

NELSON MULLINS RILEY & SCARBOROUGH LLP

Gregory A. Taube (admission *pro hac vice* to be filed)
Adam D. Herring (admission *pro hac vice* to be filed)
201 17th Street NW, Suite 1700
Atlanta, Georgia 30363
Tel: (404) 322-6143
Email: greg.taube@nelsonmullins.com
Email: adam.herring@nelsonmullins.com

-and-

NELSON MULLINS RILEY & SCARBOROUGH LLP

Alan F. Kaufman
330 Madison Avenue, 27th Floor
New York, New York 10017
Tel: (212) 413-9016
Email: alan.kaufman@nelsonmullins.com

Counsel to Snowflake Inc.

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

In re:) Chapter 11
)
INVITAE CORPORATION, *et al.*,) Case No. 24-11362 (MBK)
)
Debtors.¹) (Jointly Administered)
)

OBJECTION TO DEBTOR’S NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND RESERVATION OF RIGHTS BY SNOWFLAKE INC.

Snowflake Inc. (“Snowflake”) hereby objects to the proposed cure amounts for each executory contract set forth in Exhibit A (the “Assumption List”) to *Debtor’s Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* (the “Notice”) [ECF

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.



No. 365] that the Debtors may assume to which Snowflake is a counterparty, and reserves all rights with respect thereto, respectfully showing as follows:

BACKGROUND

1. Invitae Corporation and certain of its affiliates (the “Debtors”) filed the above-captioned jointly administered cases under chapter 11 of the Bankruptcy Code² on February 13, 2024 (the “Petition Date”).

2. On February 16, 2024, the Court entered 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 Contracts and Leases, (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* (the “Bidding Procedures Order”) [ECF No. 57].

3. Snowflake holds and timely filed Claim No. 1040 in this case in the amount of \$22,108.02 for the amount currently due Snowflake as of the Petition Date. This amount does not include additional charges, which are in excess of \$160,000.00, for post-petition services that would have to be paid for assumption.

4. Debtors indicated in the Notice that they may assume the following executory contracts (collectively, the “Proposed Assumed Contracts”) to which Snowflake is a counterparty by including each on the Assumption List (all at page 297, based on CM/ECF page numbering, of the Notice):

² 11 U.S.C. §§ 101 *et seq.*

Debtor	Counterparty	Contract Description	Effective Date	Proposed Cure Amount
Invitae Corporation	Snowflake Inc.	Master SAAS Agreement	2/12/20	\$0.00
Invitae Corporation	Snowflake, Inc.	Capacity Order Form	12/3/20	\$0.00
Invitae Corporation	Snowflake Inc.	AWS Marketplace Order	1/21/22	\$0.00
Invitae Corporation	Snowflake Inc.	AWS Marketplace Order	2/3/22	\$0.00
Invitae Corporation	Snowflake Group	Snowflake Customer Data Processing Addendum	--	\$0.00
Invitae Corporation	Snowflake Inc.	Preview Terms of Service	11/24/20	\$0.00
Invitae Corporation	Snowflake Inc.	Terms of Service	--	\$0.00
Invitae Corporation	Snowflake, Inc.	Data Marketplace Provider Terms of Service	--	\$0.00
Invitae Corporation	Snowflake, Inc.	On Demand Order Form	12/2/19	\$0.00
Invitae Corporation	Snowflake, Inc.	Optional Feature Order	5/20/21	\$0.00
Invitae Corporation	Snowflake, Inc.	Business Associate Agreement Addendum	11/13/19	\$0.00

5. Debtors have listed \$0.00 as the “Cure Amount” for most of the line items on the Assumption List.

6. The Notice was filed on April 25, 2024, and purports to provide a deadline of May 1, 2024—just six calendar days (including a weekend)—for counterparties to object, including to their proposed cure payment.

7. Despite Snowflake having provided its counsel’s email address for contacting Snowflake about its claim, Debtors did not send a copy of the Notice to Snowflake’s counsel via email or otherwise.

OBJECTION AND RESERVATION OF RIGHTS

Inadequate Notice

8. Debtors' process for addressing cure amounts—which Debtors are aware are incorrect with respect to Snowflake and presumably other parties on the Assumption List—fails to provide Snowflake reasonable and sufficient time to respond to the Notice. The objection period provided by the Notice afforded Snowflake, a large organization, just six calendar days and four business days for the Notice to make its way to the appropriate decision maker and for Snowflake to timely object and preserve its rights to be paid the correct cure amount.

9. The assumption and cure process is not only practically flawed but also legally deficient. The only notice Snowflake has received to date of Debtors' intention to *potentially* assume the Proposed Assumed Contracts is the Notice, with its unreasonably compressed response time.

10. As a result, the burden has been on Snowflake to affirmatively review the voluminous docket in these cases to protect its interests, contrary to basic notions of due process. Moreover, the six-calendar day objection period provided by the Notice is inadequate, particularly in light of the proposed \$0.00 cure amount.

11. Accordingly, Debtors should not be permitted to assume the Proposed Assumed Contracts without providing Snowflake with adequate notice and an opportunity to object.

The "Cure Amounts" Are Inaccurate and Improper

12. A debtor may not assume an executory contract or unexpired lease under which there has been a default "unless, at the time of assumption . . . the [debtor] (A) cures, or provides adequate assurance that the [debtor] will promptly cure, such default . . . (B) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the

debtor to such contract or lease, for any actual pecuniary loss . . . and (C) provides adequate assurance of future performance under such contract or lease.” 11 U.S.C. § 365(b)(1).

13. A properly filed proof of claim “is *prima facie* evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f).

14. No objections to Snowflake’s proof of claim have been filed. Moreover, Snowflake has continued to provide goods and services to Debtor under the Proposed Assumed Contracts without having received any post-petition payment.

15. Debtors’ proposed Cure Amounts for the Proposed Assumed Contracts are inaccurate and do not reflect the cure amount to which Snowflake is entitled under Bankruptcy Code section 365(b).

16. Accordingly, Snowflake objects to the assumption of each of the Proposed Assumed Contracts to the extent that the same are proposed to be assumed with a \$0.00, or otherwise inaccurate, cure amount.

17. Additionally, Snowflake reserves its rights to object to the assumption of any or all of the Proposed Assumed Contracts at any time and upon any grounds, including but not limited to the proposed cure amounts, and all other rights available to it.

WHEREFORE Snowflake requests that the Court deny the assumption of the Proposed Assumed Contracts and for such other relief as is appropriate.

Respectfully submitted this 15th day of May, 2024.

[SIGNATURES ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/ Alan F. Kaufman

ALAN F. KAUFMAN

330 Madison Avenue, 27th Floor

New York, New York 10017

Tel: (212) 413-9016

Email: alan.kaufman@nelsonmullins.com

-and-

Gregory A. Taube (admission *pro hac vice* to be filed)

Adam D. Herring (admission *pro hac vice* to be filed)

201 17th Street NW, Suite 1700

Atlanta, Georgia 30363

Tel: (404) 322-6143

Email: greg.taube@nelsonmullins.com

Email: adam.herring@nelsonmullins.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 15th, 2024, the foregoing *OBJECTION TO DEBTOR'S NOTICE TO CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND RESERVATION OF RIGHTS BY SNOWFLAKE INC.* was electronically served on all parties registered to receive CM/ECF notices.

/s/ Alan F. Kaufman