenge period of 60 days after entry of the final DIP order for any committee); *In re SLT Holdco, Inc.* No. 20-18368 (MBK) (Bankr. D. N.J. July 29, 2020) (establishing a challenge

period of 62 days after formation of the creditors' committee); *In re RTW Retailwinds Inc.* No. 20-18445 (JKS) (Bankr. D. N. J. July 15, 2020) (establishing a challenge period of 60 days after formation of the creditors' committee); *In re Modells Sporting Goods, Inc.* No. 20-14179-(VFP) (Bankr. D. N.J. June 11, 2020) (establishing a challenge period of 30 days after entry of the final DIP order for the creditors' committee).

21. These recent cases consistently provide for much shorter challenge periods than the three examples of 90-day challenge periods relied upon by the Committee that are each nearly ten to fifteen years old. *See In re Cal Dive Int'l, Inc.*, 2015 Bankr. LEXIS 4540, at *108 (establishing a challenge period of 90 days after formation of a committee); *In re Glob. Safety Textiles Holdings LLC*, No. 09-12234 (KG), 2009 Bankr. LEXIS 4903, at *47 (Bankr. D. Del. July 30, 2009) (granting a challenge period of 90 days after formation of a committee); *In re EPV Solar, Inc.*, No. 10-15173 (MBK), 2010 Bankr. LEXIS 5786, at *42 (Bankr. D.N.J. Mar. 26, 2010) (establishing a challenge period of 90 days from the entry of an order authorizing the committee's retention of counsel).

22. Here, the Debtor stipulations combined with a 75-day Challenge Period are necessary and appropriate to provide adequate protection and finality to the Prepetition Secured Parties. These provisions are customary (and in fact generous) based on precedent in this jurisdiction, and the Committee has given no reasons why this case would warrant an unusually long challenge period. Accordingly, the Committee's request for a 90-day challenge period should be denied.

III. The Committee Should Be Required to Satisfy the Legal Standard for Standing in Order to Obtain Standing to Pursue Causes of Action Subject to the Challenge Period.

23. Seeking to end-run long-standing legal precedent, the Committee requests that the Final Order be revised so that the Committee need not meet its burden to separately obtain entry of an order by the Bankruptcy Court granting it standing to pursue causes of action subject to the Challenge Period. *See* Committee Obj. ¶¶ 36-37. The Committee’s efforts should be rejected out of hand.

24. A creditor can obtain derivative standing if it shows that: (i) the debtor or trustee has unjustifiably refused either to pursue the claim or to consent to the movant's prosecution of the claim on behalf of the estate; (ii) the movant has alleged colorable claims; and (iii) the movant has received leave to sue from the bankruptcy court. *See Official Comm. of Unsecured Creditors Cybergenics v. Chinery*, 330 F.3d 548, 567 (3d Cir. 2003). The Bankruptcy Code does not automatically authorize committees or individual creditors to sue on behalf of the estate. *See id.* at 567. This is because a creditors’ committee only represents a particular subset of creditors and is under no obligation to act in the interest of the estate as a whole—only the Debtors bear this responsibility. *See In re HH Liquidation, LLC*, 571 B.R. 97, 102 (KG) (Bankr. D. Del. 2017) (quoting *In re Big M, Inc.*, 2013 WL 1681489, at *1 (Bankr. D.N.J. Apr. 17, 2013)).

25. Before a committee is granted standing, the committee has the burden to prove that the debtor “unjustifiably refused” to pursue the alleged claims. *See, e.g., In re Optim Energy, LLC*, 527 B.R. 169, 173 (D. Del. 2015) (“Derivative standing requires . . . that the trustee unjustifiably refused to pursue the claim”); *In re Yes! Entm’t Corp.*, 316 B.R. 141, 145 (D. Del. 2004) (“It is the creditor’s burden in the first instance to demonstrate that it has

satisfied these prerequisites for derivative standing.”); *see also Official Comm. of Unsecured Creditors Cybergenics v. Chinery*, 330 F.3d 548, 566–67 (adopting the requirements of derivative standing established in the Second and Seventh Circuits). To determine whether a debtor “unjustifiably refused” to bring claims, courts undertake a “cost/benefit analysis” to determine “whether, in light of the probable costs of litigation, the claims would likely benefit the estate if pursued.” *In re Centaur, LLC*, 2010 WL 4624910, at *5 (Bankr. D. Del. Nov. 5, 2010) (citing *In re Nat’l Forge Co.*, 326 B.R. 532, 548 (W.D. Pa. 2005)). This procedure prevents reorganizations from “spin[ning] out of control,” and “[r]equiring bankruptcy court approval conditioned upon the litigation’s effect on the estate helps prevent committees and individual creditors from pursuing adversary proceedings that may provide them with private benefits but result in a net loss to the entire estate.” *In re AppliedTheory Corp.*, 493 F.3d 82, 86 (2d Cir. 2007).

26. This caselaw is consistent with past orders in this district and Circuit. *See, e.g., In re Careismatic Brands, LLC*, No. 24-10561 (VFP) (Bankr. D.N.J. Feb. 29, 2024) (no automatic standing afforded to statutorily appointed committee in final cash collateral order, despite full stipulations by the debtor, subject to a challenge period); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. Mar. 1, 2024) (same); *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Dec. 11, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. July 19, 2023) (same); *In re Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. June 15, 2023) (same); *In re MediaMath Holdings, Inc.*, No. 23-10882 (LSS) (Bankr. D. Del. Aug. 4, 2023); *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. June 7, 2023) (same); *In re Town Sports Int’l, LLC*, No. 20-12168 (Bankr. D. Del. Nov. 6, 2020) (same); *In re White*

Eagle Asset Portfolio, LP, No. 18-12808 (KG) (Bankr. Jan. 15, 2019) (same); *In re Trump Enter. Resorts, Inc.*, No. 14-12103 (KG) (Bankr. D. Del. Oct. 23, 2014) (same).

27. Here, the Committee does not articulate with particularity what “colorable claims,” if any, it seeks to pursue. Indeed, it says in its pleadings that “[t]ime will tell whether there are viable claims.” Committee Obj. ¶ 23. Nor does the Committee demonstrate that the Debtors have unjustifiably failed to bring suit. The Committee points to the fact that the Debtors have provided customary stipulations. But this is entirely consistent with nearly every other cash collateral or financing order where virtually none of which automatically grant standing to the Committee. And the Committee alludes to defects in the investigation by the Special Committee of the Debtors’ board—yet has no basis to assert such defects.

28. Nevertheless, the Committee expects the Court to grant it standing to pursue claims without making the showing required in the Third Circuit by *Cybergenics* and its progeny. There is no basis for the Committee’s request. The Committee remains free to file a motion and seek standing on appropriate notice and upon a sufficient evidentiary record, but it has not done so at this time. Given that the Committee has not even attempted to meet its burden to establish standing to pursue unidentified claims, the proposed Final Order should preserve the ability of the Debtors, the Secured Parties, and others to object to that relief as is in accordance with law.

29. Accordingly, the Debtors and the Prepetition Secured Parties have negotiated a Final Order that strikes a balance between the Prepetition Secured Parties’ bargained-for interest in having all investigations conducted efficiently and the Committee’s interest in having sufficient time and procedural mechanisms to investigate claims. Providing the Committee with automatic standing here is unnecessary and inconsistent with established precedent. As a result,

the Debtors respectfully request that the Court overrule the Committee Objection and enter the Final Order.

IV. The Adequate Protection Liens Do Not Prejudice Any Party with a Permitted Prior Lien.

30. The late-filed MMAF Objection³ raises issue with granting the Prepetition Secured Parties junior liens on any assets subject to Prior Permitted Liens as part of their Adequate Protection Lien package. *See* MMAF Obj. ¶ 10. This objection lacks merit.

