

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

**WHITE & CASE LLP**

1221 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 819-8200  
J. Christopher Shore, Esq. (admitted *pro hac vice*)  
(cshore@whitecase.com)  
Harrison Denman, Esq. (admitted *pro hac vice*)  
(harrison.denman@whitecase.com)  
Andrew Zatz, Esq. (admitted *pro hac vice*)  
(azatz@whitecase.com)  
Samuel P. Hershey, Esq. (admitted *pro hac vice*)  
(sam.hershey@whitecase.com)  
Ashley Chase, Esq. (admitted *pro hac vice*)  
(ashley.chase@whitecase.com)  
Brett Bakemeyer, Esq. (admitted *pro hac vice*)  
(brett.bakemeyer@whitecase.com)

**WHITE & CASE LLP**

555 S. Flower St., Suite 2700  
Los Angeles, California 90071  
Telephone: (213) 620-7700  
Aaron Colodny, Esq. (admitted *pro hac vice*)  
(aaron.colodny@whitecase.com)

-and-

**PORZIO, BROMBERG & NEWMAN, P.C.**

100 Southgate Parkway  
P.O. Box 1997  
Morristown, NJ 07962  
Telephone: (973) 538-4006  
Warren J. Martin Jr., Esq. (wjmartin@pbnlaw.com)  
John S. Mairo, Esq. (jsmairo@pbnlaw.com)  
Christopher P. Mazza, Esq. (cpmazza@pbnlaw.com)

*Co-Counsel to the Official Committee of Unsecured Creditors*

In re:

INVITAE CORPORATION, *et al.*,  
Debtors.<sup>1</sup>

Chapter 11  
Case No. 24-11362 (MBK)  
(Jointly Administered)

<sup>1</sup> 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



**NOTICE OF MOTION TO FILE UNDER SEAL 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 to File Under Seal the 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 "**Motion to Seal**") 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 Motion to Seal sets forth the relevant factual bases upon which the relief requested should be granted. A proposed order granting the relief requested in the Motion to Seal is also submitted herewith.

**PLEASE TAKE FURTHER NOTICE** that objections, if any, to the relief requested in the Motion to Seal 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

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[www.kccllc.net/invitae](http://www.kccllc.net/invitae). The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

Commentary and the User's Manual for Electronic Case Filing System can be found at [www.njb.uscourts.gov](http://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 Motion to Seal as requested by the Committee.

**PLEASE TAKE FURTHER NOTICE** that unless objections are timely filed and served, the Motion to Seal 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](http://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  
John S. Mairo, Esq.  
Warren J. Martin Jr., Esq.  
Christopher P. Mazza, Esq.  
**PORZIO, BROMBERG & NEWMAN, P.C.**  
100 Southgate Parkway  
P.O. Box 1997  
Morristown, New Jersey 07962  
(973) 538-4006  
(973) 538-5146 Facsimile  
Email: wjmartin@pbnlaw.com  
jsmairo@pbnlaw.com  
cpmazza@pbnlaw.com

-and-

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azatz@whitecase.com  
sam.hershey@whitecase.com  
ashley.chase@whitecase.com  
brett.bakemeyer@whitecase.com

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555 S. Flower St., Suite 2700  
Los Angeles, California 90071  
Telephone: (213) 620-7700  
Email: aaron.colodny@whitecase.com

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Creditors*

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

Chapter 11  
Case No. 24-11362 (MBK)  
(Jointly Administered)

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' MOTION  
TO FILE UNDER SEAL THE 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 Official Committee of Unsecured Creditors (the “**Committee**”) appointed in these chapter 11 cases (the “**Chapter 11 Cases**”), by and through its undersigned counsel, hereby submits this motion (the “**Motion**”) for entry of an order, pursuant to section 107(b)(1) of title 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “**Local Rules**”), authorizing the filing under seal 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* [ECF No. 526] (the “**Standing Motion**”) and the attached *[Proposed] Adversary Complaint* [ECF No. 526-2] (the “**Complaint**”) (collectively, the unredacted versions of the Standing Motion and the Complaint shall be referred to as the “**Unredacted Standing Motion Documents**”). In support of this Motion, the Committee respectfully represents as follows:

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<sup>1</sup> 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.kccellc.net/invitae](http://www.kccellc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

### **JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of New Jersey (the “**Court**”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Committee confirms its consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code section 107(b)(1), Bankruptcy Rule 9018, and Local Rule 9018-1.

