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*Counsel to Deerfield Partners, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

<p>In re:</p> <p>INVITAE CORPORATION, <i>et al.</i>,</p> <p style="text-align: center;">Debtors.<sup>1</sup></p>	<p>Chapter 11</p> <p>Case No. 24-11362 (MBK)</p> <p>(Jointly Administered)</p>
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**NOTICE OF MOTION OF DEERFIELD  
PARTNERS, L.P. TO COMPEL DEPOSITION AND  
PRODUCTION OF DOCUMENTS BY BAKER BROS. ADVISORS LP**

**PLEASE TAKE NOTICE** that on the date set by the Court pursuant to a proposed Order Shortening Time (“OST”) and Application submitted herewith, Deerfield Partners, L.P. (“Deerfield”), shall move before the Honorable Judge Michael B. Kaplan, United States Bankruptcy Court, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, for entry of an order compelling the deposition and production of documents by Baker Bros. Advisors LP (the “Motion to Compel”).

<sup>1</sup> 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](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.



**PLEASE TAKE FURTHER NOTICE** that the Motion to Compel sets forth the relevant factual and legal bases upon which the relief requested should be granted. Pursuant to D.N.J. LBR 9013-4, a proposed form of Order is submitted with the Motion to Compel.

**PLEASE TAKE FURTHER NOTICE** that responses or objections, if any, to the relief requested in the Motion to Compel shall: (a) be in writing; (b) state with particularity the basis of the objection; and (c) be filed with the Clerk of the United States Bankruptcy Court and served so as to be received on or before the date and time specified in the OST by: (i) counsel to Deerfield, (A) Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004, Attn.: Justin J. DeCamp (decampj@sullcrom.com), and (B) Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110, Attn.: James N. Lawlor (jlawlor@wmd-law.com); (ii) counsel to the Debtors; (iii) the Office of the United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, New Jersey 07102; and (iv) the other parties in interest on the Master Service List established by the Court's *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Dkt. No. 62].

**PLEASE TAKE FURTHER NOTICE** that only those responses or objections that are timely filed, served, and received will be considered at the hearing on the Motion to Compel. Failure-to file a timely objection may result in entry of an order granting the Motion to Compel as requested by Deerfield.

**PLEASE TAKE FURTHER NOTICE** that unless objections are timely filed and served, the Court may grant the Motion to Compel without further notice or hearing. Pursuant to D.N.J. LBR 9013-3, Deerfield requests oral argument on the return date of this Motion to Compel if objections are timely filed.

**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: June 14, 2024

*/s/ James N. Lawlor*

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*Counsel to Deerfield Partners, L.P.*

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

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

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

**DEERFIELD PARTNERS, L.P.’S MOTION TO COMPEL DEPOSITION AND  
PRODUCTION OF DOCUMENTS BY BAKER BROS. ADVISORS LP**

Deerfield Partners L.P. (“Deerfield”), by its attorneys, hereby submits this *Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP* (the “Motion”) and the Declaration of Justin J. DeCamp (the “DeCamp Decl.”).<sup>2</sup> In support hereof, Deerfield states as follows:

<sup>1</sup> 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](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.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in 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* [Dkt. No. 21], or the *Motion 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* (the “Standing Motion”) filed by the Official Committee of Unsecured Creditors (the “Committee”) [Dkt. No. 536], as applicable.

1. Baker Bros. Advisors LP (together with its affiliate funds, “Baker”) was a holder of 2024 and 2028 Unsecured Notes who participated in the March Exchange. (See Standing Mot. ¶ 44 n.12.) Baker was also a member of an ad hoc group of 2028 Unsecured Noteholders (the “Ad Hoc Group”) who allegedly made “restructuring proposals” to the Company leading up to the Petition Date. (*Id.* at ¶ 57.)

2. In an attempt to substantiate its Proposed Claims, the Committee includes in its Standing Motion no fewer than *thirty-five* references to Baker. Among other things, the Committee alleges that (1) Baker made multiple alternative proposals to the Company around the time when Deerfield and the Company started contemplating the March Exchange; (2) the Company purportedly refused to engage with Baker and threatened to subordinate Baker through a deal with Deerfield; (3) Baker raised concerns regarding the Company’s solvency and legality of the March Exchange with the Company; and (4) Deerfield “pushed the Company into Chapter 11” notwithstanding the Ad Hoc Group’s alternative “restructuring proposals.” (*Id.* at ¶¶ 24, 30, 31, 40, 41, 51, 57, 91, 125; Proposed Compl. ¶¶ 66, 67, 72, 74, 88, 89, 90, 92, 93.) According to the Committee, these allegations are indicative of “[t]he Debtors’ fraudulent intent” in entering the March Exchange, as well as the breach of fiduciary duties by the Company’s directors and officers in the two years leading up to the Petition Date. (See, e.g., Standing Mot. ¶¶ 112, 125.)