31. MMAF has asserted liens on four pieces of equipment that the Debtors' use in their business. Based on the Debtors' current review, the Debtors believe that MMAF holds "Prior Permitted Liens" within the meaning of the proposed Final Order,⁴ and as such, MMAF's liens are not subject to priming adequate protection liens or equal adequate protection liens in favor of the Prepetition Secured Parties. *See* Final Order ¶ 4(a). The Debtors have confirmed as much to counsel to MMAF, subject to a reservation of rights as to the validity of the liens.

32. To the extent MMAF's liens are Prior Permitted Liens, the liens in favor of MMAF are subject only to *junior* Adequate Protection Liens in favor of the Prepetition Secured Parties. These liens do not prejudice MMAF because MMAF remains entitled to be paid first from the proceeds of its collateral. Accordingly, the Debtors respectfully request that the Court overrule the MMAF Objection and enter the Final Order.

³ The Interim Order provided that "[a]ny party in interest objecting to the relief sought at the Final Hearing shall file written objections no later than March 8, 2024, at 4:00 p.m. (prevailing Eastern Time)." *See* Interim Order ¶ 29. The MMAF Objection was filed March 13, 2024, five days following the established objection deadline and no objection deadline was extended for the objecting party.

⁴ The Debtors reserve all rights with respect to the liens and claims of MMAF.

Dated: March 14, 2024

/s/ Michael D. Sirota

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
Email: msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
dharris@coleschotz.com

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Jeffrey Goldfine (admitted *pro hac vice*)
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: 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
Email: spencer.winters@kirkland.com

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

Exhibit A

Proposed Final Order

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

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
In re: INVITAE CORPORATION, <i>et al.</i> , Debtors. ¹	

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

**FINAL ORDER
PURSUANT TO SECTIONS
105, 361, 362, 363, 503, AND 507
OF THE BANKRUPTCY CODE AND RULES
2002, 4001, AND 9014 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE: (I) AUTHORIZING
DEBTORS TO USE CASH COLLATERAL; (II) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES;
(III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered (3) through (52), is **ORDERED**.

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.

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

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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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the “Motion”) of the above-referenced debtors, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), for entry of an order pursuant to sections 105, 361, 362, 363, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1, 4001-3, 9013-1, 9013-2, 9013-4 and 9013-5 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”), seeking, among other things:

- (a) authorization for the Debtors, pursuant to sections 105, 361, 362, 363, 503 and 507 of the Bankruptcy Code to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (the “Cash Collateral”), and all other Prepetition Collateral (as defined below) in which the Prepetition Secured Parties (as defined below) have an interest, solely in accordance with the terms of the interim order entered on February 16, 2024 [Docket No. 47] (together with all annexes and exhibits thereto, the “Interim Order”) and this final order (together with all annexes and exhibits hereto, the “Final Order”), and (ii) grant adequate protection to the Prepetition Secured Parties to the extent of any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (including Cash Collateral);
- (b) modification of the automatic stay imposed by section 362 of the Bankruptcy Code and any other applicable stay to the extent necessary to implement and effectuate the terms and provisions of this Final Order;
- (c) subject and subordinate to the Carve Out (as defined below), the waiver of all rights to surcharge any Prepetition Collateral or Collateral (as defined below) under section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law;
- (d) to the extent set forth herein, for the “equities of the case” exception under Bankruptcy Code section 552(b) to not apply to any of the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law;
- (e) to the extent set forth herein, the equitable doctrine of “marshalling” or any other similar doctrine, to not apply with respect to any Prepetition Collateral or Collateral;

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- (f) approval of certain stipulations by the Debtors with respect to the Secured Notes Documents (as defined below), the Prepetition Liens (as defined below), the Prepetition Collateral, and Collateral as set forth herein;
 - (g) waiver of any applicable stay with respect to the effectiveness and enforceability of this Final Order; and
 - (h) granting related relief.

Upon consideration of (i) the Motion and the exhibits attached thereto, the Approved Budget (as defined below) filed and served by the Debtors, offers of proof, evidence adduced, and the statements of counsel at the interim hearing held by the Court on February 15, 2024 (the “Interim Hearing”), (ii) the evidentiary record made at the Interim Hearing , (iii) the Court having entered the Interim Order granting the relief requested on an interim basis, (iv) 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”), and (v) the evidentiary record made at the final hearing held by the court on March 15, 2024 (the “Final Hearing”); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), 9014, and all applicable Local Rules, and notice of the Motion and the Final Hearing having been given in accordance therewith; and it appearing that approval of the final relief requested in the Motion on the terms and conditions herein is necessary and is otherwise fair and reasonable, 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 all objections, if any, to the entry of this Final Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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IT IS HEREBY FOUND AND DETERMINED THAT:²

A. ***Petition Date.*** On February 13, 2024 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the “Court”).

B. ***Debtors in Possession.*** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. ***Jurisdiction and Venue.*** The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby 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*, dated July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution.

D. ***Committee.*** On March 1, 2024, the Office of the United States Trustee for the District of New Jersey appointed, pursuant to Section 1102 of the Bankruptcy Code, an official committee of unsecured creditors in these Cases (the “Committee”).

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

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E. ***Debtors' Stipulations.*** Without limiting the rights of the Committee or any other parties in interest specifically set forth in paragraph 19 of this Final Order (and subject to the limitations thereon contained in such paragraph), as approved upon entry of the Interim Order and approved pursuant to this Final Order on a final basis, the Debtors admitted, stipulated and agreed that (collectively, paragraphs E(a) through E(e) below are referred to herein as the "Debtors' Stipulations"):

(a) *Secured Notes.*

(i) That certain Indenture, dated as of March 7, 2023 (as amended, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "Secured Notes Indenture" and, together with the other "Notes Documents" (as defined in the Secured Notes Indenture), the "Secured Notes Documents"), for the 4.5% Series A Convertible Senior Secured Notes due 2028 (the "Series A Notes") and the 4.5% Series B Convertible Senior Secured Notes due 2028 (the "Series B Notes"; together with the Series A Notes, the "Secured Notes"), by and among Invitae Corporation, as issuer (the "Secured Notes Issuer"), the guarantors party thereto from time to time (the "Secured Notes Guarantors"; together with the Secured Notes Issuer, the "Prepetition Secured Notes Parties"), U.S. Bank Trust Company, National Association, as indenture trustee and collateral

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agent (including any successors thereto, the “Prepetition Secured Agent”).

(ii) *Prepetition Secured Indebtedness.* As of the Petition Date, the Prepetition Secured Notes Parties were jointly and severally indebted to the holders of the notes issued under the Secured Notes Indenture (the “Prepetition Secured Noteholders”) and the Prepetition Secured Agent (together with the Prepetition Secured Noteholders, the “Prepetition Secured Parties”) pursuant to the Secured Notes Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of approximately \$305.3 million *plus* accrued and unpaid interest with respect thereto and any additional fees, premiums, costs, expenses (including any attorneys’, accountants’, consultants’, appraisers’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, in each case to the extent reimbursable pursuant to the terms of the Secured Notes Documents and all other Obligations (as defined in Secured Notes Indenture) owing under or in connection

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with the Secured Notes Documents (collectively, “Prepetition Secured Indebtedness”).

(iii) *Secured Notes Collateral*. In connection with the Secured Notes Indenture, certain of the Debtors entered into the Collateral Documents (as defined in the Secured Notes Indenture). Pursuant to the Collateral Documents and the other Secured Notes Documents and subject to any Permitted Prior Liens, the Prepetition Secured Indebtedness is secured by first-priority security interests in and liens on all of the Collateral (as defined in the Collateral Documents) (the “Prepetition Collateral”) consisting of substantially all of each Prepetition Secured Notes Party’s assets (the “Prepetition Liens”).

