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**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.



**DECLARATION OF ANDREW
SWIFT IN SUPPORT OF ENTRY OF THE ORDER
(I) APPROVING THE SALE OF ACQUIRED ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES
AND (II) AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM
THEIR OBLIGATIONS UNDER THE LABCORP ASSET PURCHASE AGREEMENT**

I, Andrew Swift, pursuant to 28 U.S.C. § 1746, declare:

1. I am a Managing Director at Moelis & Company LLC (“Moelis”), the investment banker, capital markets advisor, and financial advisor for the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”). I am in all respects competent to make this declaration (this “Declaration”) in support of the entry of the proposed *Order (I) Approving the Sale of Acquired Assets Free and Clear of All Liens, Claims, and Encumbrances and (II) Authorizing the Debtors to Enter into and Perform their Obligations Under the Labcorp Asset Purchase Agreement* (the “Sale Order”).²

2. I have more than eleven (11) years of investment banking experience. I have led engagement teams in complex bankruptcies and reorganizations across a broad spectrum of industries in a variety of capacities. In particular, I have provided services to debtors and other constituencies in numerous restructuring engagements, including, among others: *In re Diamond Sports Group LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. 2023); *In re Cyxtera Technologies, Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. 2023); *In re Genesis Global Holdco, LLC*, No. 23-10063 (SHL) (Bankr. S.D.N.Y. 2023); *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del.

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Sale Order, the Labcorp APA, 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* [Docket No. 57] (the “Bidding Procedures Order,” and such approved bidding procedures, the “Bidding Procedures”), or the *Notice of Successful Bidder with Respect to the Auction Held on April 17 and 24, 2024* [Docket No. 362] (the “Notice of Successful Bidder”), as applicable.

2019); *In re Mattress Firm, Inc.*, No. 18-12241 (CSS) (Bankr. D. Del. 2018); *In re CJ Holding Co.*, No. 16-33590 (DRJ) (Bankr. S.D. Tex. 2016); and *In re Trinity Coal Corporation*, No. 13-50364 (TNW) (Bankr. E.D. Ky. 2013).

3. I have been with Moelis since the start of my career. I hold a Bachelor of Arts in history from the University of Michigan.

4. Except as otherwise indicated herein, the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, my involvement with the marketing and sale process with respect to the Debtors' assets, including the Acquired Assets, information provided to me by the other professionals in these cases and/or employees working under my supervision, or my opinion based upon my experience, knowledge, and information concerning the Debtors' operations. I am authorized to submit this Declaration on the Debtors' behalf. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

Moelis's Qualifications

5. Moelis is a leading international investment banking and financial advisory firm (NYSE: MC) with approximately 1,200 employees in locations around the world. Moelis provides a broad range of investment banking and financial advisory services, including (a) mergers and acquisitions, (b) recapitalization and restructuring, (c) capital markets advisory, and (d) private funds advisory. Moelis has been, and is, involved in large and complex restructuring cases throughout the United States, including representing debtors, creditors, acquirers, and official committees in numerous chapter 11 cases in this and other districts.

6. Moelis's business reorganization professionals have served as financial advisors and/or investment bankers in numerous cases, including: *In re WeWork Inc.*, No. 23-19865 (JKS) (Bankr. D.N.J. Jan. 12, 2024); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Nov. 28,