3. Because the Committee relies heavily on Baker’s alleged conduct to support its Proposed Claims—and Baker itself participated in both the March Exchange and the Ad Hoc Group in the few months prior to the Petition Date—on May 31, 2024, Deerfield served a subpoena on Baker for deposition and document production under Rules 30(b)(6) and 26 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Bankruptcy Rule 9014 (the “Subpoena,”

attached to the DeCamp Decl. as **Exhibit 1**). In connection with the Subpoena, Deerfield propounded seven discreet deposition topics and thirteen document requests, primarily seeking materials and information regarding alternative transactions proposed by Baker and Baker's analyses of the Company's financial condition.

4. On June 10, 2024, Baker responded to the Subpoena with a blanket objection to "the Subpoena in its entirety" (the "Objection," attached to the DeCamp Decl. as **Exhibit 2**). Baker argues that the Subpoena and its requests are not "relevant to the Court's evaluation of the Committee's Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Rule 12(b)(6)." (Obj. at ¶ 2.) Baker also contends that the Subpoena is "unduly burdensome," as Baker is "not the appropriate target" for discovery. (*Id.* at ¶ 3.) In its Objection, Baker stated that it would not produce any documents or make a witness available for deposition in response to the Subpoena. (*Id.* at ¶¶ 3, 4.)

5. Deerfield met and conferred with Baker over videoconference on June 12, 2024, offering to work with Baker on a focused discovery plan to resolve the discovery dispute on a consensual basis. Nevertheless, on June 14, Baker confirmed that it would stand by its blanket objection unless Deerfield agreed to narrow the scope of the Subpoena only to certain communications between Baker and non-Debtor third parties and not to seek a deposition of a Baker witness. (*See* e-mail exchange between Deerfield's and Baker's counsel attached to the DeCamp Decl. as **Exhibit 3**.) In the same correspondence, Baker also enclosed an objection to Deerfield's deposition request (attached to the DeCamp Decl. as **Exhibit 4**), relying primarily on the same bases as its earlier Objection. Deerfield responded to Baker on the same day and agreed to carve out from the review and production Baker's communications with the Company and, to lessen the burden of a privilege review, internal communications including attorneys. Deerfield

also agreed to confer further with Baker on reasonable search terms, custodians, and the length and format of a deposition. (See Ex. 3.) Later that day, Baker informed Deerfield that while there may be some room to reach agreement concerning “the necessity for a deposition after production, the correct date range, [and] the right search terms,” Baker would not agree to “produce ‘internal analyses and communications (including solvency analyses).’” (*Id.*)<sup>3</sup>

6. In light of Baker’s refusal to comply with the Subpoena, as well as the compressed litigation schedule leading up to the July 9 Standing Motion hearing, Deerfield respectfully requests that the Court compel Baker’s compliance with the Subpoena pursuant to Bankruptcy Rules 7037 and 9016 and Local Bankruptcy Rules 7037-1 and 9016-1.

### ARGUMENT

7. Rule 26 of the Federal Rules of Civil Procedure, made applicable to contested matters by Bankruptcy Rule 9014, provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). Discovery under this standard is “broad and liberal.” *Pacitti v. Macy’s*, 193 F.3d 766, 777 (3d Cir. 1999) (“It is well recognized that the federal rules allow broad and liberal discovery.”). For instance, “[i]nformation can be relevant even if it only leads to other relevant information.” *In re Anderson News, LLC*, 615 B.R. 45, 50 (Bankr. D. Del. 2020). Information also “need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1). Indeed, in this Circuit, discovery is generally allowed “***unless it is clear that the information sought can have no possible bearing upon the subject matter of the action.***” *Korotki v. Cooper Levenson, Apr., Niedelman & Wagenheim, P.A.*, 2022 WL 2191519, at \*4 n.6 (D.N.J. June 17,

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<sup>3</sup> In accordance with Bankruptcy Rule 7037 and Local Bankruptcy Rule 7037-1, Deerfield has included herewith a certification identifying the dates and means by which Deerfield conferred in good faith with Baker.