(iv) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Secured Indebtedness*. Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date: (i) the Prepetition Liens encumber all of the Prepetition Collateral, including that held by the Prepetition Secured Notes Parties, as the same existed on the Petition Date; (ii) the Prepetition Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral held by the Prepetition Secured Notes Parties; (iii) the Prepetition Liens are subject and subordinate only to those

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valid, enforceable, and non-avoidable liens that are (1) in existence on the Petition Date, (2) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (3) permitted under the Secured Notes Documents and senior in priority to the Prepetition Liens granted to the Prepetition Secured Parties under and in connection with the Secured Notes Documents in accordance with applicable law (such liens, the “Permitted Prior Liens”); (iv) the Prepetition Liens were granted to or for the benefit of the Prepetition Secured Agent and the other Prepetition Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the loans and/or commitments and other financial accommodations secured thereby; (v) the Prepetition Secured Indebtedness constitutes legal, valid, binding and non-avoidable obligations of the Debtors, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code); (vi) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Indebtedness exist, and no

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portion of the Prepetition Liens or Prepetition Secured Indebtedness is subject to any challenge, cause of action, or defense including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or “claim” (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law or regulation including in any cases under Chapter 7 of the Bankruptcy Code upon the conversion of any of these Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”); and (vii) the Debtors and their estates have no claims, objections, challenges, causes of action, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including “lender liability” causes of action or avoidance claims under chapter 5 of the Bankruptcy Code or applicable state law equivalents, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Secured Parties or any of their respective affiliates,

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agents, representatives, attorneys, advisors, professionals, officers, directors, and employees (in their capacities as such) arising out of, based upon, or related to their obligations under the Secured Notes Documents, the Prepetition Secured Indebtedness, or the Prepetition Liens.

(b) *Cash Collateral.* Any and all of the Prepetition Secured Notes Parties' cash, including all amounts on deposit or maintained in any banking, checking, or other deposit accounts by the Prepetition Secured Notes Parties, any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral or deposited into the Prepetition Secured Notes Parties' banking, checking, or other deposit accounts, in each case as of or after the Petition Date, and any of the proceeds of any of the foregoing is the Prepetition Secured Parties' Cash Collateral.

(c) *Bank Accounts.* The Debtors acknowledge and agree that, as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to the *Interim Order 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* [Docket No. 48] or an order approving the *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,*

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(C) *Maintain Existing Business Forms, and (D) Perform Intercompany Transactions* [Docket No. 10] on a final basis (the “Cash Management Order”).

(d) *Credit Bids.* Subject to the Secured Notes Documents, the Prepetition Secured Agent (at the direction of the Prepetition Secured Noteholders constituting Required Holders as defined in the Secured Notes Indenture) shall have the rights granted pursuant to and consistent with section 363(k) of the Bankruptcy Code with respect to any credit bidding of the Prepetition Secured Indebtedness on which they have Prepetition Liens or Adequate Protection Liens (as defined below). No Debtor or Debtor’s affiliate shall object to any Prepetition Secured Agent’s or Prepetition Secured Party’s right to credit bid up to the full amount of Prepetition Secured Indebtedness, in each case including, without limitation, any accrued interest and expenses, in any sale, as applicable, whether such sale is effectuated through Bankruptcy Code section 363, in a chapter 11 or chapter 7 proceeding, under Bankruptcy Code section 1129, by a chapter 7 or chapter 11 trustee, or otherwise, subject to applicable law.

(e) *No Control.* None of the Prepetition Secured Parties (including in connection with the Transaction Support Agreement) controls the Debtors or their properties or operations, has authority to determine the manner in which any Debtors’ operations are conducted, or is a control person or insider of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Interim Order, this Final Order, the Secured Notes Indenture or the Secured Notes Documents.

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F. ***Adequate Protection.*** The Prepetition Secured Noteholders and the Debtors have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses in accordance with the terms hereof. The Prepetition Secured Parties are entitled, pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, as a condition for the use of their Prepetition Collateral, including the Cash Collateral, after the Petition Date, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition diminution in value of their respective interests in the Prepetition Collateral as of the Petition Date resulting from the Debtors' use, sale, or lease of the Prepetition Collateral (including Cash Collateral) and/or the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code (any such diminution after the Petition Date, a "Diminution in Value"). The foregoing shall not, nor shall any other provision of this Final Order be construed as, a determination or finding that there has been or will be any Diminution in Value of Prepetition Collateral (including Cash Collateral) and the rights of all parties as to such issues are hereby preserved.

G. ***Need to Use Cash Collateral.*** The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-3 and have an immediate need to continue using the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget), in order to, among other things, (i) conduct a sale of all or some of the Debtors' assets and/or equity in accordance with that certain Transaction Support

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Agreement, dated as of February 13, 2024 (the “Transaction Support Agreement”), by and among, *inter alios*, the Debtors and the Prepetition Secured Noteholders party thereto, (ii) continue their operations, for working capital purposes, other general corporate purposes of the Debtors, and (iii) to satisfy in full the costs and expenses of administering the Cases and preserving the value of their estates during the Cases. The continued ability of the Debtors to obtain liquidity through the use of the Cash Collateral is vital to the Debtors and their efforts to maximize the value of their estates. If the authorization to use Cash Collateral is not approved on a final basis in accordance with the terms hereof, the Debtors’ estates and reorganization efforts will be immediately and irreparably harmed.

H. **Notice.** Notice of the Motion and the hearing thereon was provided pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9006 and Local Rule 4001-3, as required by sections 361 and 363 of the Bankruptcy Code and the Local Rules. Except as provided herein with respect to notice of the Final Hearing and Final Order, no further notice of, or hearing on, the relief sought in the Motion is necessary or required. The Debtors have represented that notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, by email, overnight courier and/or hand delivery, to: (a) the office of the U.S. Trustee for the District of New Jersey (the “U.S. Trustee”); (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Secured Agent; (d) Sullivan & Cromwell LLP, as counsel to a certain holder of a majority of the Secured Notes constituting the Required Holders (under and as defined in the Secured Notes Indenture) (the “Required Holders”);

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(e) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (f) the office of the attorney general for each of the states in which the Debtors operate; (g) the United States Attorney's Office for the District of New Jersey; (h) the Internal Revenue Service; (i) the Prepetition Secured Parties; and (j) all other parties entitled to notice pursuant to Local Rule 9013-5(c).

I. **Consent.** The Required Holders constitute "Required Holders" as defined in the Secured Notes Indenture. To the extent required, the Required Holders have consented to the Debtors' use of Cash Collateral, in accordance with and subject to the terms and conditions provided for in this Final Order.

J. **Relief Essential; Best Interest.** The Debtors have requested entry of this Final Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-3. The relief requested in the Motion (and as provided in this Final Order) is necessary, essential and appropriate for the continued operation of the Debtors' businesses and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein.

K. **Arm's-Length, Good Faith Negotiations.** The terms of this Final Order were negotiated in good faith and at arm's-length between the Debtors and the Required Holders. The Required Holders have acted without negligence or violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing,

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documenting, or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of the Adequate Protection Liens and all documents related to and all transactions contemplated by the foregoing.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1. ***Motion Granted.*** The Motion is granted on a final basis as set forth herein, and the use of Cash Collateral on a final basis is authorized, subject to the terms of this Final Order.

2. ***Objections Overruled.*** Any objections to the Motion with respect to the entry of this Final Order that have not been withdrawn, waived, settled or otherwise resolved and all reservations of rights included therein, are hereby denied and overruled with prejudice.

3. ***Authorization to Use Cash Collateral; Budget.***

(a) ***Authorization.*** Subject to the terms and conditions of this Final Order, the Court hereby authorizes the Debtors' use of Cash Collateral during the period beginning with the Petition Date and ending on the Termination Date (as defined below), in each case, solely and exclusively in a manner consistent with this Final Order and the Approved Budget, and for no other purposes. Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 8(a) hereof and the Carve Out, the Debtors' right to use Cash Collateral shall terminate on the Termination Date.

