



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

Order Filed on March 18, 2024
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Chapter 11

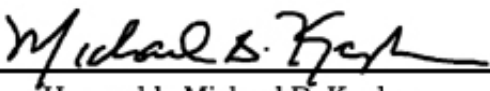
Case No. 24-11362 (MBK) (Jointly Administered)

**ORDER AUTHORIZING AND APPROVING PROCEDURES
TO REJECT EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

The relief set forth on the following pages, numbered three (3) through nine (9), is

ORDERED.

DATED: March 18, 2024


Honorable Michael B. Kaplan
United States Bankruptcy Judge

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.



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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: ORDER AUTHORIZING AND APPROVING PROCEDURES TO REJECT EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Upon the *Debtors' Motion for Entry of an Order Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases* (the "Motion"),¹ of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") authorizing and approving procedures (as described in the Motion, the "Rejection Procedures") for rejecting executory contracts and unexpired leases, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The following Rejection Procedures are approved in connection with rejecting

Contracts:

¹ Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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- a. **Rejection Notice.** The Debtors shall file a notice substantially in the form attached to the Order as Exhibit 1 (the “Rejection Notice”) indicating the Debtors’ intent to reject a Contract or Contracts pursuant to section 365 of the Bankruptcy Code, which Rejection Notice shall set forth, among other things: (i) the Contract or Contracts to be rejected; (ii) the Debtor or Debtors party to such Contracts; (iii) the names and addresses of the counterparties to such Contract(s) (each a “Rejection Counterparty”); (iv) the proposed effective date of the rejection for each such Contract, which for leases shall be the later of (a) the proposed effective date set forth on the Rejection Notice; and (b) the date the Debtors relinquish control of the premises by (1) notifying the affected landlord in writing, with email being sufficient, of the Debtors’ surrender of the premises and turning over keys, key codes, and security codes, if any, to the affected landlord or (2) notifying the affected landlord in writing, with email being sufficient, that the keys, key codes, and security codes, if any, are not available, but that the landlord may rekey the leased premises (each a “Rejection Date”); (v) if any such Contract is a lease, the personal property to be abandoned (the “Abandoned Property”), if any; (vi) with respect to real property, any known third party having an interest in any remaining property, including personal property, fixtures and equipment located at the leased premises and (vii) the deadlines and procedures for filing objections to the Rejection Notice (as set forth below); *provided* that the Debtors shall comply with the consent rights of the Required Consenting Stakeholders in accordance with the Transaction Support Agreement. The Rejection Notice may list multiple Contracts; *provided* that the number of Rejection Counterparties listed on the Rejection Notice shall be limited to no more than 100; and the Rejection Counterparties shall be listed in alphabetical order. Further, the Rejection Notice shall include the proposed form of order (the “Rejection Order”) approving the rejection of the Contracts. No Contract shall be deemed rejected absent entry of an applicable Rejection Order.
- b. **Service of the Rejection Notice.** No later than two business days after filing, the Debtors will cause the Rejection Notice to be served (i) by overnight delivery service upon the Rejection Counterparties affected by the Rejection Notice at the notice address provided in the applicable Contract (and their counsel, if known) and all parties who have any interest in any Abandoned Property (if known), and (ii) by first class mail, email, or fax upon: (a) the office of the United States Trustee for the District of New Jersey; (b) White & Case LLP, as proposed counsel to the Official Committee of Unsecured Creditors (the “Creditors’ Committee”); (c) Porzio, Bromberg & Newman, P.C., as proposed local counsel to the Creditors’ Committee; (d) the Debtors’ thirty (30) largest unsecured

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creditors (on a consolidated basis); (e) counsel to the agent to the Secured Notes; (f) the indenture trustee to the 2024 Convertible Notes; (g) the indenture trustee to the 2028 Convertible Notes; (h) Sullivan & Cromwell LLP, as counsel to the Required Holders; (i) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (j) counsel to the 2028 Convertible Noteholders; (k) the U.S. Securities and Exchange Commission; (l) the United States Attorney's Office for the District of New Jersey; (m) the attorneys general in the states where the Debtors conduct their business operations; (n) the Internal Revenue Service; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Service Parties").