2022) (emphasis added); *accord In re Energy Future Holdings Corp.*, 513 B.R. 651, 656 (Bankr. D. Del. 2014) (same).

**I. The Subpoena’s Requests Are Relevant to the Committee’s Proposed Claims and Deerfield’s Defenses.**

8. Baker cannot credibly argue that the Subpoena’s requests “have no possible bearing upon the subject matter” of the Standing Motion. *Id.* As a threshold matter, the requests are relevant to the Committee’s Proposed Claims because the Standing Motion repeatedly argues that the Company’s refusal to engage with Baker (or the Ad Hoc Group) and disregard for Baker’s concerns in connection with the March Exchange constitute badges of actual fraud and breaches of fiduciary duties. In fact, the Committee deems Baker’s role to be so relevant that the Standing Motion and Proposed Complaint each expends numerous paragraphs discussing Baker’s alternative proposals, its interactions with the Company and its advisors, its view of the March Exchange, and its assessment of the Company’s solvency. (Standing Mot. ¶¶ 24, 30, 31, 40, 41, 57, 91, 125; Proposed Compl. ¶¶ 66, 67, 72, 74, 88, 89, 90, 92, 93.) The Subpoena’s requests—including those calling for materials related to “actual or potential offers made” by Deerfield to the Company “to provide debt or equity financing” and “contemplated or consummated transactions or strategic alternatives involving the [Company],” (Subpoena at 8–9)—are directed at these discreet “issues central to the [Committee]’s [proposed] claims,” on which discovery is plainly appropriate. *Ceuric v. Tier One, LLC*, 325 F.R.D. 558, 562 (W.D. Pa. 2018).

9. Moreover, as alleged in the Standing Motion, Baker is a “Participating 2024 Unsecured Noteholder” who took part in the purportedly fraudulent March Exchange. (Standing Mot. ¶ 44 n.12.) Because insolvency is a key element of constructive fraudulent transfer, *see In re Designline Const. Servs., Inc.*, 2012 WL 4866699, at \*2 (Bankr. D.N.J. Oct. 12, 2012), the Subpoena’s requests for Baker’s “solvency analyses” and other “assessments, analyses, and



evaluations” concerning the Company are also relevant to Deerfield’s defenses against the Committee’s attempt to unwind the March Exchange. *See In re Novo Nordisk Sec. Litig.*, 530 F. Supp. 3d 495, 499 (D.N.J. 2021) (granting motion to compel seeking “communications [that] are also relevant to [defendant]’s defenses”). Given that the Subpoena’s requests target materials at the core of the Committee’s Proposed “[C]laim[s]” and Deerfield’s potential “defense[s],” Fed. R. Civ. P. 26(b), it cannot be said that “the information sought can have no possible bearing upon the subject matter” of the Standing Motion, *Korotki*, 2022 WL 2191519.

## II. Baker’s Objections Are Meritless.

10. Baker argues in its Objection that the Subpoena’s requests are irrelevant because the Standing Motion only asks whether “the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6),” and even if the requests are relevant, Baker is “not the appropriate target” for discovery. (Obj. at 5.) In its subsequent correspondence, Baker also contends that its internal communications and analyses are not “relevant or proportional to the needs of the standing motion, and . . . they are also protected in many instances because they reflect advice from attorneys.” (Ex. 3.) These arguments are without merit.

11. **First**, colorability is only one of four elements of derivative standing. In addition to pleading sufficient facts to state a “colorable claim,” the Committee must also show that the Company “has unjustifiably refused to bring an action to enforce a colorable claim.” *In re One2One Commc’ns, LLC*, 627 B.R. 273, 295 (Bankr. D.N.J. 2021). Under the “[un]justifiability” prong, the court conducts a “cost-benefit analysis,” weighing the “likelihood of success in pursuing these claims” against “the costs of bringing the claims.” *In re Diocese of Camden, New Jersey*, 2022 WL 884242, at \*5–9 (Bankr. D.N.J. Mar. 24, 2022). In doing so, a court examines “whether the creditors’ claims have **colorable merit**,” *In re Pack Liquidating, LLC*, 658 B.R. 305, 336 (Bankr. D. Del. 2024) (emphasis added), and whether there is “**appropriate proof** [that] would

support a recovery,” *In re Diocese of Camden, New Jersey*, 2022 WL 884242, at \*4 (emphasis added).