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Case No. 24-11362 (MBK)

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(b) *Approved Budget; Budget Period.* Except as otherwise provided herein, the Debtors may only use Cash Collateral in accordance with the budget prepared by the Debtors attached as **Exhibit 1** to the Interim Order (the “Initial Approved Budget”) as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the terms of this Final Order or by the Required Holders (such budget, including the Initial Approved Budget, the “Approved Budget”) subject to permitted variances as set forth below. On the Friday of the first full calendar week after the Petition Date, and each two weeks thereafter, the Debtors shall deliver an updated budget to the Prepetition Secured Agent, counsel to the to: (i) the Prepetition Secured Agent, (ii) Shipman & Goodwin LLP and Riker Danzig LLP as co-counsel to the Prepetition Secured Agent, as well as any other advisors to the Prepetition Secured Agent (collectively, the “Prepetition Secured Agent Advisors”), (iii) the Required Holders, and (iv) Sullivan & Cromwell, LLP, Wollmuth Maher & Deutsch LLP, and Perella Weinberg Partners L.P., as advisors to the Required Holders (the “Required Holders Advisors” and, together with the Prepetition Secured Agent, the Prepetition Secured Agent Advisors, the Required Holders, and counsel to any statutory committees appointed in these Cases, the “Notice Parties”), in form and substance satisfactory to the Required Holders in their sole discretion.

(c) *Budget Testing.* On the Friday of the first full calendar week after the Petition Date, and each week thereafter, the Debtors shall deliver a budget variance report/reconciliation (the “Variance Report”) to the Notice Parties, in form and substance

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reasonably satisfactory to the Notice Parties, showing for the prior two-week period ending on the Friday immediately prior (each such period, a “Test Period”). For the avoidance of doubt, the reporting schedule is detailed in **Exhibit 2** – “Testing Cadence”, attached herein. The Variance Report will include (i) the variance (as compared to the applicable Approved Budget) of actual cash receipts (on a line item by line item basis) of the Debtors for the applicable Test Period, (ii) the variance (as compared to the applicable Approved Budget) of the disbursements (on a line item by line item basis) made by the Debtors set forth in the Approved Budget for the applicable Test Period, and (iii) an explanation, in reasonable detail, for any material variances (on a line item basis) set forth in such Variance Report, certified by an authorized officer of the Debtors. Commencing with the first full calendar week after the Petition Date, the Debtors shall not permit (i) a total receipts variance for any Test Period to have a negative variance in excess of 12.5% (with negative variance meaning, for the avoidance of doubt, that actual receipts are less than projected receipts) or (ii) a total disbursements variance for any Test Period to have a negative variance in excess of 12.5% (with negative variance meaning, for the avoidance of doubt, that actual disbursements are greater than the projected disbursements on a line-item basis); *provided* that, (1) any positive receipts variance may be used to offset any negative disbursements variance for such Test Period or carried over to the immediately subsequent (but not any other) Test Period, and (2) any positive disbursements variance may be used to offset any negative receipts variance for such Test Period or carried over to the immediately subsequent (but not any other) Test Period. For the avoidance of

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doubt, the cash disbursements considered for determining compliance with this covenant shall exclude the Debtors' disbursements in respect of restructuring professional fees (such excluded cash disbursements, the "Restructuring Professional Fees"). Debtors shall provide notice of the occurrence of the Debtors' unrestricted cash and cash equivalents ("Liquidity") falling below \$56,700,000 (the "Minimum Liquidity Amount") at the end of any week and the amount of such Liquidity as of such time.

(d) *Proposed Budget Updates.* On or before the second (2nd) day before the end of each Test Period, the Debtors shall deliver to the Notice Parties and the U.S. Trustee a rolling 13-week cash flow forecast of the Debtors substantially in the format of the Initial Approved Budget (each, a "Proposed Budget"), which Proposed Budget (including any subsequent revisions to any such Proposed Budget), shall become the Approved Budget effective the subsequent Test Period *unless* the Required Holders notify the Debtors of any reasonable objection to the Proposed Budget within four (4) business days after receipt of the Proposed Budget (the "Approval Deadline"). For the avoidance of doubt, the Debtors' use of Cash Collateral shall be governed by the then-existing Approved Budget (x) at all times prior to the earlier of (i) the Required Holders' approval of the Proposed Budget in accordance with this paragraph and (ii) the Approval Deadline; and (y) during the pendency of any unresolved objection by the Required Holders to the Proposed Budget.

(e) *Miscellaneous.* For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral may not be transferred to any non-Debtor affiliate of

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the Debtors or used (i) by any non-Debtor entity, or (ii) to pay any expense of any non-Debtor entity, in each case, except as necessary to satisfy trade claims against non-Debtor subsidiaries of the Debtors in the ordinary course of the Debtors' and such non-Debtors' business and consistent with the historical practices of such entities and the Approved Budget.

4. *Adequate Protection for the Prepetition Secured Parties.* Subject only to the Carve Out and the terms of this Final Order, pursuant to sections 361, 362, and 363(e) of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as approved upon entry of the Interim Order and pursuant to this Final Order on a final basis, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral), in each case, solely for and equal in amount to the Diminution in Value of the Prepetition Collateral (including Cash Collateral), the Prepetition Secured Agent, for its benefit and the other Prepetition Secured Parties, was granted pursuant to the Interim Order, and is hereby further granted on a final basis the following:

(a) *Adequate Protection Liens.* Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, solely to the extent of any Diminution in Value of the Prepetition Secured Parties' interests in the Prepetition Collateral and subject in all cases to the Carve Out, as made effective upon entry of the Interim Order and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control, the Debtors are authorized to grant, and hereby

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deemed to have granted, to the Prepetition Secured Agent, for the benefit of itself and the other Prepetition Secured Parties, valid, binding, continuing, enforceable, fully-perfected, nonavoidable, first-priority senior (except as otherwise provided in this paragraph 4(a) below with respect to the Permitted Prior Liens), additional and replacement security interests in and liens on (all such liens and security interests, the “Adequate Protection Liens”) (i) the Prepetition Collateral and (ii) all of the Debtors’ other now-owned and hereafter-acquired real and personal property, assets and rights of any kind or nature, wherever located, whether encumbered or unencumbered, including, without limitation, all prepetition property and postpetition property of the Debtors’ estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all equipment, all goods, all accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date), insurance, equity interests, intercompany claims, accounts receivable, other rights to payment, all general intangibles, contracts, securities, chattel paper, all interest rate hedging agreements, all owned real estate, real property leaseholds, fixtures, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, claims and causes of action, and any and all proceeds, products, rents, and profits of the foregoing (all property identified in this paragraph 4(a) being collectively referred to as the “Collateral”), subject only to the Carve Out and any Permitted Prior Liens, in which case the Adequate Protection Liens shall be

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immediately junior in priority to any such Permitted Prior Liens and to the Carve Out; notwithstanding the foregoing, the Collateral shall exclude all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code or applicable state law equivalents (the “Avoidance Actions”), but shall include proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Actions.

(b) *Adequate Protection Superpriority Claims.* As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, including subject to the priorities set forth therein, the Debtors granted, and hereby are deemed to have granted on a final basis, to the Prepetition Secured Agent, for the benefit of itself and the other Prepetition Secured Parties, allowed superpriority administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of, and in an aggregate amount equal to, any Diminution in Value (the “Adequate Protection Superpriority Claims”), but junior to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113

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and 1114 of the Bankruptcy Code to the extent of, and in an aggregate amount equal to, any Diminution in Value.

(c) *Right to Seek Additional Adequate Protection.* This Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Secured Parties to request, upon notice and a hearing, further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request.

(d) *Other Covenants.* The Debtors shall maintain their cash management arrangements in a manner consistent with this Court's order(s) granting the Debtors' cash management motion [Docket No. 10] or final order granting similar relief. The Debtors shall provide the Required Holders (and the Required Holders Advisors) with material updates and information as reasonably requested by the Required Holders.

