

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
Caption in Compliance with D.N.J. LBR 9004-1

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Co-Counsel to the Official Committee of Unsecured Creditors

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 ("Invitae," and with its subsidiary debtors, the "Debtors") 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. The Debtors' service address in these chapter 11 California 94103.



NOTICE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION FOR (I) LEAVE, STANDING AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN CLAIMS AND CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES AND (II) EXCLUSIVE SETTLEMENT AUTHORITY

PLEASE TAKE NOTICE that a hearing on *The Official Committee of Unsecured Creditors' Motion for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* (the "**Standing Motion**") will be held on **June 11, 2024 at 10:00am (prevailing Eastern Time)** or as soon thereafter as counsel may be heard (the "**Hearing**") before the Honorable Chief Judge Michael B. Kaplan, United States Bankruptcy Court for the District of New Jersey, at the Clarkson S. Fisher United States Courthouse, 402 East State Street, Second Floor, Courtroom No. 8, Trenton, New Jersey 08608.

PLEASE TAKE FURTHER NOTICE that the Standing Motion sets forth the relevant factual bases upon which the relief requested should be granted. A proposed order granting the relief requested in the Standing Motion is also submitted herewith.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Standing Motion shall: (i) be in writing, (ii) state with particularity the basis of the objection, (iii) be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents dated March 27, 2002 (the "**General Order**") and the Commentary Supplementing Administrative Procedures dated as of March 2004 (the "**Supplemental Commentary**") (the General Order, the Supplemental Commentary and the User's Manual for Electronic Case Filing System can be found at www.njb.uscourts.gov, the official website for the Bankruptcy Court) and, by all the other parties-

in-interest, on CD-ROM in Portable Document Format (PDF), and shall be served in accordance with the General Order, the Supplemental Commentary, and the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [ECF No. 62], so as to be received on or before **June 4, 2024 at 4:00pm (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that only those responses or objections that are timely filed, served, and received will be considered at the Hearing. Failure to file a timely objection may result in entry of a final order granting the Standing Motion as requested by the Committee.

PLEASE TAKE FURTHER NOTICE that unless objections are timely filed and served, the Standing Motion shall be decided on the papers in accordance with D.N.J. LBR 9013-3(d) and the relief requested may be granted without further notice or hearing.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases may be obtained free of charge by visiting the website of Kurtzman Carson Consultants LLC at www.kccllc.net/invitae. You may also obtain copies of any pleadings by visiting the Court's website at <https://www.njb.uscourts.gov> in accordance with the procedures and fees set forth therein.

Dated: May 21, 2024

By: /s/ John S. Mairo
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*Co-Counsel to the Official Committee of
Unsecured Creditors*

Standing Motion

Filed Under Seal

Exhibit A

Proposed Complaint

Filed Under Seal

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¹ The last four digits of Debtor Invitae Corporation's ("Invitae," and with its subsidiary debtors, the "Debtors") 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. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

**CERTIFICATION OF AARON COLODNY IN SUPPORT OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS’ MOTION FOR (I) LEAVE, STANDING
AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN CLAIMS AND
CAUSES OF ACTION ON BEHALF OF DEBTORS’ ESTATES AND (II) EXCLUSIVE
SETTLEMENT AUTHORITY**

I, Aaron Colodny, declare pursuant to 28 U.S.C. § 1746 the following:

1. I am an attorney-at-law admitted to practice in the State of California and am a partner with the law firm White & Case LLP. I am admitted *pro hac vice* before the United States Bankruptcy Court for the District of New Jersey in the above-captioned matter. White & Case LLP (“**Counsel**”) is co-counsel to the Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the Chapter 11 Cases² in connection with this matter and have knowledge of the facts contained herein.

2. I submit this Certification in support of *The Official Committee of Unsecured Creditors’ Motion for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors’ Estates and (II) Exclusive Settlement Authority* (the “**Standing Motion**”).

3. Attached to the Standing Motion as **Exhibit A** is a true and correct copy of the “**Proposed Complaint.**” The Committee seeks leave to file the Proposed Complaint by way of the Standing Motion.³

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Standing Motion (defined herein).

³ To the extent the Proposed Complaint refers to documents, most, if not all, of those documents are subject to the *Stipulated Confidentiality Agreement and Protective Order* entered by the Court on April 19, 2024 (the “**Confidentiality Order**”). See [Docket. No. 339 ¶14] (“[A]ll portions of pleadings, motions or other papers filed with the Court that disclose, quote, or reference Designated Material, shall be filed under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules, with a version of the filing redacting or omitting the Designated Material filed publicly by the next day.”). Accordingly, the Committee will file a redacted version of the Standing Motion, which includes this Certification, along with a redacted version of the Proposed Complaint, without those documents, on the Court’s docket via ECF within one day of the filing of the Standing Motion and Proposed Complaint and will provide the Court and all parties to the Confidentiality Order with unredacted copies of the Standing Motion and the Proposed Complaint. The Committee has also contemporaneously filed a motion for entry of an order authorizing the filing of the Standing Motion, including the Proposed Complaint, under seal.

4. Each and every one of the factual allegations in the Proposed Complaint are the product of a diligent, good faith investigation conducted by Counsel.

5. This includes Counsel's review of documents that were produced by the Debtors and Deerfield Partners, LP ("**Deerfield**") in these Chapter 11 Cases as well as review of publicly available documents and information.

6. On March 14, 2024, the Committee exchanged discovery requests with the Debtors and Deerfield under Bankruptcy Rule 2004, seeking the production of documents. In response, to date, the Debtors and Deerfield have collectively produced to the Committee over 28,000 documents, consisting of over 257,000 pages. The Debtors and Deerfield have communicated that their document production is complete. However, review and other discovery is still ongoing, including interviews with principals from the Debtors and Deerfield that are scheduled to occur after the submission of this certification.

7. I, or members of my firm that I supervise, have substantially completed our review of the documents produced to date. The Committee's investigation is otherwise ongoing.

8. The factual allegations in the Proposed Complaint were derived in part from review of the documents provided to date. Upon request, the documents underlying the facts asserted in the Proposed Complaint will be provided to this Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2024
Los Angeles, California

By /s/ Aaron Colodny
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Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

[PROPOSED] ORDER CONCERNING REQUEST FOR STANDING

The relief set forth on the following page is **ORDERED**.

¹ The last four digits of Debtor Invitae Corporation's ("**Invitae**," and with its subsidiary debtors, the "**Debtors**") 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. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

On request of the Official Committee of Unsecured Creditors (the “**Committee**”), to grant standing to commence and prosecute certain claims and causes of action on behalf of the Debtors’ Estates as requested in *The Official Committee of Unsecured Creditors’ Motion for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors’ Estates and (II) Exclusive Settlement Authority* (the “**Standing Motion**”); and the *Certification of Aaron Colodny in Support of the Official Committee of Unsecured Creditors’ Motion for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors’ Estates and (II) Exclusive Settlement Authority* (the “**Colodny Decl.**”); and this Court having jurisdiction to consider the Standing 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 Standing Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found the Committee’s notice of the Standing Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Standing Motion; and this Court having determined that the legal and factual bases set forth in the Standing Motion establish just cause for the relief granted herein; and this Court having considered the request and any objection there to, IT IS HEREBY ORDERED THAT:

1. The Standing Motion is GRANTED.
2. The Committee is granted derivative authority to prosecute the claims set forth in the Proposed Complaint attached to the Standing Motion as Exhibit A, and all related claims that may be uncovered by the Committee’s further investigation of the Debtors (the “**Subject Matters**”); and
3. The parties are directed to work in good faith in the transition of all materials relevant to the claims being litigated.