12. Here, the Standing Motion includes repeated references to Baker’s proposals and statements made to the Company and its advisors and Baker’s own views regarding the Company’s financial condition and the March Exchange. To determine whether the Company unjustifiably refused to bring the Proposed Claims, the Court must look past the face of these assertions and assess whether competent proof exists to justify “pursuing these [Proposed] [C]laims.” *In re Diocese of Camden, New Jersey*, 2022 WL 884242. If contravening evidence exists to refute the Committee’s allegations, the Proposed Claims’ “likelihood of success” is correspondingly diminished, thereby supporting the Company’s refusal to bring an action enforcing the Proposed Claims. *Id.* In fact, contrary to Baker’s assertion that Rule 12(b)(6)’s standards somehow render materials underpinning the Committee’s claims undiscoverable, *cf. In re Schering-Plough Corp.*, 2008 WL 11381889, at \*2 (D.N.J. Apr. 22, 2008) (staying merits discovery pending a motion to dismiss “is an exceptional case”), this Court has made clear that “the standing issue does involve certain factual predicates,” June 11, 2024 Hr’g Tr. at 37:25–38:1.

13. **Second**, Baker is an appropriate target for the discovery sought in the Subpoena. Baker is not just an irrelevant non-party that has no connection to the Standing Motion. Rather, it is prominently featured in the Standing Motion and, as a key participant in the events leading up to the March Exchange, the March Exchange itself, and events leading up to the Company’s bankruptcy filing, likely possesses materials and information important to both the Committee’s claims and Deerfield’s defenses. Although parties to the Standing Motion (including the Company) may have custody over some documents that Baker also possesses, the Subpoena primarily seeks materials solely in the possession of Baker, including its “assessments, analyses,

and evaluations, including, without limitation, solvency analyses, concerning the [Company],” its “[c]ommunications with [its] investors concerning [the Company],” and internal communications and documents regarding “actual or potential offers made, considered, or discussed by [Baker] to provide debt or equity financing to the [Company].” (Subpoena at 8.) Because the applicable rules expressly permit discovery from third parties possessing relevant information, *see* Fed. R. Civ. P. 45; Fed. R. Bank. P. 9016, Baker’s position that it is somehow relieved from producing any document by virtue of being a “non-party” is untenable. *See Hinsinger v. Conifer Ins. Co.*, 2024 WL 866529, at \*5 (D.N.J. Feb. 29, 2024) (“The scope of permissible discovery from non-parties under Rule 45 *is the same* as the scope permitted under Rule 26(b) of the Federal Rules of Civil Procedure.” (emphasis added)).

14. **Third**, Baker articulates no basis to withhold nonprivileged, internal communications and analyses. The applicable rules are clear that discovery is permissible “regarding any nonprivileged matter that is relevant to any party’s claim or defense,” whether such materials are considered internal or external. *Arrowood Indem. Co. v. Metallo Gasket Co.*, 2011 WL 4950200, at \*1 (D.N.J. Oct. 18, 2011). As already discussed, Baker’s internal communications and analyses concerning the Company are plainly relevant to both the Committee’s Proposed Claims and Deerfield’s defenses, given Baker’s role in the events leading up to the Petition Date and its active participation in the March Exchange and the Ad Hoc Group. *See Handorf v. Milliman, Inc.*, — F. Supp. 3d —, 2024 WL 1827826, at \*4 (N.D. Iowa Apr. 26, 2024) (granting motion to compel the production of a third party’s “in-house” analysis and “internal communications”); *Univ. of Tennessee Rsch. Found. v. Caelum Biosciences, Inc.*, 2022 WL 19403696, at \*4 (E.D. Tenn. July 1, 2022) (granting motion to compel the production of a third party’s “internal communications” because they are “relevant to the core issues in th[e]

case.”). Indeed, the Committee insisted on obtaining discovery of Deerfield’s internal communications and analyses concerning the Company, and Deerfield produced such internal communications and analyses in response to the Committee’s request. (See e-mail correspondence between Deerfield’s and the Committee’s counsel regarding internal analyses, attached to the DeCamp Decl. as **Exhibit 5**.) To the extent that Baker is concerned about any administrative burden associated with a privilege review, Deerfield has offered to exclude from Baker’s review internal communications including attorneys, which Baker declined. (See Ex. 4.)