(e) *Fees and Expenses.* As additional adequate protection, the Debtors shall, and are directed to, pay (i) postpetition monthly interest payments in cash to the Prepetition Secured Agent, on behalf of the Prepetition Secured Parties, in an amount equal to the accrued and unpaid interest at the non-default interest rate and as otherwise provided under the Secured Notes Indenture (including, for the avoidance of doubt, payment of all prepetition accrued and unpaid interest under the Secured Notes Indenture); (ii) within ten (10) days after the Debtors' receipt of invoices therefor, the reasonable and documented professional fees, expenses and disbursements (including, but not limited to, the expenses and disbursements of

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counsel and other third-party consultants, including financial advisors), arising prior to the Petition Date, incurred by the Prepetition Secured Agent (including reasonable and documented fees, expenses and disbursements incurred by the Prepetition Secured Agent Advisors) and the Required Holders (including reasonable and documented fees, expenses and disbursements incurred by the Required Holders Advisors and Hogan Lovells US LLP, as counsel to the Required Holders); and (iii) subject to paragraph 25, on a monthly basis, within ten (10) days of the Debtors' receipt of invoices therefor, which may be sent by email to Debtors' counsel, the reasonable and documented fees, expenses and disbursements (including, but not limited to, the reasonable and documented fees, expenses and disbursements of the Prepetition Secured Agent, the Prepetition Secured Agent Advisors, the Required Holders Advisors, Hogan Lovells US LLP, and any conflicts counsel or other legal counsels necessary to represent the interests of the Prepetition Secured Parties (collectively, the "Prepetition Secured Party Professionals") incurred by the Prepetition Secured Parties), arising subsequent to the Petition Date through the date on which the Debtors' authority to use Cash Collateral terminates in accordance with this Final Order. None of the foregoing reasonable and documented fees, expenses and disbursements shall be subject to separate approval by this Court or require compliance with the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments. Any payments made pursuant to this paragraph 4(e) shall be without prejudice to whether any such payments should

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be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise.

(f) *Miscellaneous.* Except for (i) the Carve Out and (ii) as otherwise provided in this paragraph 4, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties pursuant to this paragraph 4 of this Final Order shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise.

5. ***Carve Out.***

(a) *Carve Out.* As used in this Final Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals,

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the “Professional Persons”) at any time before the date of delivery of the Carve Out Trigger Notice (as defined below) by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,500,000 incurred on or after the date of delivery of the Carve Out Trigger Notice by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders) to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of a Termination Event and upon termination of the Debtors’ right to use Cash Collateral by the Prepetition Secured Noteholders, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders) to the Debtors with a copy to counsel to the Committee and the U.S. Trustee (the “Termination Declaration Date”), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any

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Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees (the “Pre-Carve Out Trigger Notice Reserve”) prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the “Post-Carve Out Trigger Notice Reserve” and, together with the Pre-Carve Out Trigger Notice Reserve, the “Carve Out Reserves”) prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition Secured Agent for the benefit of the Prepetition Secured Noteholders, unless the Secured Notes has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition Secured Agent for the benefit of the Prepetition Secured Noteholders, unless the Secured Notes has been indefeasibly

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paid in full, in cash, in which case any such excess shall be paid to the Debtors' creditors in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Secured Notes Documents, or the Interim Order or this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 5, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 5, prior to making any payments to the Prepetition Secured Agent or any of the Debtors' creditors, as applicable. Notwithstanding anything to the contrary in the Secured Notes Documents or this Final Order, following delivery of a Carve Out Trigger Notice, the Prepetition Secured Agent shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the Prepetition Secured Agent for application in accordance with the Secured Notes Documents. Further, notwithstanding anything to the contrary in this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Secured Notes (as defined in the Prepetition Notes Documents) or increase or reduce the Secured Notes, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Approved Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed

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Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Final Order or in any Secured Notes Documents, the Carve Out shall be senior to all liens and claims securing the Prepetition Collateral, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Secured Notes.

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(d) No Direct Obligation To Pay Allowed Professional Fees. Subject to the terms of the Transaction Support Agreement, the Prepetition Secured Agent and the other Prepetition Secured Parties reserve the right to object to the allowance of any fees and expenses, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Except for permitting the funding of the Carve Out Reserves as provided herein, none of the Prepetition Secured Noteholders shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or any fees or expenses of the U.S. Trustee or Clerk of the Court incurred in connection with these Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall be construed to obligate the Prepetition Secured Noteholders, in any way, to pay compensation to, or to reimburse

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expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(e) *Payment of Carve Out On or After the Termination Declaration Date.* Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis.

6. ***Access and Information.*** In addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under the Secured Notes Indenture, upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, the Debtors shall permit the Prepetition Secured Agent Advisors, the Required Holders, the Required Holders Advisors (each of which is bound by obligations of confidentiality pursuant to a separate confidentiality agreement entered into with the Debtors), and the Committee's advisors to have access to such information regarding the operations, business affairs and financial condition of the Borrower or any of its subsidiaries, or compliance with the terms of any Secured Notes Document as the Prepetition Secured Agent (acting on behalf of itself or any applicable Prepetition Secured Party), the Required Holders, the Required Holders Advisors, or the Committee's advisors may reasonably request, and it being understood that nothing in this paragraph 6 shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

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7. **Termination.** Subject to the Remedies Notice Period (as defined herein) and paragraph 5, the Debtors' right to use the Cash Collateral pursuant to this Final Order shall automatically cease without further court proceedings on the Termination Date (as defined herein). As used herein "Termination Events" means any of the events set forth in clauses (a) through (n) below (each such events a "Termination Event"):

(a) The violation of any term of this Final Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors, counsel for the Committee, and the U.S. Trustee of notice of such default, violation or breach (which may be provided to the Debtors, counsel for the Committee, and the U.S. Trustee by email);

(b) Entry of any order modifying, reversing, revoking, staying for a period in excess of five (5) business days, rescinding, vacating, or amending this Final Order without the express written consent of the Required Holders;

(c) Any of the Cases is dismissed (other than following the effective date of a chapter 11 plan) or converted to a case under chapter 7 of the Bankruptcy Code, without the express written consent of the Required Holders, or a trustee under chapter 11 of the Bankruptcy Code or an examiner with enlarged powers is appointed in any of the Cases, or any of the Debtors seeks entry of an order accomplishing any of the foregoing;

(d) An order is entered granting another claim or lien (except for the Permitted Prior Liens) *pari passu* with or senior to except as provided under this Final Order,

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Caption of Order: FINAL ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

the Prepetition Liens, Adequate Protection Liens or the Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties under this Final Order;

(e) Any motion, pleading, or proceeding is filed or is commenced by any Debtor seeking, or otherwise consenting to or supporting, (i) the invalidation, subordination, or other challenge to the Prepetition Secured Indebtedness, the Prepetition Liens, the Adequate Protection Liens or the Adequate Protection Superpriority Claims or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against any of the Prepetition Secured Parties; *provided* that if the Debtors provide any response to any third-party discovery request or may make a witness available for deposition, such action shall not be a violation of this clause (f);

(f) Any Debtor files a motion, pleading, or proceeding that would, if the relief sought therein were granted, result in a Termination Event (other than a Termination Event under this paragraph 7(f)), and such motion, pleading, or proceeding is not dismissed or withdrawn (as applicable) within five (5) business days after receipt by the Debtors, counsel to the Committee, and the U.S. Trustee of notice (which may be by email) that the Required Holders have determined that such motion, pleading, or proceeding, if the relief sought therein were granted, would give rise to such a Termination Event; *provided* that if the Debtors receive the written consent of the Required Holders to file such motion, pleading, or proceeding than such action shall not be a violation of this clause (f);

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(g) The entry by this Court of an order granting relief from or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to any entities other than the Prepetition Secured Parties with respect to the Prepetition Collateral or the Collateral (except for the Permitted Prior Liens) with a value in excess of \$500,000 without the written consent of the Required Holders;

(h) The failure by the Debtors to make any payment required pursuant to this Final Order when due; *provided* that such failure remains uncured for at least five (5) business days following a written notice from the Required Holders (which may be by email);

(i) The failure by the Debtors to deliver to any of the Notice Parties any of the documents or other information reasonably required to be delivered to such applicable party pursuant to this Final Order within five (5) days following a request therefor from any of the Notice Parties pursuant to the terms of this Final Order; or any such documents or other information shall contain a material misrepresentation; *provided* that, such misrepresentation remains uncured for at least five (5) business days following written notice thereof from any of the Prepetition Secured Agent;

(j) The Debtors' failure to comply with an Approved Budget except with respect to Permitted Variances or the Debtors' failure at the end of any week to maintain Liquidity in an amount equal to or greater than the Minimum Liquidity Amount;

(k) The failure of the Debtors to observe or perform any of the material terms or material provisions contained herein, *provided* that such failure remains uncured for

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at least five (5) business days following written notice thereof from any of the Prepetition Secured Agent;

(l) The entry of an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code authorizing any party to exercise remedies against any asset of the Debtors without which the Debtors' ability to operate their business in the ordinary course would be materially and adversely affected; and

(m) The occurrence of a "Consenting Stakeholder Termination Event" under the Transaction Support Agreement, unless waived by the Required Holders.