2022); *In re Revel AC, Inc.*, No. 14-22654 (GMB) (Bankr. D.N.J. Aug. 1, 2014); *In re Revel AC, Inc.*, No. 13-16253 (JHW) (Bankr. D.N.J. April 17, 2013); *In re Adamar of New Jersey, Inc. & Manchester Mall, Inc.*, No. 09-20711 (JHW) (Bankr. D.N.J. May 27, 2009); *In re Impel Pharmaceuticals Inc.*, No. 23-80016 (SGJ) (Bankr. N.D. Tex. Jan. 12, 2024); *In re Proterra Inc.*, No. 23-11120 (BLS) (Bankr. D. Del. Sept. 21, 2023); *In re Venator Materials PLC*, No. 23-90301 (DRJ) (Bankr. S.D. Tex. July 27, 2023); *In re MLCJR LLC*, No. 23-90324 (CML) (Bankr. S.D. Tex. July 10, 2023); *In re Sorrento Therapeutics, Inc.*, No. 23-90085 (DRJ) (Bankr. S.D. Tex. May 22, 2023); *In re Diamond Sports Group, LLC*, No. 23-90116 (CML) (Bankr. S.D. Tex. May 8, 2023); *In re Genesis Global Holdco, LLC*, No. 23-10063 (SHL) (Bankr. S.D.N.Y. Mar. 21, 2023); *In re Party City Holdco Inc.*, No. 23-90005 (DRJ) (Bankr. S.D. Tex. Feb. 21, 2023); *In re Brazos Electric Power Cooperative, Inc.*, No. 21-30725 (DRJ) (Bankr. S.D. Tex. Dec. 15, 2022); *In re Voyager Dig. Holdings, Inc.*, No. 22-10943 (MEW) (Bankr. S.D.N.Y. Aug. 16, 2022); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. Jul. 26, 2022); *In re MD Helicopters, Inc.*, No. 22-10263 (KBO) (Bankr. D. Del. May 6, 2022); *In re Knotel, Inc.*, No. 21-10146 (MFW) (Bankr. D. Del. June 29, 2021); *In re Alpha Media Holdings LLC*, No. 21-30209 (KRH) (Bankr. E.D. Va. Mar. 11, 2021); *In re EHT US1, Inc.*, No. 21-10036 (CSS) (Bankr. D. Del. Feb. 23, 2021); *In re Ferrellgas Partners, L.P. & Ferrellgas Partners Finance Corp.*, No. 21-10021 (MFW) (Bankr. D. Del. Feb. 3, 2021); *In re Mallinkrodt PLC*, No. 20-12522 (JTD) (Bankr. D. Del. Jan. 14, 2021); *In re CBL & Assocs. Props., Inc.*, No. 20-35226 (DRJ) (Bankr. S.D. Tex. Dec. 30, 2020); *In re Energy Alloys Holdings, LLC*, No. 20-12088 (MFW) (Bankr. D. Del. Nov. 23, 2020); *In re Intelsat S.A.*, No. 20-32299 (KLP) (Bankr. E.D. Va. Sept. 22, 2020); *In re Jason Indus., Inc.*, No. 20-22766 (RDD) (Bankr. S.D.N.Y. Aug. 26, 2020); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Aug. 11,

2020); *In re The Hertz Corp.*, No. 20-11218 (MFW) (Bankr. D. Del. July 30, 2020); *In re Speedcast Int'l Ltd.*, No. 20-32243 (MI) (Bankr. S.D. Tex. July 2, 2020); *In re The McClatchy Co.*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. May 18, 2020); *In re Whiting Petroleum Corp.*, No. 20-32021 (DRJ) (Bankr. S.D. Tex. May 6, 2020); *In re Internap Technology Solutions Inc.*, No. 20-22393 (RDD) (Bankr. S.D.N.Y. May 5, 2020); and *In re RentPath Holdings, Inc.*, No. 20-10312 (BLS) (Bankr. D. Del. Mar. 10, 2020).³

The Marketing Process

7. Based on my experience and involvement with the sale and marketing process for the Acquired Assets (the “Marketing Process”), I believe that the Debtors conducted a thorough and fair Marketing Process transparently, and in good faith.

8. On or about December 14, 2023, in accordance with the Second Supplemental Indenture, the Debtors, with the assistance of Moelis and their other advisors, launched a process to solicit proposals for a Sale Transaction. The Marketing Process involved extensive efforts by the Debtors and their advisors including a comprehensive process and arm’s-length negotiations with multiple potential purchasers. During this the Marketing Process, the Debtors dedicated substantial time and effort to conducting outreach to a group of strategic and financial investors that Debtors and their advisors believed might have the interest and means to acquire the Debtors. The Debtors, in consultation with Moelis, determined which parties to contact based upon, among other criteria, the parties’ involvement in the healthcare sector, potential capacity to consummate a large-scale transaction (particularly given certain regulatory considerations), and industry knowledge and experience. The Debtors, with Moelis’s assistance, prepared a confidential

³ Because of the voluminous nature of the orders cited herein, such orders are not attached to this Declaration. Copies of these orders are available upon request of the Debtors’ proposed counsel.

information memorandum with customary information on the Assets and populated a virtual data room with significant diligence documentation. The Debtors, with the assistance of Moelis, then reached out to a group of twenty-five (25) parties, comprising strategic investors experienced in investing in the healthcare sector in addition to certain special situations investors. Outreach included nineteen (19) introductory calls, execution of thirteen (13) non-disclosure agreements with access granted to virtual data rooms, financial models, and business segment standalone models, and the granting of further access to clean team virtual data rooms to a subset of these parties.

