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U.S. Bankruptcy Court
District of New Jersey

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

Caption in Compliance with D.N.J. LBR 9004-1(b)

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DATED: June 11, 2024

Honorable Michael B. Kaplan
United States Bankruptcy Judge



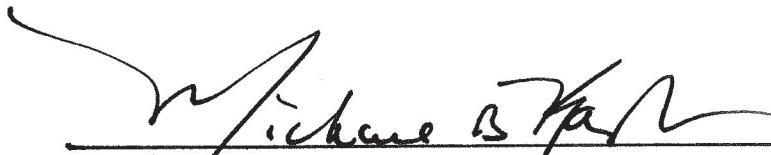
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Debtors: INVITAE CORPORATION, *et al.*
Case No. 24-11362 (MBK)
Caption of Order: ORDER APPOINTING A MEDIATOR AND GOVERNING MEDIATION PROCEDURES

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

**ORDER APPOINTING
A MEDIATOR AND GOVERNING MEDIATION PROCEDURES**

The relief set forth on the following pages, numbered three (3) through nine (9), is **ORDERED.**



Michael B. Kaplan, USBJ

6/11/24

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.

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In furtherance of the Court's findings and conclusions announced on the record at the hearing held May 30, 2024, **IT IS HEREBY ORDERED THAT:**

1. The Court authorizes and appoints the Honorable Jose L. Linares, Chief United States Judge (ret.) to serve as mediator (the "Mediator") in these chapter 11 cases and to conduct the mediation as set forth herein (the "Mediation").

2. Subject to the Mediator's availability, the Mediation shall commence in person at **10:00 a.m. Eastern Time on July 1, 2024 and if necessary shall continue on July 3, 2024.** The Mediation shall be held at the offices of McCarter & English, LLP, Worldwide Plaza, 825 8th Avenue, 31st Floor, New York, New York., 10019 unless an alternate location is agreed upon by the Mediation Parties (as defined herein). Subject to the Mediator's discretion, the Mediator may elect to hold portions of, or the entirety of, the Mediation remotely via videoconference.

3. The following parties are hereby denoted "Mediation Parties" (each, a "Mediation Party"):

- .i. The Debtors;
- ii. Deerfield Partners L.P. ("Deerfield");
- iii. The Official Committee of Unsecured Creditors (the "Committee"); and
- iv. U.S. Bank Trust Company, National Association, in its capacity as trustee and collateral agent for the 2028 Senior Secured Notes Indenture (the "Agent").

4. Each Mediation Party shall make every effort to attend the Mediation in person. If it is not practicable for a Mediation Party to attend in person, such Mediation Party may make a request of the Mediator to permit them to participate via videoconference. Each of the

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Mediation Parties shall either (i) have settlement authority, or (ii) have a client representative with settlement authority available to participate in the Mediation via videoconference as necessary.

5. Within two (2) days upon entry of this Order, the Debtors shall provide the Mediator with unredacted copies of:

- i. *The Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* [Docket No. 21] (the “First Day Declaration”) and the transaction support agreement attached thereto as Exhibit B (the “TSA”);
- ii. all of the Debtors’ executed Indentures (including all executed amendments, modifications, and supplements thereto) governing the notes described in the First Day Declaration;
- iii. all board materials approving: (a) the March 2023 exchange transaction; (b) the August 2023 exchange transaction; (c) the Second Supplemental Indenture (as defined in the First Day Declaration); and (d) the TSA;
- iv. the *Joint Plan of Invitae Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 471] (the “Plan”);²
- v. the *Disclosure Statement Relating to the Joint Plan of Invitae Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 472] (the “Disclosure Statement”) the liquidation analysis submitted therewith [Docket No. 535], including any insert or objection thereto submitted by the Committee;
- vi. *The Official Committee of Unsecured Creditors’ Motion*

² Capitalized terms used but not immediately defined herein shall have the meanings ascribed to them in the Plan.

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for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of the Debtors' Estate and (II) Exclusive Settlement Authority [Docket No. 536] (the "Standing Motion");

- vii. *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 the Debtors to Use Cash Collateral; (II) Granting Adequate Protection to Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief [Docket No. 188] (the "Final Cash Collateral Order") and all filed pleadings related thereto; and*
- viii. any other background materials requested by the Mediator.

6. The Mediator is authorized to mediate any issues and disputes concerning: (a) the allocation of Distributable Value under the Plan, including whether the Committee should have standing to prosecute and/or settle certain claims and causes of action on behalf of the Debtors and their Estates raised in the Standing Motion; (b) the validity and amount of 2028 Senior Secured Notes Claim under the Plan, including resolution of the Committee's objection to the proof of claim filed at Docket No. 528; (c) any other matters the Mediator deems necessary to resolve any of the foregoing; (d) and/or the Debtor Releases and any amendments or modifications to the structure set forth in the Plan (collectively, the "Mediation Topics").

