

**GIBBONS P.C.**

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

In re:  
INVITAE CORPORATION, et al.,  
Debtors.<sup>1</sup>

Chapter 11  
Case No. 24-11362 (MBK)  
(Jointly Administered)  
Judge: Michael B. Kaplan

**OBJECTION AND RESERVATION OF RIGHTS OF GBF, INC.  
TO CURE NOTICE AND PROPOSED SALE**

GBF, Inc. (“GBF”), by and through its undersigned counsel, hereby submits this Objection (this “Objection”) to the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 365] (the “Cure Notice”) filed by the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) pursuant to the *Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets*

<sup>1</sup> The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



[Docket No. 57] (the “Bidding Procedures Order”).” In support of this Objection, GBF states as follows below.

**BACKGROUND**

1. The Debtors commenced these bankruptcy cases by filing petitions for relief under chapter 11 of the Bankruptcy Code on February 13, 2024 (the “Petition Date”).

2. Prior to the Petition Date, GBF and one of the Debtors, Invitae Corporation, executed certain agreements, including the Business Associate Agreement, on or about March 4, 2021; the Master Supply and Services Agreement; the Quality Terms and Conditions agreement, on or about October 22, 2020; and the Product and Service Agreement, on or about February 17, 2021 (each an “Agreement,” and collectively, the “Agreements”). Among other terms, the Agreements provide that GBF will fulfill Invitae Corporation orders for medical test kits and other products.

3. Pursuant to the Agreements, GBF has provided, and continues to provide, medical testing kits to Invitae Corporation. *See, e.g.*, Proof of Claim No. 16.

4. On February 16, 2024, the Court entered the Bidding Procedures Order. On information and belief, GBF did not receive a mailed copy of the Bidding Procedures Order.

5. On April 25, 2024, the Debtors filed the Cure Notice and listed the Agreements as potential contracts for assumption and assignment to a buyer with a cure amount of \$0.00 for each Agreement, as shown below:

Invitae Corporation	24-11362 (MBK)	GBF Inc.	Invitae Corporation Business Associate Agreement	3/4/21	\$ 0.00
Invitae Corporation	24-11362 (MBK)	GBF	Master Supply and Services Agreement		\$ 0.00
Invitae Corporation	24-11362 (MBK)	GBF Inc.	Quality Terms and Conditions	10/22/20	\$ 0.00
Invitae Corporation	24-11362 (MBK)	GBF, INC (GBF)	Product and Service Agreement	2/17/21	\$ 0.00

6. On information and belief, GBF did not receive a mailed copy of the Cure Notice.

7. On information and belief, the Cure Notice provided the first and only information about treatment specific to GBF under the Bidding Procedures Order.

8. Because the Cure Notice provided the first and only information specific to GBF, GBF received insufficient notice of the proposed assumption of the Agreements and the purported cure amounts scheduled by the Debtors.

9. Indeed the notice and objection period between receipt of the Cure Notice and the objection deadline provided only three business days and only five calendar days.

### **OBJECTION**

10. GBF objects to the Cure Notice and any assumption or assignment of the Agreements because (i) the Debtors have failed to accurately state the cure amount owed to GBF and (ii) GBF did not receive due, proper, timely, adequate, or sufficient notice of the treatment proposed for the Agreements.

11. Section 365 of the Bankruptcy Code provides that a debtor may not assume an executory contract, unless at the time of the assumption of such contract, the debtor cures any defaults, compensates for any actual pecuniary loss resulting from such defaults, and provides adequate assurance of future performance. 11 U.S.C. §§ 365(b)(1), 365(f)(2).

12. As of April 29, 2024, the cure amount due to satisfy prepetition amounts under the Agreements is \$624,573.79, plus all interest and other legally recoverable charges that continue to accrue on the amounts owed to GBF under the Agreements or otherwise. GBF also is owed \$295,934.00 in postpetition amounts due under the Agreements. In total, \$920,507.79 is due and owing to GBF. A summary of unpaid invoices as of April 29, 2024, is attached hereto as **Exhibit A**.

13. Amounts owing to GBF continue to accrue. GBF demands payment in full of all accrued and accruing invoices as a condition to assumption or assignment of the Agreements to any buyer.

