



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

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

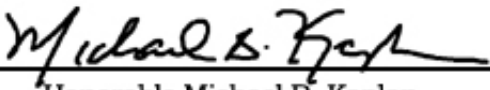
Chapter 11

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

**FINAL ORDER
(I) APPROVING THE
DEBTORS' PROPOSED
ADEQUATE ASSURANCE OF
PAYMENT FOR FUTURE UTILITY
SERVICES, (II) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING
SERVICES, AND (III) APPROVING THE DEBTORS' PROPOSED
PROCEDURES FOR RESOLVING ADEQUATE ASSURANCE REQUESTS**

The relief set forth on the following pages, numbered three (3) through thirteen (13), 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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Caption in Compliance with D.N.J. LBR 9004-1(b)

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Case No. 24-11362 (MBK)

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Upon the *Debtor's Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services, and (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) approving the Debtors' proposed adequate assurance of payment for future utility services, (b) prohibiting Utility Providers from altering, refusing, or discontinuing services, and (c) approving the Adequate Assurance Procedures for resolving Adequate Assurance Requests, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing

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

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before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. Subject to the Adequate Assurance Procedures for resolving Adequate Assurance Requests, the Adequate Assurance Deposit, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business, shall constitute adequate assurance of future payment as required under section 366 of the Bankruptcy Code.
3. The following Adequate Assurance Procedures are hereby approved on a final basis:
 - a. The Debtors will serve a copy of the Motion and this Final Order to each Utility Provider within two (2) business days after entry of this Final Order by the Court.
 - b. The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within fifteen (15) days after entry of the Interim Order.
 - c. If an amount relating to Utility Services provided postpetition by any Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account up to the amount owed to each such Utility Provider by giving notice to: (i) the Debtors, Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attn: Benjamin Carver; (ii) proposed counsel to the Debtors, (A) Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com), Francis Petrie (francis.petrie@kirkland.com), Nikki Gavey

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(nikki.gavey@kirkland.com), and Olivia Acuna (olivia.acuna@kirkland.com), and (B) Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Spencer A. Winters, P.C. (spencer.winters@kirkland.com); (iii) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn: Michael D. Sirota (msirota@coleschotz.com); Warren A. Usatine (wusatine@coleschotz.com), Felice R. Yudkin (fyudkin@coleschotz.com), and Daniel J. Harris (dharris@coleschotz.com); (iv) proposed counsel to the Official Committee of Unsecured Creditors (the "Creditors' Committee"), White & Case LLP, 1221 Avenue of the Americas, New York, New York 10020, Harrison Denman (harrison.denman@whitecase.com), Andrew Zatz (azatz@whitecase.com), Brett Bakemeyer (brett.bakemeyer@whitecase.com); (v) 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. (WJMartin@pbnlaw.com); John S. Mairo, Esq. (JSMairo@pbnlaw.com); Dean M. Oswald, Esq. (dmoswald@pbnlaw.com); (vi) counsel to the Required Holders, (A) Sullivan & Cromwell LLP, 125 Broad Street, New York, NY, 10004, Attn: Ari Blaut (blauta@sullcrom.com) and Benjamin Beller (bellerb@sullcrom.com) and (B) Wollmuth Maher & Deutsch LLP, 500 5th Avenue, New York, NY, 10110, Attn: James Lawlor (JLawlor@wmd-law.com), Joseph Pacelli (jpacelli@wmd-law.com), and Nicholas Servider (nservider@wmd-law.com); and (vii) the U.S. Trustee for the District of New Jersey, One Newark Center, 1095 Raymond Boulevard, Suite 2100, Newark, New Jersey 07102, Attn: Jeffrey Sponder (jeffrey.m.sponder@usdoj.gov) and Lauren Bielskie (lauren.bielskie@usdoj.gov) (collectively, the "Notice Parties"). The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- d. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the

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column labeled "Proposed Adequate Assurance" on the Utility Services List, attached hereto as **Exhibit A**.