#### **NO PRIOR REQUEST**

15. The relief requested in the Motion has not been previously requested in this Court or any other court.

#### **WAIVER OF MEMORANDUM OF LAW**

16. Under Local Bankruptcy Rule 9013-1, Deerfield respectfully requests that the Court waive the requirement that it file a memorandum of law in support of this Motion. Deerfield submits that no memorandum of law is necessary because all applicable legal authority is set forth in this Motion and because there are no novel issues of law presented.

#### **NOTICE**

17. Consistent with the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Dkt. No. 62] (the “Case Management Order”), notice of this Motion has been provided to (i) the Debtors, (ii) the U.S. Trustee, (iii) the other parties on the Master Service List established by the Case Management Order, and (iv) counsel for Baker. In light of the nature of the relief requested herein, Deerfield submits that no other or further notice is required.

**CONCLUSION**

18. For the foregoing reasons, Deerfield respectfully requests that the Court issue an order compelling Baker's compliance with the Subpoena.

*[Remainder of page intentionally left blank.]*

Dated: June 14, 2024

*/s/ James N. Lawlor*

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*Counsel to Deerfield Partners, L.P.*

**CERTIFICATION PURSUANT TO  
BANKRUPTCY RULE 7037 AND LOCAL BANKRUPTCY RULE 7037-1**

Pursuant to Rule 7037 and Local Bankruptcy Rule 7037-1, I certify that prior to filing this Motion, Deerfield in good faith conferred with Baker over videoconference on June 12, 2024, and over e-mail correspondence on June 14, 2024, to obtain Baker's compliance with the Subpoena without court action.

Dated: June 14, 2024

*/s/ James N. Lawlor*

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*Counsel to Deerfield Partners, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**DECLARATION OF JUSTIN J. DECAMP IN SUPPORT OF  
DEERFIELD PARTNERS, L.P.'S MOTION TO COMPEL DEPOSITION  
AND PRODUCTION OF DOCUMENTS BY BAKER BROS. ADVISORS LP**

I, Justin J. DeCamp, declare as follows under penalty of perjury pursuant to 28 U.S.C.

§ 1746:

1. I am a member of the bars of the State of New York and admitted to practice before this Court *pro hac vice*. I am a partner at Sullivan & Cromwell LLP, co-counsel for Deerfield Partners, L.P. ("Deerfield").

2. I am authorized to submit this Declaration on behalf of Deerfield, a party in interest in the above-captioned Chapter 11 case.

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<sup>1</sup> 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.kcellc.net/invitae](http://www.kcellc.net/invitae). The Debtors' service address in these chapter 11 cases is 1400 16<sup>th</sup> Street, San Francisco, California 94103. Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion filed concurrently herewith.



3. I am familiar with the facts, circumstances, and proceedings in this case and submit this Declaration in support of Deerfield's *Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP*, which is being filed concurrently herewith.

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Subpoena that Deerfield served on Baker on May 31, 2024.

5. Attached hereto as **Exhibit 2** is a true and correct copy of Baker's Objection that Deerfield received on June 10, 2024.

6. Attached hereto as **Exhibit 3** is a true and correct copy of the e-mail exchange between Deerfield's and Baker's counsel regarding the Subpoena.

7. Attached hereto as **Exhibit 4** is a true and correct copy of Baker's objection to the Subpoena's deposition request that Deerfield received on June 14, 2024.

8. Attached hereto as **Exhibit 5** is a true and correct copy of the e-mail exchange between Deerfield's and the Committee's counsel regarding the production of internal analyses.

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

Executed at New York, New York on the 14th day of June, 2024.

/s/ Justin J. DeCamp  
Justin J. DeCamp

# **EXHIBIT 1**

# UNITED STATES BANKRUPTCY COURT

District of New Jersey

In re Invitae Corporation, et al.,  
Debtor

Case No. 24-11362 (MBK)

*(Complete if issued in an adversary proceeding)*

Chapter 11

Plaintiff

v.