9. In January 2024, efforts to identify a potential buyer intensified and diligence continued. The Debtors and Moelis shared diligence materials and financial projections, discussed the structuring of potential transactions, and conducted in-person or telephonic meetings with certain of the possible strategic investors and the Debtors' management. As the Marketing Process progressed, Moelis and the Debtors' other advisors kept members of the Debtors' secured and unsecured noteholder constituencies apprised of important developments and took input from these groups on the Marketing Process, when deemed appropriate. However, based on the proposals and initial indications of interest received by Moelis and the Debtors, it became apparent that the Marketing Process, which spanned a total of fifty-eight (58) days, was unlikely to yield a third-party partner that could facilitate an out-of-court Sale Transaction. Thus, the Debtors determined that pivoting to an in-court Sale Transaction, as contemplated by the TSA, was the best option available to the Debtors' in their efforts to reach the highest or otherwise best transaction possible under the circumstances.

10. The Debtors filed these chapter 11 cases with the goal of continuing their prepetition marketing efforts to attempt to enter into a transaction (or transactions) with the highest

or otherwise best offer (or offers) for the benefit of all stakeholders. Accordingly, the Debtors, with the support of their key creditor constituencies, filed the *Debtors' Motion for Entry of an 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* [Docket No. 19], which established parameters for the postpetition marketing process. Upon entry of the Bidding Procedures Order, the Debtors and Moelis continued their efforts to market all or a portion of the Debtors' assets on a postpetition basis in accordance with the Bidding Procedures Order for an additional fifty-four (54) days prior to the Bid Deadline.

11. This continuation of the Marketing Process involved a months-long process in which the Debtors and their advisors sought strategic and financial investors to effectuate the highest or otherwise best transaction available under the circumstances and included regular discussions and consultation with the requisite parties described in the Bidding Procedures, including the official committee of unsecured creditors (the "Committee"). During the course of the Marketing Process, Moelis engaged with over seventy (70) potential buyers for the Debtors' assets, including the Acquired Assets, and the Debtors received six (6) indications of interest by the Interim Proposal Deadline of March 6, 2024. Throughout this process, the Debtors also from time to time consulted with and apprised certain key stakeholders and parties-in-interest of the status and key developments in the Marketing Process. The Debtors explored the possibility of designating a Stalking Horse Bidder based on indications of interest received by the Interim Proposal Deadline, but ultimately did not designate a Stalking Horse. Based on indications of interest and ongoing diligence by other potential bidders, the Debtors determined that the best path

forward was to allow parties to continue to develop their diligence and submit fulsome bids in advance of the Bid Deadline. I believe that the Marketing Process was comprehensive and transparent, and was conducted in good faith in accordance with the Court-approved Bidding Procedures.

12. Ultimately, the Debtors generated several actionable offers. By the Bid Deadline, the Debtors received several bids for the Acquired Assets that contemplated an acquisition of the whole company, as well as multiple other bids that contemplated different asset packages. Accordingly, and in accordance with the Bidding Procedures, on April 17, 2024, the Debtors commenced an auction (the “Auction”) with respect to the Acquired Assets, which included participation by four Qualified Bidders. Following the conclusion of the Auction, on April 24, 2024, and as set forth in the Notice of Successful Bidder, the Debtors, in consultation with the Committee, selected Labcorp Genetics Inc. (“Labcorp” or the “Purchaser”) as the Successful Bidder. Labcorp’s bid was selected because the Debtors determined that it was the highest or otherwise best bid of all bids submitted at the Auction, including a credit bid submitted by the Debtors’ secured lenders that the Committee was not supportive of. Labcorp’s bid contemplates a going-concern transaction that preserves the vast majority of employees’ jobs, provides greater cash consideration than any other bid received by the Debtors, and includes a mechanism for Labcorp to collect and remit collections of any accounts receivable existing at the time of transaction close for the benefit of the Debtors’ estates. I understand that both the Purchaser and the Debtors have represented that they are willing and able to consummate the transactions contemplated by the Labcorp APA on the terms set forth therein.

