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

*In re*  
  
INVITAE CORPORATION, *et al.*  
  
Debtors.

Chapter 11  
Case No. 24-11362-MBK  
Chief Judge Michael B. Kaplan  
Hearing Date: May 7, 2024  
Hearing Time: 10:00 a.m.

**OBJECTION OF UNITED STATES OF AMERICA TO NOTICE TO  
CONTRACT PARTIES TO POTENTIALLY ASSUMED  
CONTRACTS AND UNEXPIRED LEASES**

THE UNITED STATES OF AMERICA, submits the following objection to the Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases [ECF Doc. 365] (the "Contract Assumption Notice").<sup>1</sup> In support thereof, the United States respectfully represents as follows:

**RELEVANT BACKGROUND**

1. The Contract Assumption Notice lists over one dozen purported

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<sup>1</sup> Capitalized terms used herein that are otherwise undefined shall have the meanings ascribed in the Cure Notice.



contracts with the United States. *See* Contract Assumption Notice, Exhibit A. Pursuant to the USPS tracking number accompanying the Contract Assumption Notice sent to the United States Attorney's Office, it was delivered on May 1, 2024, at 2:50 p.m. *See* <https://tools.usps.com/go/TrackConfirmAction?tLabels=1=9405516931490046526793>. Notwithstanding this May 1 delivery date, the Contract Assumption Notice purported to impose an objection deadline of that very same day at 4:00 p.m.<sup>2</sup> *See* Contract Assumption Notice at 2, ¶ 3.

2. Thus, even assuming undersigned counsel received the Contract Assumption Notice at the moment it was delivered to the mailroom of the U.S. Attorney's Office, the purported objection deadline would have provided exactly **one hour and ten minutes** to *inter alia*, (i) review the 370-page document; (ii) identify and review all of the relevant contracts (after obtaining them from the relevant agencies); (iii) confirm whether these contracts were even subject to assignment under applicable non-bankruptcy law; (iv) ascertain whether the affected agencies agreed with the proposed cure amounts; and (v) prepare and file any appropriate objection. Presumably, many other contract parties are similarly disadvantaged in having adequate time to review and respond to the Contract Assumption Notice.

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<sup>2</sup> Contrary to the May 1 deadline stated in the Contract Assumption Notice, the Court's docketing notes accompanying the Contract Assumption Notice state that the objection deadline is actually May 5, 2024. *See* [ECF Doc. No. 365]. Based on discussions with Debtors' counsel, the United States does not believe the Debtors will take the position that this objection is untimely.

**OBJECTION**

3. The United States objects to the Contract Assignment Notice to the extent it purports to assume and assign contracts in violation applicable non-bankruptcy law including, *inter alia*, the Federal Anti-Assignment Act (41 U.S.C. § 6305) and the Federal Acquisition Regulation, (48 CFR § 42.1204(a)). Section 365(c)(1) of the Bankruptcy Code prohibits the Debtors from assuming and assigning executory contracts when “applicable law excuses a party, other than the debtor, to such a contract from accepting performance from . . . an entity other than the debtor or debtor in possession” without the non-debtor’s consent. 11 U.S.C. § 365(c)(1). The Anti-Assignment Act and Federal Acquisition Regulation (among other potentially governing statutes and regulations) would constitute applicable law that excuses the United States from accepting performance from anyone but the Debtors for purposes of section 365(c)(1). *In re West Elecs.*, 852 F.2d 79, 83 (3d Cir. 1988). The United States reserves all rights in this regard because, having received notice yesterday afternoon, it has not yet had an opportunity to review the federal contracts listed in the Contract Assignment Notice or to confer with the impacted agencies to determine which non-bankruptcy statutes and regulations apply to the scheduled contracts.

4. Even assuming the relevant federal contracts are subject to assignment, the United States further objects to the cure amounts listed Contract Assignment Notice. As explained above, the United States has had no meaningful

opportunity to determine what amounts are due under the scheduled contracts or to even obtain copies of the same. As a result, the United States is in no position to accept the stated cure amounts and therefore objects.

5. The United States fully reserves all rights with respect to the foregoing issues.

Dated: May 2, 2024

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