- c. **Objection Procedures.** Parties objecting to a proposed rejection must file and serve a written objection² so that such objection is filed with the Court and is *actually received* by the following parties no later than ten (10) days after the date the Debtors file and serve the applicable Rejection Notice (the "Rejection Objection Deadline"): (a) the Debtors, Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attn: Benjamin Carver; (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Nicole L. Greenblatt, P.C., Francis Petrie, Nikki Gavey, and Olivia Acuña; Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Spencer A. Winters, P.C.; (c) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Warren A. Usatine, Felice R. Yudkin, and Daniel J. Harris; (d) the Office of the United States Trustee for the District of New Jersey, One Newark Center, 1085 Raymond Boulevard, suite 2100, Newark, New Jersey 07102, Attn.: Jeffrey M. Sponder, Lauren Bielskie; (e) proposed counsel to the Creditors' Committee, White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn: Harrison Denman, Andrew Zatz and Brett Bakemeyer; and (f) proposed local counsel to the Creditors' Committee, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, New Jersey 07962-1997, Attn: Warren J. Martin, Jr., Esq.; John S. Mairo, Esq.; Dean M. Oswald, Esq. (collectively, the "Objection Service Parties").
- d. **No Objection Timely Filed.** If no objection to the rejection of any Contract is timely filed, the Debtors shall file a Rejection Order under a certificate of no objection. The rejection of each Contract listed in the applicable Rejection Notice shall be rejected as of the applicable Rejection Date set

² An objection to the rejection of any particular Contract listed on a Rejection Notice shall not constitute an objection to the rejection of any other Contract listed on such Rejection Notice.

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Debtors: INVITAE CORPORATION, *et al.*

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forth in the Rejection Notice or such other date as the Debtors and the applicable Rejection Counterparty agree; *provided, however*, that the Rejection Date for a rejection of a lease of nonresidential real property shall not occur until the later of (i) the Rejection Date set forth in the Rejection Notice and (ii) the date the Debtors relinquish control of the premises by notifying the affected landlord in writing of the Debtors' surrender of the premises and (A) turning over keys, key codes, and security codes, if any, to the affected landlord or (B) notifying the affected landlord in writing that the keys, key codes, and security codes, if any, are not available, but the landlord may rekey the leased premises; *provided, further*, that the Rejection Date for a lease of non-residential real property rejected pursuant to these Rejection Procedures shall not occur earlier than the date the Debtors filed and served the applicable Rejection Notice.

- e. ***Unresolved Timely Objections.*** If an objection to the rejection of any Contract(s) listed in the applicable Rejection Notice is timely filed and properly served as specified above and not withdrawn or consensually resolved, the Debtors shall file a notice for a hearing to be held on not less than ten (10) days' notice to the applicable Rejection Counterparty and Objection Service Parties to consider the objection for the Contract(s) to which such objection relates. Such Contract will only be deemed rejected upon entry by the Court of a consensual form of Rejection Order resolving the objection as between the objecting party and the Debtors, or if resolution is not reached and/or if such objection is overruled or withdrawn, such Contract(s) shall be rejected as of (i) the applicable Rejection Date set forth in the Rejection Notice, (ii) such other date as the Debtors and the applicable Rejection Counterparty agree, or (iii) such other date as the Court may so order.
- f. ***Consent Orders.*** Any objection may be resolved without a hearing by the filing of a notice of such resolution signed by counsel to the Debtors, counsel to the objecting party, and counsel to the Rejection Counterparty together with a proposed Rejection Order.
- g. ***No Application of Security Deposits.*** If the Debtors have deposited monies with a Rejection Counterparty as a security deposit or other arrangement, such Rejection Counterparty may not setoff, recoup, or otherwise use such monies without further order of the Court, unless the Debtors and the applicable Rejection Counterparty to such Contract(s) otherwise agree.
- h. ***Abandoned Property.*** The Debtors are authorized at any time on or before the applicable Rejection Date, to remove or abandon any of the Debtors' personal property that is located on the Debtors' leased premises that are