8. ***Remedies after the Termination Date.***

(a) Notwithstanding anything contained herein, the Debtors' authorization to use Cash Collateral hereunder shall automatically terminate (except for purposes of funding the Carve Out, as provided in paragraph 5) on the date (such date, the "Termination Date") that is the earlier of (i) 5:00 p.m. on the date that is 159 days from the Petition Date, (ii) the effective date of any chapter 11 plan with respect to the Debtors confirmed by the Court, or (iii) five (5) business days from the Termination Declaration Date (which notice may be given by electronic mail (or other electronic means)) by the Required Holders to counsel to the Debtors, counsel to the Committee, and the U.S. Trustee (the "Termination Declaration," and such period commencing on the Termination Declaration Date and ending five (5) business days later, the "Remedies Notice Period"); *provided* that, until expiration of the Remedies Notice Period, the Debtors may continue to use Cash Collateral to make payments in respect of expenses critical

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to keep the business of the Debtors operating in accordance with the Approved Budget; and *provided, further*, that the Debtors may continue to use Cash Collateral during or after expiration of the Remedies Notice Period solely to the extent necessary to fund the Carve Out Reserves subject to paragraph 5 hereof. The automatic stay in the Cases otherwise applicable to the Prepetition Secured Parties is hereby modified so that upon the occurrence of the Termination Date, the Prepetition Secured Agent shall, subject to the Remedies Notice Period, be entitled to exercise their rights and remedies in accordance with the Secured Notes Documents and this Final Order with respect to the Debtors' use of Cash Collateral, subject and subordinate to the Carve Out. For the avoidance of doubt, during the Remedies Notice Period, unless otherwise ordered by the Court, the automatic stay under section 362 of the Bankruptcy Code shall remain in effect.

(b) During the Remedies Notice Period, if applicable, the Debtors, the Committee, and/or any party in interest shall be entitled to seek an emergency hearing with the Court with respect to any relevant matters as determined by the Court; *provided, however*, that nothing herein limits the Court's ability to hear other matters it deems appropriate at such hearing; *provided, further*, that if a hearing to consider the foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall be automatically extended to the date of such hearing, but in no event later than eight (8) business days after delivery of the Termination Declaration unless a further extension is agreed to consensually. Upon expiration of the Remedies Notice Period,

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if applicable, the Required Holders shall be permitted to exercise all remedies set forth herein, in the Secured Notes Documents, and as otherwise available at law or in equity without further order of or application or motion to this Court consistent with this Final Order, subject and subordinate to the Carve Out.

(c) Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing on any request by the Debtors or other party in interest to re-impose or continue the automatic stay under Bankruptcy Code section 362(a), use Cash Collateral, or to obtain any other injunctive relief. Any delay or failure of the Required Holders to exercise rights under the Secured Notes Documents, the Interim Order or this Final Order shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise. The occurrence of the Termination Date or a Termination Event shall not affect the validity, priority, or enforceability of any and all rights, remedies, benefits, and protections provided to any of the Prepetition Secured Parties under this Final Order, which rights, remedies, benefits, and protections shall survive the Termination Date or the delivery of a Termination Declaration.

9. ***Payments Free and Clear.*** Pursuant to the provisions of this Final Order (including the Carve Out), any and all payments or proceeds remitted to the Prepetition Secured Agent for the benefit of itself and the other Prepetition Secured Parties, pursuant to the provisions of the Interim Order or this Final Order shall be irrevocable (subject to paragraphs 4(e) and 19 of this Final Order), received free and clear of any claim, charge, assessment or other liability, including

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without limitation, any such claim or charge arising out of or based on, directly or indirectly, Bankruptcy Code section 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b).

10. ***Limitation on Charging Expenses Against Collateral.*** All rights to surcharge the interests of the Prepetition Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in the Cases.

11. ***Section 507(b) Reservation.*** Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Agent or the other Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral) during the Cases or any Successor Case.

12. ***Reservation of Rights of the Prepetition Secured Parties.*** This Final Order and the transactions contemplated hereby shall be without prejudice to (a) the rights of any of the Prepetition Secured Parties to seek additional or different adequate protection, or to appear and be heard in any matter raised in the Cases to the extent consistent with the Transaction Support Agreement, and (b) any and all rights, remedies, claims and causes of action which the Prepetition Secured Parties may have against any non-Debtor party liable for the Prepetition Secured Indebtedness. For all adequate protection purposes throughout the Cases, each of the Prepetition

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Secured Parties shall be deemed to have requested relief from the automatic stay and adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Final Order.

13. ***Modification of Automatic Stay.*** The Debtors are authorized and directed to perform all acts and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms and conditions of this Final Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Final Order.

14. ***Survival of Final Order.*** The provisions of this Final Order shall be binding upon any trustee appointed during the Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and any actions taken pursuant hereto shall survive entry of any order which may be entered converting the Cases to chapter 7 cases, dismissing the Cases under section 1112 of the Bankruptcy Code or otherwise. The terms and provisions of and the priorities in payments, liens, and security interests granted pursuant to, this Final Order, shall continue notwithstanding any conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, or the dismissal of any of the Cases. Subject to the limitations described in paragraphs 4 (e) and 19 of this Final Order, payments made pursuant to this Final Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in any of the Cases or any Successor Case.

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15. ***No Third-Party Rights.*** Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary.

16. ***Release.*** Subject to the rights and limitations set forth in paragraph 19 of this Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Secured Parties (each in their respective roles as such), and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates and assigns, and predecessors and successors in interest, each in their capacity as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Secured Notes, the Prepetition Liens, the Prepetition Secured Indebtedness, the Secured Notes Documents, the

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Interim Order or this Final Order, as applicable, and/or the transactions contemplated hereunder or thereunder including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties; *provided* that nothing in this paragraph shall in any way limit or release the right of the Debtors to enforce the terms of this Final Order; *provided, further*, that this release shall not include a release of any claim arising from bad faith, gross negligence or willful misconduct as determined by a final non-appealable order of a court of competent jurisdiction.

17. ***Binding and Controlling Effect of Final Order.*** The terms of this Final Order shall be valid and binding upon the Debtors, all creditors of the Debtors and all other parties in interest from and after the entry of this Final Order by this Court, and none of the terms and provisions of this Final Order shall be abrogated or suspended by the conflicting provisions of any other order entered by this Court (unless otherwise contemplated hereunder or consented to by the Prepetition Secured Parties). To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion or the Interim Order, the provisions of this Final Order shall control.

18. ***Reversal, Stay, Modification or Vacatur.*** In the event the provisions of this Final Order are reversed, stayed, modified or vacated by court order following notice and any further hearing, such reversals, modifications, stays or vacatur shall not affect the rights and priorities of

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the Prepetition Secured Parties granted pursuant to this Final Order. Notwithstanding any such reversal, stay, modification or vacatur by court order, any indebtedness, obligation or liability incurred by the Debtors pursuant to this Final Order arising prior to the Required Holders' receipt of notice of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of the Interim Order or this Final Order, as applicable, and the Prepetition Secured Parties shall continue to be entitled to all of the rights, remedies, privileges and benefits, including any payments authorized therein or herein and the security interests and liens granted therein or herein, with respect to all such indebtedness, obligation or liability, and the validity of any payments made or obligations owed or credit extended or lien or security interest granted pursuant to the Interim Order or this Final Order, as applicable, is and shall remain subject to the protection afforded under the Bankruptcy Code.