### **BACKGROUND**

3. On February 13, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their property as debtors in possession pursuant to Bankruptcy Code section 1107(a) and 1108. No trustee or examiner has been appointed in these Chapter 11 Cases.

4. On March 1, 2024, the United States Trustee appointed the Committee pursuant to Bankruptcy Code section 1102(a)(1). The Committee consists of (i) Wilmington Savings Fund Society, Federal Savings Bank, (ii) Chimetech Holding Ltd., and (iii) Workday, Inc.

5. On March 18, 2024, the Court approved the *Final Order Pursuant to Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal*

*Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [ECF No. 188] (the “**Cash Collateral Order**”), which provided the Committee with 75 days from its appointment—*i.e.*, until May 15, 2024—to challenge any liens or the secured status or amount of Prepetition Secured Indebtedness (as defined in the Cash Collateral Order) (the “**Challenge Period**”).

6. On April 19, 2024, the Committee, the Debtors, and Deerfield submitted the agreed upon *Stipulated Confidentiality Agreement and Protective Order* [ECF No. 339] (the “**Protective Order**”) for this Court’s approval. The Protective Order allows a party to designate discovery material “Confidential” or “Highly Confidential” (the “**Designated Material**”). Protective Order ¶ 7(b). “[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.” *Id.* ¶ 14.

7. On May 3, 2024, the Court entered the *Order Authorizing and Approving the Employment and Retention of White & Case LLP as Counsel for the Official Committee of Unsecured Creditors of Invitae Corporation, et al. Effective as of March 5, 2024* [ECF No. 429], formalizing White & Case LLP’s retention as counsel to the Committee. The Court also authorized the retention of the Committee’s professionals [ECF Nos. 430, 431, 432].

8. Also on May 3, 2024, the Committee filed its *Emergency Motion to Extend the Challenge Period through June 15, 2024* [ECF No. 438], requesting that this Court extend the Challenge Period to June 15, 2024. On May 14, 2024 the Court entered an Order granting the *Stipulation Concerning and Extending the Challenge Period Set Forth in Final Order Pursuant to*



*Sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure: (I) Authorizing Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief [ECF No. 494], extending the Challenge Period to May 30, 2024.*

9. On May 21, 2024, contemporaneously with the filing of this Motion, the Committee filed its Standing Motion, requesting that the Court grant the Committee (i) leave, standing, and authority to commence and prosecute certain claims and cases of action on behalf of the Debtors' estates (the "**Estates**"); and (ii) exclusive authority to settle such claims on behalf of the Estates. The Standing Motion and Complaint reference certain material that Debtors have designated "Confidential" or "Highly Confidential" pursuant to the Protective Order.

#### **RELIEF REQUESTED**

10. The Committee seeks entry of an order, substantially in the form of the proposed order submitted herewith, (i) authorizing the Committee to file the Unredacted Standing Motion Documents under seal, and (ii) directing that the Unredacted Standing Motion Documents shall remain under seal and confidential and not be made available to anyone, except for the Court, until such time that a hearing can be held regarding redactions; and (iii) granting related relief.

#### **BASIS FOR RELIEF**

11. Pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize the filing of certain documents under seal. 11 U.S.C. § 107(b). Bankruptcy Rule 9018 sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal. In relevant part, "[o]n motion or on its own initiative . . . the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret

or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018; *see also* Local Bankruptcy Rule 9018-1 (setting out the procedure for obtaining a sealing order by filing a motion to seal).

12. Section 107(b) of the Bankruptcy Code provides an exception to the general rule that court records should be publicly accessible by granting bankruptcy courts the power to issue orders that will protect entities from potential harm. Specifically, section 107(b) provides that “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b); *see also* 11 U.S.C. § 105(a) (codifying the bankruptcy court’s inherent equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title”). Commercial information is material which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp.* (*In re Orion Pictures Corp.*), 21 F.3d 24, 27 (2d Cir. 1994)).