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subject to a rejected Contract; *provided, however*, that (i) nothing shall modify any requirement under applicable law with respect to the removal of any hazardous materials as defined under the applicable law from any of the Debtors' leased premises and (ii) to the extent the Debtors seek to abandon personal property that contains "personally identifiable information," as that term is defined in section 101(41A) of the Bankruptcy Code (the "PII"), the Debtors will use commercially reasonable efforts to remove the PII from such personal property before abandonment. If the Debtors decide to abandon any personal property, the Debtors shall generally describe the abandoned personal property in the Rejection Notice. Absent a timely objection, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. For the avoidance of doubt, any and all property located on the Debtors' leased premises on the Rejection Date of the applicable lease of nonresidential real property shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the Rejection Date. Landlords may, in their sole discretion and without further notice or order of this Court, utilize and/or dispose of such property without liability to the Debtors or third parties, and, to the extent applicable, the automatic stay is modified to allow such disposition.

- i. ***Proofs of Claim.*** Claims arising out of the rejection of Contracts, if any, must be filed on or before the later of (i) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and (ii) thirty (30) days after the later of (A) the date of entry of the Rejection Order approving rejection of the applicable Contract, and (B) the Rejection Date. If no proof of claim is timely filed, such claimant shall be forever barred from asserting a claim for damages arising from the rejection and from participating in any distributions on such a claim that may be made in connection with these chapter 11 cases.

- j. ***Removal from the Rejection Notice.*** The Debtors reserve the right to remove any Contract from the schedule to a Rejection Notice at any time prior to the Rejection Date but shall provide any affected Rejection Counterparty and the Objection Service Parties notice of removal of any Contract from the Rejection Notice within two (2) business days of any such change, *provided* that the Debtors shall not remove any Contract from the schedule to a Rejection Notice if they have relinquished control of the premises by notifying the affected landlord in writing, with email being sufficient, of the Debtors' surrender of the premises as described above and (a) turned over keys, key codes, and security codes, if any, to the affected landlord or (b) notified the affected landlord in writing, with email being sufficient, that the keys, key codes, and security codes, if any, are not

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available, but the landlord may rekey the leases premises.

3. Approval of the Rejection Procedures and this Order will not prevent the Debtors from seeking to reject a Contract by separate motion or pursuant to a chapter 11 plan.

4. All rights and defenses of the Debtors are preserved, including all rights and defenses of the Debtors with respect to a claim for damages arising as a result of a Contract rejection, including any right to assert an offset, recoupment, counterclaim, or deduction. In addition, nothing in this Order or the Motion shall limit the Debtors' ability to subsequently assert that any particular Contract is expired or terminated and is no longer an executory contract or unexpired lease, respectively.

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

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

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

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

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

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

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

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

Exhibit 1

Proposed Rejection Notice

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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)

**NOTICE OF REJECTION OF
CERTAIN EXECUTORY CONTRACTS AND/OR UNEXPIRED LEASES**

PARTIES RECEIVING THIS NOTICE SHOULD LOCATE THEIR NAMES AND THEIR CONTRACTS OR LEASES ON SCHEDULE 1 ATTACHED HERETO AND READ THE CONTENTS OF THIS NOTICE CAREFULLY.

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.

PLEASE TAKE NOTICE that on [_____], 2024, the United States Bankruptcy Court for the District of New Jersey (the “Court”) entered an order on the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (the “Debtors”) authorizing and approving procedures to reject executory contracts and unexpired leases [Docket No. ____] (the “Rejection Procedures Order”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Rejection Procedures Order and by this written notice (this “Rejection Notice”), the Debtors hereby notify you that they have determined, in the exercise of their business judgment, that each Contract set forth on **Schedule 1** attached hereto is hereby rejected effective as of the date (the “Rejection Date”) set forth on **Schedule 1**, or such other date to which the Debtors and the counterparty or counterparties to any such Contract agree.