7. Each of the Mediation Parties may elect to share a confidential summary document, not to exceed seven (7) double-spaced pages of text (exclusive of demonstrative exhibits such as graphs, images, or diagrams), expressing their respective views and arguments on some or all of the Mediation Topics (each, a "Mediation Statement"), by **5:00 p.m. Eastern**

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Time on June 18, 2024. Each Mediation Statement shall only be provided solely to the Mediator via email and shall not be shared with the other Mediation Parties.

8. Unless reduced to writing and signed by counsel for the Mediation Parties, the results of the Mediation are non-binding upon the Mediation Parties.

9. Upon the conclusion of the Mediation, the Mediator shall file a statement (the "Mediation Report") with the Court. The Mediation Report shall include: (i) the date and time when the Mediation was deemed concluded; (ii) whether a settlement between the Mediation Parties was reached; and (iii) whether, in the Mediator's opinion, the Mediation Parties participated in the Mediation in good faith. Prior to the filing of any Mediation Report, the Mediator shall provide a draft of such statement to the Mediation Parties, but has no obligation to accept any comments thereto from any Mediation Party.

10. The Mediation shall conclude at the earlier of the Mediator's filing of a Mediation Report or by July 9, 2024, subject to extension at the recommendation of the Mediator with the consent of all Mediation Parties.

11. All communications, information, and evidence, written or oral, exchanged within the Mediation, including, (a) discussions among the Mediation Parties, including discussions with or in the presence of the Mediator and/or or his counsel before or after the entry of this Order, (b) any Mediation Statements or any other documents or information provided to the Mediator and/or his counsel or exchanged among the Mediation Parties in the course of the Mediation, (c) any proprietary information provided to the Mediator and/or his counsel or exchanged among the Mediation Parties in the course of the Mediation, and (d) correspondence,

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offers, and counteroffers produced for, or as a result of, or during the Mediation, shall be treated confidentially by all Mediation Parties and shall remain confidential following the Mediation's conclusion, and shall not be used for any purpose other than the Mediation unless otherwise agreed by the Mediation Parties. To the extent any information or evidence disclosed within the course of Mediation is privileged, its disclosure among the Mediation Parties in the Mediation and to the Mediator and/or his counsel does not waive or adversely affect the privileged nature of such information or evidence. Information otherwise discoverable or admissible in evidence, however, does not become exempt from discovery or admission because of its use in Mediation. No person, the Mediator, or any Mediation Party, including counsel for any Mediation Party or the Mediator, shall in any way (including, without limitation, in any pleading or other submission to any court) disclose to any person or entity that is not a Mediation Party or to any court, including this Court, any discussion, Mediation Statement, other information, correspondence, resolution, offer, or counteroffer that may be made or provided in connection with the Mediation.

12. All settlement proposals, counterproposals, and offers of compromise made during the Mediation (each, a "Settlement Proposal") shall (a) remain confidential unless the Mediation Party making such Settlement Proposal agrees to the disclosure of any such Settlement Proposal and (b) be subject to protection under Rule 408 of the Federal Rules of Evidence and all applicable federal and state-law equivalents. Upon motion by any Mediation Party, the Court may impose sanctions against any person who fails to comply with D.N.J. LBR 9019 or this Order in connection with the Mediation.

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13. The Mediator and his counsel shall not disclose, or be compelled to disclose, to the Court or to any person or entity that is not a Mediation Party any information received or distributed by the Mediator while serving in such capacity. The Mediator and his counsel shall not testify or be compelled to testify concerning the Mediation in any other proceeding. The Mediator and his counsel shall not be a necessary party in any proceeding relating to the Mediation.

14. The costs of the Mediation shall be borne consistent with the below:

- i. the professionals of the Debtors and the Committee will seek approval of fees and expenses consistent with the Bankruptcy Code, the Bankruptcy Code, and any orders of this Court, and Deerfield and the Agent shall be entitled to payment of fees and expenses pursuant to the Final Cash Collateral Order and any other orders of this Court;
- ii. the Mediator shall be compensated at the rate of \$1,500.000 per hour. The Mediator is authorized to utilize the assistance of bankruptcy counsel Jeffrey Testa who shall be compensated at his hourly rate of \$825.00. To the extent that the Mediator utilizes any other attorneys or staff at McCarter & English, LLP to assist him in the Mediation they shall be compensated at their standard hourly rate; and
- iii. the Debtors will promptly reimburse any fees or expenses incurred by the Mediator related to the Mediation.

15. Any Mediation Party may engage in *ex parte* communications with the Mediator or any other Mediation Party and shall not be obligated to disclose the substance of any such communications to any other Mediation Party or the Mediator.

16. The Mediation Parties are authorized and empowered to take all actions necessary to effectuate the relief granted in this Order.

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17. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. Each of the Mediation Parties represents and warrants that it is duly authorized to enter into and be bound by this Order.

19. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.