13. Commercial information need not constitute a “trade secret.” *In re Orion Pictures*, 21 F.3d at 28; *see also In re Anthracite Cap., Inc.*, 492 B.R. 162, 178 (Bankr. S.D.N.Y. 2013) (“Congress used the word ‘or’ to distinguish between trade secrets and commercial information in § 107; thus, commercial information need not rise to the level of a trade secret to qualify for protection under section 107(b).”) (citations omitted). Protections under section 107(b) extend to commercial information that, if disclosed to the public, could be used by parties or competitors for an unfair advantage. *In re Orion Pictures Corp.*, 21 F.3d at 27-28. “[T]he term includes situations where a bankruptcy court may reasonably determine that allowing such disclosure would have a

chilling effect on [business] negotiations, ultimately affecting the viability of Debtors.” *In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (internal citations and quotations omitted).

14. Unlike Rule 26(c) of the Federal Rules of Civil Procedure, Bankruptcy Code section 107(b) does not require a demonstration of “good cause.” *In re Orion Pictures Corp.*, 21 F.3d at 28. Once the Court determines that the information sought to be protected from disclosure falls within one of the categories enumerated in section 107(b), “the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27 (emphasis in original). In other words, an interested party must only demonstrate that the information it wishes to seal is “confidential” and “commercial” in nature. *Id.* at 28.

15. The Unredacted Standing Motion Documents reference certain material that the Debtors have designated as Confidential or Highly Confidential pursuant to the Protective Order. As such, the Protective Order requires the Committee to file any reference to the Designated Material under seal in accordance with the Federal Rules, the Bankruptcy Rules, and the Local Rules. *See* Protective Order ¶ 14. The Committee does not take a position as to the propriety of the Debtors’ confidentiality designations but files this Motion to comply with the terms of the Protective Order.

16. Accordingly, the Committee respectfully requests that this Court enter an order authorizing the Committee to file the Unredacted Standing Motion Documents, which disclose or reference Designated Material, under seal in accordance with Bankruptcy Rule 9018. Consistent with the Protective Order, the Committee will file redacted versions of the Motion to Seal and the Complaint within one business day of the filing of the Unredacted Standing Motion Documents. *See id.* (“[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.”).

**NOTICE, PRIOR REQUEST, AND WAIVER OF BRIEF**

17. In accordance with the *Notice, Case Management and Administrative Procedures Order* entered in these Chapter 11 Cases [ECF No. 62], notice of this Motion will be provided to: (a) the Debtors; (b) counsel to the Debtors, Attn: Kirkland & Ellis LLP, and Cole Schotz P.C.; (c) the office of the United States Trustee for the District of New Jersey; (d) counsel to the Required Holders; (e) the indenture trustee to the 2028 Convertible Notes and the 2024 Convertible Notes, and counsel thereto; (f) agent to the 2028 Senior Secured Notes, and counsel thereto; (g) the U.S. Securities and Exchange Commission; (h) the United States Attorney’s Office for the District of New Jersey; (i) the attorneys general in the states where the Debtors conduct their business operations; (j) the Internal Revenue Service; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Committee submits that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

18. No prior request for the relief sought herein has been made to this or to any other court.

19. The Committee respectfully requests that the Court waive the requirement under Local Rule 9013-2 to file a separate memorandum of law because the relevant authorities relied upon by the Committee are set forth herein and the Committee’s request does not raise any novel issues of law.

**WHEREFORE**, the Committee requests entry of an Order, substantially in the form submitted herewith, authorizing the relief requested herein and for such other relief as is just and proper.

Dated: May 21, 2024

By: /s/ John S. Mairo  
John S. Mairo, Esq.  
Warren J. Martin Jr., Esq.  
Christopher P. Mazza, Esq.  
**PORZIO, BROMBERG & NEWMAN, P.C.**  
100 Southgate Parkway  
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Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**ORDER CONCERNING REQUEST TO SEAL DOCUMENTS**

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

<sup>1</sup> 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](http://www.kccllc.net/invitae). The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103.

On request of the Official Committee of Unsecured Creditors (the “**Committee**”), to seal the following documents, *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 attached *[Proposed] Adversary Complaint* (the “**Complaint**”) (the “**Motion**”); and this Court having jurisdiction to consider the 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 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 Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having considered the request and any objection there to, it is:

ORDERED that the request is denied and the underlying document(s) shall be deleted from the court’s electronic filing system.

ORDERED that the request is granted and the document(s) shall be sealed until the expiration of the judiciary records retention period at which time the document will be permanently deleted.