PLEASE TAKE FURTHER NOTICE that parties seeking to object to the proposed rejection of any of the Contracts must file and serve a written objection so that such objection is filed with the Court on the docket of the Debtors’ chapter 11 cases and is ***actually received*** by the following parties no later than ten (10) days after the date that the Debtors served this Notice: (a) the Debtors, Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attn: Benjamin Carver; (b) proposed co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Nicole L. Greenblatt P.C., Francis Petrie, Nikki Gavey, and Olivia Acuña; 300 North LaSalle, Chicago, Illinois 60654, Attn: Spencer A. Winters, P.C.; (c) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Warren A. Usatine,

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

Felice R. Yudkin, and Daniel J. Harris; (d) the Office of the United States Trustee for the District of New Jersey, One Newark Center, 1085 Raymond Boulevard, suite 2100, Newark, New Jersey 07102, Attn.: Jeffrey Sponder, Lauren Bielskie; (e) proposed counsel to the Creditors' Committee, White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020, Attn: Harrison Denman, Andrew Zatz and Brett Bakemeyer; and (f) proposed local counsel to the Creditors' Committee, Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, New Jersey 07962-1997, Attn: Warren J. Martin, Jr., Esq.; John S. Mairo, Esq.; Dean M. Oswald, Esq.

PLEASE TAKE FURTHER NOTICE that, absent an objection being timely filed, the rejection of each Contract shall become effective on the applicable Rejection Date set forth on **Schedule 1** or such other date to which the Debtors and the counterparty or counterparties to such Contract agree.³

PLEASE TAKE FURTHER NOTICE that, if an objection to the rejection of any Contract is timely filed and not withdrawn or resolved, the Debtors shall file a notice for a hearing to consider the objection for the Contract or Contracts to which such objection relates. If such objection is overruled or withdrawn, such Contract or Contracts shall be rejected as of the applicable Rejection Date set forth on **Schedule 1** or such other date to which the Debtors and the counterparty or counterparties to any such Contract agree.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Rejection Procedures Order, if the Debtors have deposited monies with a Contract counterparty as a security

³ An objection to the rejection of any particular Contract listed in this Rejection Notice shall not constitute an objection to the rejection of any other contract or lease listed in this Rejection Notice. Any objection to the rejection of any particular Contract listed in this Rejection must state with specificity the Contract to which it is directed. For each particular Contract whose rejection is not timely or properly objected to, such rejection will be effective in accordance with this Rejection Notice and the Rejection Procedures Order.

deposit or other arrangement, the Contract counterparty may not set off or recoup or otherwise use such monies without further order of the Court, unless the Debtors and the counterparty or counterparties to such Contracts otherwise agree.

PLEASE TAKE FURTHER NOTICE that, absent timely objection, any personal property of the Debtors that is listed and described on **Schedule 1** shall be deemed abandoned as of the Rejection Date.

PLEASE TAKE FURTHER NOTICE that, to the extent you wish to assert a claim with respect to rejection of your Contract or Contracts, you must do so on or before the later of (a) the deadline for filing proofs of claim established in these chapter 11 cases, if any, and, (b) thirty (30) days after the later of (A) if no objection is timely filed, the Rejection Objection Deadline, and (B) if any objection is timely filed, the date that all such filed objections have either been overruled or withdrawn. IF YOU FAIL TO TIMELY SUBMIT A PROOF OF CLAIM IN THE APPROPRIATE FORM BY THE DEADLINE SET FORTH HEREIN, YOU WILL BE FOREVER BARRED, ESTOPPED, AND ENJOINED FROM (1) ASSERTING SUCH CLAIM AGAINST ANY OF THE DEBTORS AND THEIR CHAPTER 11 ESTATES, (2) VOTING ON ANY CHAPTER 11 PLAN OF REORGANIZATION FILED IN THESE CASES ON ACCOUNT OF SUCH CLAIM, AND (3) PARTICIPATING IN ANY DISTRIBUTION IN THE DEBTORS' CHAPTER 11 CASES ON ACCOUNT OF SUCH CLAIM.

Dated: [____], 2024

/s/ *DRAFT*

COLE SCHOTZ P.C.

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

Schedule 1

Rejected Contracts¹

Rejection Counterparty	Description of Contract²	Abandoned Property	Rejection Date

¹ For the avoidance of doubt, the Contracts referenced herein include any ancillary documents, including guaranties or assignments thereof, and any amendments, modifications, subleases, or termination agreements related thereto.

² The inclusion of a Contract on this list does not constitute an admission as to the executory or non-executory nature of the Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Contract.