19. ***Reservation of Certain Third-Party Rights and Bar of Challenge and Claims.***

(a) Subject to the Challenge Period (as defined below), (1) the stipulations, admissions, waivers, and releases contained in the Interim Order and this Final Order, as applicable, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors, including, without limitation, any chapter 7 or chapter 11 trustee (a "Trustee") appointed in any Successor Cases, responsible person, examiner with expanded powers, or other estate representative, and (2) upon entry of the Interim Order the Debtors were deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, waivers and releases contained

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in the Interim Order and this Final Order, as applicable, including the Debtors' Stipulations, shall be binding upon all other parties in interest, including the Committee and any other person acting on behalf of the Debtors' estates, unless and to the extent that (i) a party in interest (other than any Debtor or successor thereto, but including any Trustee) with proper standing to do so (to the extent derivative standing is required under applicable law), has timely and properly objected to or challenged the findings or Debtors' Stipulations regarding (I) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and/or liens of any of the Prepetition Secured Parties, or (II) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Secured Indebtedness (any such claim, a "Challenge") by commencing an adversary proceeding or contested matter, as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including, *inter alia*, in this paragraph), and setting forth with particularity the basis for such Challenge, by the date that is seventy five (75) days from the date of entry of the Interim Order; *provided* that the Committee shall have until the date that is seventy-five (75) calendar days after its appointment to file a Challenge (a "Challenge Period" and, the date of expiration of each Challenge Period, a "Challenge Period Termination Date"); *provided, further* that any party in interest reserves the right to seek relief to modify the Challenge Period or oppose such requested relief; and (ii) the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter, which is no longer subject to appeal; *provided*, that the timely filing of a motion seeking standing to file a

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Challenge before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge, shall toll the Challenge Period only as to the party that timely filed such standing motion until such standing motion is resolved or adjudicated by the Court. If a chapter 7 trustee or a chapter 11 trustee is appointed or elected during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is fifteen (15) calendar days after the date on which such trustee is appointed or elected. For the avoidance of doubt, no party that has timely filed a Challenge or a motion seeking standing to assert a Challenge shall be bound by the stipulations, admissions, waivers, or releases contained in the Interim Order or this Final Order unless such Challenge or motion seeking standing, as applicable, is denied by a final and non-appealable order of a court of competent jurisdiction.

(b) To the extent the stipulations, admissions, waivers and releases contained in the Interim Order and this Final Order, including the Debtors' Stipulations, are (x) not subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date or (y) subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date, but such Challenge does not result in a final and nonappealable judgment or order of the Court that is inconsistent with the stipulations, admissions, waivers and releases contained in the Interim Order or this Final Order, including the Debtors' Stipulations, then, without further notice,

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motion, or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (i) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case) shall be deemed to be forever, waived, released, and barred; (ii) the Prepetition Secured Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtors' Cases and any Successor Case; (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (iv) all of the Debtors' stipulations, admissions, waivers and releases contained in the Interim Order and this Final Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in the Interim Order or this Final Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Case.

(c) If a Challenge is timely and properly filed under the Bankruptcy Rules and remains pending and the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such Challenge on behalf of the Debtors' estates, as applicable.

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Furthermore, if any such Challenge is timely and properly filed under the Bankruptcy Rules, the stipulations, admissions, waivers and releases contained in the Interim Order and this Final Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on the Committee, Trustee, and any other person or entity except to the extent that such stipulations and admissions were expressly challenged in such timely and properly filed Challenge prior to the Challenge Period Termination Date and determined by final order of the Court to be disallowed. Nothing in this Final Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, the Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any challenges (including a Challenge) with respect to the Secured Notes Documents, the Prepetition Liens, and the Prepetition Secured Indebtedness, and a separate order of the Court conferring such standing on the Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by the Committee or such other party-in-interest.

20. ***Limitation on Use of Collateral and Cash Collateral.*** Notwithstanding anything to the contrary set forth in the Interim Order or this Final Order, but subject to the proviso below in this paragraph 20, none of the Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds thereof may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or

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finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (i) against any of the Prepetition Secured Parties (in their capacities as such), and each of their respective affiliates, officers, directors, employees, members, managers, partners, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors (in their capacities as such), with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called “lender liability” claims and causes of action, or seeking relief that would impair the rights and remedies of the Prepetition Secured Parties under the Secured Notes Documents, the Interim Order or this Final Order, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or the Committee in connection with the assertion of or joinder in any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the Prepetition Secured Parties to recover on the Prepetition Collateral or seeking affirmative relief against any of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Prepetition Secured Indebtedness, or the Prepetition Secured Parties’ respective Prepetition Liens or security interests in the Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: FINAL ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; AND (IV) GRANTING RELATED RELIEF

against any of the Prepetition Secured Parties, or the Prepetition Secured Parties' respective liens on or security interests in the Collateral or the Prepetition Collateral that would impair the ability of any of the Prepetition Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Prepetition Secured Indebtedness, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever (including, without limitation, any Avoidance Actions) related to the Prepetition Secured Indebtedness or the Prepetition Liens; or (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Liens or any other rights or interests of any of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness or the Prepetition Liens; *provided*, that notwithstanding the foregoing, an aggregate of \$125,000 of Cash Collateral may be used for the payment of professional fees, disbursements, costs, or expenses incurred by the Committee to investigate potential Challenges.

21. ***Enforceability; Waiver of Any Applicable Stay.*** The Interim Order constituted, and this Final Order shall constitute, findings of fact and conclusions of law and shall take effect and be fully enforceable effective as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 9014 or any other Bankruptcy Rule, or Rule 62(a) of the Federal

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Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

22. ***Proofs of Claim.*** Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition Secured Agent nor any Prepetition Secured Party shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Secured Indebtedness or any claims (including, without limitation, Adequate Protection Superpriority Claims) arising under this Final Order. The failure of the Prepetition Secured Agent or any Prepetition Secured Party to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Secured Notes Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Prepetition Secured Agent's or any Prepetition Secured Party's respective rights, remedies, powers, or privileges under any of the Secured Notes Documents, the Interim Order, this Final Order or applicable law (as applicable). The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

23. ***Section 552(b) of the Bankruptcy Code.*** The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the

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“equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the Collateral.

24. ***No Marshaling.*** The Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral, as the case may be.

25. ***Expense Invoices; Disputes; Indemnification.***

(a) Any of the Debtors’ obligations to pay, in accordance with this Final Order, the principal, interest, fees, payments, expenses, or any other amounts described in the Secured Notes Documents the Interim Order or this Final Order as such amounts become due, shall not require the Prepetition Secured Parties or any party to obtain further Court approval. For the avoidance of doubt, such payments include, without limitation, the reasonable and documented fees and disbursements of the Prepetition Secured Party Professionals, in each case to the extent set forth in paragraph 4 of this Final Order, whether or not such fees arose before or after the Petition Date, all to the extent provided in the Interim Order, this Final Order or the Secured Notes Documents.

(b) As approved upon entry of the Interim Order and pursuant to this Final Order on a final basis, the Debtors shall be jointly and severally obligated to pay all reasonable and documented fees and expenses described above, which obligations shall constitute Prepetition Secured Indebtedness. The Debtors shall pay the reasonable and documented fees

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and professional fees, expenses, and disbursements to the extent provided for in paragraph 4(e)(ii) and (iii) of this Final Order no later than ten business days (the “Review Period”) after the receipt by counsel for the Debtors, the Committee, or the U.S. Trustee of each of the invoices therefor (the “Invoiced Fees”) and without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines, including such amounts arising before the Petition Date. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed, which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any other confidential information (such information, collectively, “Confidential Information”), and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law; *provided*, that at any time a Professional seeks payment of Invoiced Fees from the Debtors, the Debtors, the Committee, and the U.S. Trustee reserve their rights to request additional detail regarding the services rendered and expenses incurred by such Professional, subject to any attorney-client privilege, work product doctrine, privilege or

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protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law.