- e. Each Utility Provider holding an existing deposit is permitted to maintain its existing deposit in addition to its right to funds in the Adequate Assurance Account. Such Utility Provider may not, absent a separate order granting relief from Section 362 of the Bankruptcy Code, apply such existing deposit to any prepetition amounts owed if there are no outstanding disputes related to postpetition payment.
- f. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors or the Reorganized Debtors, as applicable, automatically, without further order of the Court, on the earlier of (i) the Debtors reconciling and paying the Utility Provider's final invoice in accordance with applicable nonbankruptcy law following the Debtors' termination of Utility Services from such Utility Provider or (ii) the effective date of any chapter 11 plan confirmed in these chapter 11 cases if there are no outstanding disputes related to postpetition payment.
- g. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Notice Parties.
- h. Any Adequate Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; (v) certify that the Utility Provider does not already hold a deposit equal to or greater than two (2) weeks of Utility Services; and (vi) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- i. Unless a Utility Provider files and serves an Adequate Assurance Request, the Utility Provider shall be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

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- j. Upon the Debtors' receipt of an Adequate Assurance Request, the Debtors shall promptly negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request.
 - k. The Debtors may, without further order from the Court, resolve any Adequate Assurance Request by mutual agreement with a Utility Provider and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable; *provided, however,* that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be made available to the Creditors' Committee and the U.S. Trustee on a monthly basis.
 - l. If the Debtors and the Utility Provider are unable to reach a consensual resolution within fourteen (14) days of receipt of an Adequate Assurance Request, or if a Utility Provider was omitted from the Utility Services List and wishes to dispute that it received adequate assurance of future payment as required by section 366 of the Bankruptcy Code as provided by this Final Order, the Debtors will request a hearing before the Court at the next regularly-scheduled omnibus hearing to determine the adequacy of assurance of payment with respect to such Utility Provider (a "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
 - m. At all times prior to resolution of such dispute at a Determination Hearing and the entry of any Court order as a result thereof, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.
4. The Utility Providers, including those Utility Providers paid by the Debtors' Landlords, are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures. Notwithstanding anything to the contrary in this

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Final Order, nothing in this Final Order affects the rights and obligations of the Debtors and their landlords under section 365 of the Bankruptcy Code with respect to nonresidential real property leases.

5. Absent further order of the Court, all Utility Providers, including those Utility Providers paid by the Debtors' Landlords, are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

6. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a segregated account during the pendency of these chapter 11 cases.

7. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized to add or remove such parties from the Utility Services List; *provided, however*, that the Debtors shall provide notice of any such addition or removal to the Notice Parties; *provided, further*, that, if a Utility Provider is removed from the Utility Services List, the Debtors shall provide the applicable Utility Provider with two (2) weeks' notice thereof and the opportunity to respond to such removal. To the extent that there is any dispute as to the postpetition amounts owed to a Utility Provider or such Utility Provider's removal, such Utility Provider shall not be removed from the Utility Services List, and no funds shall be removed from

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the Adequate Assurance Deposit, until such dispute has been resolved. To the extent the Debtors and the Utility Provider are unable to reach a consensual resolution within fourteen (14) days of the Debtors' receipt of notice of such dispute, the Debtors shall request a hearing before this Court at the next omnibus hearing date or such other date that the Debtor and the Utility Provider may agree.

9. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors shall serve such Utility Provider a copy of this Final Order, including the Adequate Assurance Procedures within two (2) business days of such Utility Provider being added to the Utilities Services List, allocate additional amounts to the Adequate Assurance Deposit in accordance with the Motion, and provide such Utility Provider two (2) weeks' notice to object to the inclusion of such Utility Provider on the Utility Services List. If an objection is received, to the extent the Debtors and the Utility Provider are unable to reach a consensual resolution within fourteen (14) days of the Debtors' receipt of such objection, the Debtors shall request a hearing before this Court at the next omnibus hearing date or such other date that the Debtor and the Utility Provider may agree. The terms of this Final Order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider. The Debtors shall supplement **Exhibit A** hereto with the names of any subsequently identified Utility Provider and file the same with the Court.