### **RESERVATION OF RIGHTS**

14. GBF does not release or waive any claim, right, or remedy arising under the Agreements, any related agreements, the Bankruptcy Code, or other applicable law.

15. Without limitation, GBF expressly reserves the right to assert that amounts due and owing to GBF are administrative expense claims under section 503 of the Bankruptcy Code and other applicable law.

16. Similarly, GBF continues to provide services to the Debtors. GBF reserves the right to assert additional cure claims for any and all amounts that may remain outstanding under the Agreements at the time that assumption of the Agreements is proposed to be effective. Any and all such amounts must be paid in full under section 365 of the Bankruptcy Code in order for the Debtors to assume or assume and assign the Agreements.

### **NOTICE**

17. Notice of this Objection will be provided via electronic mail to: (i) the Debtors, Invitae Corporation, 1400 16th Street, San Francisco, California 94103, Attn: Tom Brida (tom.brida@invitae.com); (ii) co-counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C. (nicole.greenblatt@kirkland.com); Francis Petrie (francis.petrie@kirkland.com); and Nikki Gavey (nikki.gavey@kirkland.com) and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com); (iii) 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) the Office of the United States Trustee for the District of New Jersey, 1085 Raymond Boulevard, Suite 2100, Newark, NJ 07102, Attn: Jeffrey Sponder (jeffrey.m.sponder@usdoj.gov); and Lauren Bielskie (lauren.bielskie@usdoj.gov); (v) counsel to the official committee of unsecured creditors, White & Case LLP, 1221 6th Avenue, New York, NY 10020, Attn: Harrison Denman (harrison.denman@whitecase.com); and Brett Bakemeyer (brett.bakemeyer@whitecase.com); (vi) counsel to the Successful Bidder, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, CA 90067, Attn: Erin N. Brady (erin.brady@hoganlovells.com); Edward McNeilly (edward.mcneilly@hoganlovells.com); and William Intner (william.intner@hoganlovells.com). Notice will be further provided to all other parties that have formally requested notice in these proceedings via the Court's CM/ECF system.

**WHEREFORE**, GBF respectfully requests that the Court sustain this Objection and grant GBF such other and further relief as the Court deems just and proper.

Dated: May 2, 2024  
Newark, New Jersey

**GIBBONS P.C.**

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**EXHIBIT A**



# Accounts Receivable Aging

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Aging By Due Date Ordered by Customer Number, Due Date  
Aging Date: 04/29/2024

Customer Number Equal to INV100

Invoice No	Inv Date	Due Date	Current	Days Past Due			
				1-30	31-60	61-90	Over 90
INV100	INVITAE CORPORATION				Phone: (800)436-3037	Credit Limit:	0
CM-0013096	12/29/2023	12/29/2023	0	0	0	0	-193.00
CM-0013097	12/29/2023	12/29/2023	0	0	0	0	-2,772.20
0000405514	01/12/2024	02/11/2024	0	0	0	132,604.95	0
0000405866	01/19/2024	02/18/2024	0	0	0	110,336.73	0
0000406161	01/26/2024	02/25/2024	0	0	0	107,837.72	0
0000406469	01/31/2024	03/01/2024	0	0	64,307.07	0	0
0000406578	02/01/2024	03/02/2024	0	0	8,841.00	0	0
0000406995	02/09/2024	03/10/2024	0	0	182,403.43	0	0
0000407222	02/12/2024	03/13/2024	0	0	17,811.30	0	0
0000407223	02/12/2024	03/13/2024	0	0	431.59	0	0
0000410126-POST	04/05/2024	05/05/2024	118,176.65	0	0	0	0
0000410540-POST	04/12/2024	05/12/2024	86,258.54	0	0	0	0
0000411109-POST	04/19/2024	05/19/2024	91,498.81	0	0	0	0
<b>Total Past Due</b>	<b>Total Recv Amt</b>		<b>295,934.00</b>	<b>0.00</b>	<b>273,794.39</b>	<b>350,779.40</b>	<b>-2,965.20</b>
621,608.59	917,542.59						

**Grand Total Amounts** 295,934.00 0.00 273,794.39 350,779.40 -2,965.20

**Grand Total Past Due** 621,608.59

**Grand Total Receivable** 917,542.59

**Above Receivables include**

**Total Prepayment Invoices not yet applied of** 0.00 and a Credit Memo total of -2,965.20