Adv. Proc. No. \_\_\_\_\_

Defendant

## SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Baker Bros. Advisors LP

*(Name of person to whom the subpoena is directed)*

**Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

PLACE <u>Sullivan &amp; Cromwell LLP</u> <u>125 Broad Street, New York, New York 1004</u>	DATE AND TIME <u>June 14, 2024, at 10:00 a.m. E.T.</u>
--	---

The deposition will be recorded by this method:  
See Schedule A attached hereto.

**Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:  
See Schedule A attached hereto.

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: May 31, 2024

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

/s/ Justin J. DeCamp  
*Attorney's signature*

The name, address, email address, and telephone number of the attorney representing *(name of party)* Deerfield Partners, L.P., who issues or requests this subpoena, are:

Justin J. DeCamp; 125 Broad Street, New York, New York 10004; decampj@sullcrom.com; (212) 558-1688

### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

**(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)**

I received this subpoena for *(name of individual and title, if any)*: \_\_\_\_\_  
on *(date)* \_\_\_\_\_ .

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_ .

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ .

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**SCHEDULE A**

**SULLIVAN & CROMWELL LLP**

Ari B. Blaut (admitted *pro hac vice*)  
Justin J. DeCamp (admitted *pro hac vice*)  
Benjamin S. Beller (admitted *pro hac vice*)  
125 Broad Street  
New York, NY 10004  
Telephone: (212) 558-1656  
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*Counsel to Deerfield Partners, L.P.*

**WOLLMUTH MAHER & DEUTSCH LLP**

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*Counsel to Deerfield Partners, L.P.*

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

In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-11362 (MBK)

(Jointly Administered)

**DEERFIELD PARTNERS, L.P.'S NOTICE OF RULE 30(B)(6) DEPOSITION OF  
BAKER BROS. ADVISORS LP AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS TO BAKER BROS. ADVISORS LP**

**PLEASE TAKE NOTICE** that pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rules 7030, 9016, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), in connection with the *Motion 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* filed by the Official Committee of Unsecured Creditors (the "Committee") [Dkt. Nos. 526, 536], Deerfield Partners,

<sup>1</sup> 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](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.

L.P. (“Deerfield”), by and through its undersigned counsel, will take the deposition upon oral examination of Baker Bros. Advisors LP (“Baker Brothers”) by one or more corporate witnesses designated by Baker Brothers to testify on its behalf regarding the subject matters listed in the attached **Exhibit A** (the “Deposition Topics”).

**PLEASE TAKE FURTHER NOTICE** that the deposition will be recorded by stenographic means and may also be recorded by audio or audiovisual means. The deposition will take place before a Notary Public or other person authorized by law to administer oaths. The deposition will take place in person on a date to be agreed between Deerfield and Baker Brothers, but no later than **June 14, 2024, at 10:00 a.m., Prevailing Eastern Time**. The deposition will be taken for all purposes permitted by the Federal Rules of Civil Procedure, Bankruptcy Rules, and Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”). The deposition will be taken for the purposes of discovery, for use at any evidentiary hearing or trial, or for any other purposes that are permitted by any applicable law.

**PLEASE TAKE FURTHER NOTICE** that pursuant to Rule 30(b)(6), Baker Brothers is required to designate one or more knowledgeable persons to testify on its behalf with respect to the Deposition Topics. Baker Brothers is requested to provide Deerfield’s counsel, as soon as reasonably possible, with a written designation of the name(s) and position(s) of the persons who will testify on behalf of Baker Brothers. If Baker Brothers designates more than one corporate representative, Baker Brothers shall indicate five (5) days prior to the deposition which representative will speak to which subject matters. Deerfield reserves the right to amend or supplement this Notice, including the Deposition Topics. Deerfield also reserves the right to seek relief from the Court in the event that the designated deponent is not properly prepared to testify with respect to each of the identified topics below.



**PLEASE TAKE FURTHER NOTICE** that, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, made applicable by Bankruptcy Rules 7026, 7034, 9014, and 9016, Deerfield, by and through its undersigned counsel, hereby submits this request for the production of documents (the “Document Requests”) to Baker Brothers in the above-captioned chapter 11 case. Deerfield requests that the documents and electronic information responsive to the Document Requests identified in the attached **Exhibit A** be produced to Deerfield’s counsel on a rolling basis and completed no later than **June 10, 2024**. Please take further notice that Deerfield reserves its rights under title 11 of the United States Code (the “Bankruptcy Code”), the Bankruptcy Rules, the Local Rules, and any applicable law regarding the subject matter of these Document Requests to (i) amend, supplement, and/or modify **Exhibit A** attached hereto; and (ii) seek additional discovery including additional requests for the production of documents, interrogatories, and depositions, provided, further, that Deerfield expressly reserves its rights to amend, supplement, and/or modify **Exhibit A** attached hereto for any reason.