10. To the extent that the Debtors become delinquent with respect to a Utility Provider's account after the Petition Date, such Utility Provider shall be permitted to file a written

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notice of delinquency with the Court (a "Delinquency Notice") and serve such Delinquency Notice on the Notice Parties. Such Delinquency Notice must set forth the amount of the delinquency with enough detail for the Debtors and other parties-in-interest to determine the amount owing, by account number, and the dates services were provided. If such delinquency is not cured, and none of the Debtors have objected to the Delinquency Notice within ten (10) days of receipt, the Debtors will be required to remit to the respective Utility Provider from the Adequate Assurance Account the amount of postpetition charges claimed as delinquent. The Debtors will further be required to ensure that the Adequate Assurance Deposit is replenished, by the amount disbursed, after payment of the delinquent balance. If an objection is filed to the Delinquency Notice, the Debtors will request that this Court schedule a hearing to resolve the dispute.

11. The relief granted herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those parties or entities on the Utility Services List.

12. Absent further order of the Court, any Landlord or third party that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease, and has been provided notice of the relief provided by this Final Order, must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of rent, or any defaults with respect to the applicable lease; *provided* that a Landlord or third party may cease payments on account of Utility Services following the effective

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date of any rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code, if any.

13. The Debtors shall be authorized to reduce the Adequate Assurance Deposit to reflect terminated Utility Services upon either (a) obtaining the affected Utility Provider's consent to reduce the Adequate Assurance Deposit; or (b) filing notice with the Court and serving upon the affected Utility Provider a notice of the Debtors' intent to reduce the Adequate Assurance Deposit within fourteen (14) days thereof and receiving no response thereto. Any notices of any reductions of the Adequate Assurance Deposit filed with the Court shall be provided to the Notice Parties. Upon the effective date of a plan in these chapter 11 cases, the Adequate Assurance Deposit shall be returned to the Debtors, less any amount owed on account of unpaid, postpetition Utility Services, by no later than five (5) business days following the date upon which the plan becomes effective.

14. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

15. Nothing contained in the Motion or this Final Order, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with this Final Order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of,

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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 Final Order; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law.

16. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

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

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

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

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

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

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

Exhibit A

Utility Services List

Utility Provider	Utility Provider's Address	Service Provided	Account Number(s)	Proposed Adequate Assurance
AT&T Inc.	208 S. Akard Street Dallas, Texas 75202	Telecommunications	831-001-1392-837 287304415014- 57898261	\$1,353.39
City & County of San Francisco d/b/a San Francisco Public Utilities Commission	525 Golden Gate Avenue – 13 th Floor, San Francisco, CA 94102	Water, fire, sewer	5101306703	\$379.80
Cox Communications, Inc.	6205 Peachtree Dunwoody Road, Atlanta, GA 30328	Telecommunications	001-7601-061984301 001-7601-032947102	\$812.50
Duke Energy Corporation	526 S Church St, Charlotte, North Carolina 28202	Water	9100 9520 2200	\$9,383.42
Irvine Ranch Water District	15600 Sand Canyon Ave, Irvine, CA 92618	Water	7808255883 Meter #86741611	\$89.86
Lumen Technologies	CenturyLink, PO Box 52187 Phoenix, AZ 85072-2187 Level 3 Communications, LLC, PO Box 910182, Denver, CO 80291-0182	Telecommunications	88943994 1-B9W66Q 5-THYB2LKM	\$3,146.74
Pacific Gas and Electric Company d/b/a PG&E	P.O. Box 997300, Sacramento, CA 95899	Electricity, Gas	2172909804-2	\$33,079.39
Public Service Company of North Carolina, Incorporated	400 Cox Road, Gastonia, NC 28054	Gas	9-2101-3667-6246	\$2,579.64
Southern California Edison	P.O. Box 6400, Rancho Cucamonga, CA 91729	Electricity	Customer Account: 700102549454 Service Account: 801298871	\$3,754.40
Southern California Gas Company d/b/a SoCalGas	17836 Gillete Ave, Irvine, CA 92614	Gas	071-095-9478-3	\$12.56
Town of Cary	400 James Jackson Ave, Cary, NC 27513	Water	239427-9006390	\$113.30
Verizon Business Network Services Inc, d/b/a Verizon	1095 Avenue of the Americas, New York, NY 10036	Telecommunications	U0206670	\$532.68
Xcel Energy	P.O. Box 8, Eau Claire, WI 54702	Electricity, Gas	Golden, CO: 53-0010358702-9 Boulder, CO: 53-0011133698-7	\$431.45
Total				\$55,669.13