(c) The Debtors, the Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the “Disputed Invoiced Fees”) if, within the Review Period, a Debtor, the Committee, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten days’ prior written notice to the submitting party of any hearing on such motion or other pleading). Any hearing to consider such an objection to the payment of any fees, costs, or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of the objection and any other matter that the Court determines to be heard. For the avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(d) In addition, the Debtors hereby indemnify each of the Prepetition Secured Noteholders, the Prepetition Secured Agent, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing, each in their capacity as such, (each, an “Indemnified Person”) and hold them harmless from and against all costs, expenses (including reasonable and documented postpetition legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed

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use of the Cash Collateral as set forth herein. No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence, fraud, or willful misconduct. In no event shall any Indemnified Person or any Debtor be liable on any theory of liability for any special, indirect, consequential, or punitive damages; *provided*, that this shall not affect the Debtors' indemnification obligations pursuant to the immediately preceding sentence.

26. ***Headings.*** The headings in this Final Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Final Order.

27. ***Interim Order.*** Except as specifically amended or modified hereby, all of the provisions of the Interim Order and any actions taken by the Debtors or the Prepetition Secured Parties (including, without limitation, the Prepetition Secured Agent) in accordance therewith or in reliance thereon are hereby ratified by this Final Order.

28. ***Retention of Jurisdiction.*** The Court has and will retain jurisdiction to enforce this Final Order according to its terms.

29. ***Controlling Effect of Final Order.*** To the extent any provision of this Final Order conflicts or is inconsistent with any provision of the Motion, the Interim Order or any other order of this Court, the provisions of this Final Order shall control.

Exhibit 1
Final Budget

Detailed 13 Week Liquidity Outlook

(\$ in 000s)

Projected Weekly Liquidity (\$ in 000s)	Fcst. Week 1 ⁽¹⁾	Fcst. Week 2	Fcst. Week 3	Fcst. Week 4	Fcst. Week 5	Fcst. Week 6	Fcst. Week 7	Fcst. Week 8	Fcst. Week 9	Fcst. Week 10	Fcst. Week 11	Fcst. Week 12	Fcst. Week 13	Fcst.
	2/16/24	2/23/24	3/1/24	3/8/24	3/15/24	3/22/24	3/29/24	4/5/24	4/12/24	4/19/24	4/26/24	5/3/24	5/10/24	Total
Operating Receipts:														
Test/Collaboration Receipts	\$5,252	\$5,957	\$8,093	\$6,169	\$6,244	\$6,728	\$7,012	\$9,073	\$7,184	\$7,109	\$7,392	\$8,268	\$7,112	\$91,594
Other Receipts	-	-	189	-	-	-	-	189	-	-	-	117	-	496
Total Receipts	\$5,252	\$5,957	\$8,282	\$6,169	\$6,244	\$6,728	\$7,012	\$9,263	\$7,184	\$7,109	\$7,392	\$8,386	\$7,112	\$92,090
Operating Disbursements:														
Payroll, Bonus & Benefits	-	(\$7,374)	(\$1,147)	(\$7,251)	(\$12,451)	(\$7,374)	(\$1,147)	(\$6,495)	(\$933)	(\$6,593)	(\$4,182)	(\$11,944)	(\$933)	(\$67,822)
Lab Materials	-	(653)	(826)	(959)	(1,915)	(2,173)	(1,374)	(1,374)	(1,374)	(1,374)	(1,374)	(1,505)	(1,505)	(16,404)
Collection Kits	-	(1,122)	(234)	(3)	(507)	(546)	(236)	(371)	(236)	(236)	(236)	(246)	(246)	(4,219)
Shipping Costs	-	(1,571)	(400)	(345)	(473)	(345)	(345)	(345)	(360)	(360)	(360)	(360)	(360)	(5,623)
Real Property Lease Payments	-	-	(784)	-	-	-	-	(784)	-	-	-	(784)	-	(2,352)
Other Disbursements	-	(2,819)	(2,902)	(1,700)	(3,068)	(2,699)	(2,908)	(2,603)	(2,665)	(2,551)	(2,868)	(2,519)	(2,680)	(31,981)
Total Disbursements	-	(\$13,539)	(\$6,292)	(\$10,258)	(\$18,414)	(\$13,137)	(\$6,009)	(\$11,972)	(\$5,567)	(\$11,113)	(\$9,019)	(\$17,357)	(\$5,723)	(\$128,401)
Restructuring Related / One-Time:														
Debt Service	-	-	-	-	(\$1,143)	-	-	-	(\$1,143)	-	-	-	(\$1,143)	(\$3,430)
Capex	-	(505)	-	(767)	-	(505)	(767)	-	(505)	(767)	-	-	-	(3,815)
Non-Insider Severance	-	-	-	-	(192)	(1,505)	-	-	-	(111)	-	-	-	(1,807)
Non-Insider Retention	-	-	-	(321)	(1,178)	(321)	-	-	(94)	-	-	(522)	-	(2,436)
Professional Fees	-	-	-	-	(750)	-	(450)	(3,071)	-	(750)	(450)	-	(3,131)	(8,601)
Other One-Time	-	-	(3,300)	(462)	-	-	-	-	(462)	-	-	-	(358)	(4,582)
Total Restructuring Related / One-Time	-	(\$505)	(\$3,300)	(\$1,550)	(\$3,264)	(\$2,330)	(\$1,217)	(\$3,071)	(\$2,204)	(\$1,627)	(\$450)	(\$522)	(\$4,632)	(\$24,672)
Change in Cash	\$5,252	(\$8,087)	(\$1,310)	(\$5,638)	(\$15,434)	(\$8,739)	(\$214)	(\$5,780)	(\$587)	(\$5,632)	(\$2,077)	(\$9,494)	(\$3,244)	(\$60,982)
Total Liquidity:														
Ending Cash Balance ⁽²⁾	147,199	139,112	137,803	132,165	116,731	107,992	107,778	101,998	101,411	95,779	93,702	84,208	80,964	80,964
Ending Securities Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Liquidity	\$147,199	\$139,112	\$137,803	\$132,165	\$116,731	\$107,992	\$107,778	\$101,998	\$101,411	\$95,779	\$93,702	\$84,208	\$80,964	\$80,964

Footnotes:

(1) Forecast for Week 1 ending 2/16/24 represents post-petition period only.

(2) Excludes \$10.1M of restricted cash.

Exhibit 2

Testing Cadence

Test Periods

<u>Budget Delivered</u>	<u>Test Period</u>		<u>Variance Report Sent</u>
	<u>Start</u>	<u>End</u>	
Wednesday, February 28, 2024	WE 3/1	WE 3/8	Friday, March 15, 2024
Wednesday, March 13, 2024	WE 3/15	WE 3/22	Friday, March 29, 2024
Wednesday, March 27, 2024	WE 3/29	WE 4/5	Friday, April 12, 2024
Wednesday, April 10, 2024	WE 4/12	WE 4/19	Friday, April 26, 2024
Wednesday, April 24, 2024	WE 4/26	WE 5/3	Friday, May 10, 2024
Wednesday, May 8, 2024	WE 5/10	WE 5/17	Friday, May 24, 2024
Wednesday, May 22, 2024	WE 5/24	WE 5/31	Friday, June 7, 2024
Wednesday, June 5, 2024	WE 6/7	WE 6/14	Friday, June 21, 2024
Wednesday, June 19, 2024	WE 6/21	WE 6/28	Friday, July 5, 2024
Wednesday, July 3, 2024	WE 7/5	WE 7/12	Friday, July 19, 2024
Wednesday, July 17, 2024	WE 7/19	WE 7/26	Friday, August 2, 2024
Wednesday, July 31, 2024	WE 8/2	WE 8/9	Friday, August 16, 2024
Wednesday, August 14, 2024	WE 8/16	WE 8/23	Friday, August 30, 2024
Wednesday, August 28, 2024	WE 8/30	WE 9/6	Friday, September 13, 2024