13. I believe, based on my involvement in the Marketing Process and my experience as an investment banker, that the Marketing Process and Bidding Procedures provided the Debtors

with a reasonable amount of time to solicit and potentially identify and select a higher or otherwise better bid for the Acquired Assets than the sale transaction contemplated to be effected pursuant to the Labcorp APA, and, similarly, afforded interested parties a reasonable opportunity to conduct due diligence prior to submitting their proposals or bids.⁴ The foregoing view is informed by the duration and scope of the Marketing Process described above, the due diligence conducted by potential interested parties, the feedback obtained from the parties solicited, as well as from the parties who submitted proposals and/or with whom the Debtors engaged in related negotiations. Given the foregoing, I believe that the Sale Transaction contemplated to be effectuated pursuant to the Labcorp APA is the highest or otherwise best bid presently available to the Debtors under the circumstance.

The Sale Transaction

14. On April 25, 2024, the Debtors filed the Sale Order as Exhibit A to the *Notice of (I) Filing of the Asset Purchase Agreement and Proposed Sale Order with Respect to the Labcorp Sale Transaction, (II) Modified Cure Objection Deadline, and (III) Rescheduled Sale Hearing* [Docket No. 364]. Through the Sale Order, the Debtors seek (a) authority to enter into, and approval of, that certain asset purchase agreement, attached to the Sale Order as Exhibit A (the “Labcorp APA”), by and among Invitae Corporation and certain of its subsidiaries named therein (the “Sellers”), as sellers, Labcorp, as purchaser, and Laboratory Corporation of America Holdings, as guarantor, and (b) authorization and approval of the sale of the Acquired Assets free

⁴ The Marketing Process in these cases lasted for approximately four (4) months, which is comparable in length to other marketing processes in this jurisdiction. *See e.g., In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D.N.J. 2023) (marketing process spanned approximately four (4) months postpetition); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. 2023) (marketing process spanned approximately six (6) months); *In re Cytexa Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. 2023) (marketing process spanned approximately five (5) months).

and clear of all liens, claims, liabilities, rights, encumbrances, and other interests (other than Assumed Liabilities) (collectively, the “Sale Transaction”).

15. Pursuant to the Labcorp APA, the Sellers and the Purchaser have agreed to a sale of the Acquired Assets, on terms set forth in the Labcorp APA. The Labcorp APA provides for a purchase price of \$239 million in cash, plus additional non-cash consideration, such as the payment of certain cure costs and the assumption of liabilities arising out of ownership of the Acquired Assets, subject to certain terms and conditions.

16. The Labcorp APA contemplates the purchase of the Acquired Assets, free and clear of any liens or encumbrances, and the assumption of certain liabilities associated with the Acquired Assets. The Labcorp APA also contemplates the assumption and assignment to the Purchaser of Executory Contracts and Unexpired Leases as set forth in the *Notice to Contract Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 365], with certain cure costs to be borne by the Purchaser pursuant to the terms of the Labcorp APA.

17. Based upon my observations during the Marketing Process, I believe that the Debtors selected the Purchaser as the Successful Bidder in good faith and without collusion or fraud. Based on my observations, knowledge and interactions during the Marketing Process, I believe that the Purchaser has transacted with the Debtors in good faith in connection with this proceeding. To the best of my knowledge, information, and belief, the Purchaser is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in the Bankruptcy Code, and I am aware of no common identity of incorporators, directors, or controlling stakeholders between Purchaser and the Debtors.

Conclusion

18. Accordingly, I believe that the Debtors engaged in a robust Marketing Process, and that the Sale Transaction and the terms of the Labcorp APA reflect the highest or otherwise best bid for the Acquired Assets currently available under the circumstances of these chapter 11 cases.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: May 3, 2024
New York, New York

By: /s/ Andrew Swift
Andrew Swift
Managing Director
Moelis & Company LLC