*[Remainder of page intentionally left blank.]*

Dated: May 31, 2024

*/s/ James N. Lawlor*

---

**WOLLMUTH MAHER & DEUTSCH LLP**

James N. Lawlor  
500 Fifth Avenue  
New York, NY 10110  
Telephone: (212) 382-3300  
Facsimile: (973) 741-2398  
Email: [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)

**SULLIVAN & CROMWELL LLP**

Ari B. Blaut (admitted *pro hac vice*)  
Justin J. DeCamp (admitted *pro hac vice*)  
Benjamin S. Beller (admitted *pro hac vice*)  
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*Counsel to Deerfield Partners, L.P.*

**EXHIBIT A**

## DEFINITIONS

As used herein, the terms listed below shall be defined as follows. Insofar as a term is not explicitly defined, the meaning to be used is the commonly accepted definition of the term. None of the definitions set forth below are intended to narrow the scope of discovery permitted by the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules of the United States Bankruptcy Court for the District of New Jersey, and the definitions and topics should be read as broadly as permitted by those rules. Terms not otherwise defined have the meaning ascribed to them in the Disclosure Statement (as defined herein).

1. “2024 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

2. “2028 Convertible Senior Secured Notes” shall have the meaning ascribed to it in the First Day Declaration.

3. “2028 Convertible Senior Unsecured Notes” shall have the meaning ascribed to it in the First Day Declaration.

4. “Affiliate” has the meaning ascribed to such term in section 101(2) of the Bankruptcy Code.

5. The terms “all,” “each,” and “any” shall be construed to mean all, each, every, any, “each and every,” and “any one.”

6. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

7. “Bankruptcy Cases” means the jointly administered chapter 11 cases captioned *In re Invitae Corporation, et al.*, Case No. 24-11362 (MBK), pending before the Bankruptcy Court.

8. “Bankruptcy Code” means chapter 11 of title 11 of the United States Code.

9. “Bankruptcy Court” means the United States Bankruptcy Court for the District of New Jersey.

10. “Baker Brothers,” “You” or “Your” means Baker Bros. Advisors LP, Baker Brothers Life Sciences LP, and any other Affiliates, agents, assigns, directors, employees, officers, parents, partners, representatives, subsidiaries, or any other Persons acting or purporting to act on their behalf, and any predecessor or successor of the foregoing.

11. “Claim” has the meaning ascribed to such term in section 101(5) of the Bankruptcy Code.

12. “Committee” means the Official Committee of Unsecured Creditors appointed in these Bankruptcy Cases on March 1, 2024 [Dkt. No. 131]

13. “Communication,” or any variant thereof, includes any contact between two or more persons by which any information or knowledge is transmitted or conveyed, or attempted to be transmitted or conveyed, and shall include, without limitation, written contact by means such as letters, memoranda, teletypes, text messages, instant messages, emails, social media, or any other document, and oral contact, such as face-to-face meetings, videoconference or telephone conversations, or social media. The term “Communication” is not limited to internal Communications but includes Communications between Baker Brothers and third parties and Communications between or among third parties.

14. “Debtors” means Invitae Corporation and its affiliated debtors, which filed voluntary chapter 11 petitions under the Bankruptcy Code commencing these Bankruptcy Cases, and any of their respective current or former affiliates, subsidiaries, parent corporations, predecessors, or successors entities; and all of their respective current or former directors, officers, employees, agents, attorneys, advisors, and representatives.

15. “Deerfield” means Deerfield Partners, L.P. and its directors, officers, employees, and representatives.

16. “Disclosure Statement” means the *Disclosure Statement Relating to the Joint Plan of Invitae Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed on May 9, 2024 [Dkt. No. 472], as amended, supplemented, or otherwise modified from time to time, including all exhibits and schedules thereto and references therein that relate to the Plan.

17. “Document” has the meaning prescribed by Rule 7034 of the Bankruptcy Rules, including, without limitation, any tangible thing upon which any expression, communication or representation has been recorded by any means including, but not limited to, handwriting, typewriting, printing, photographing, videotaping, magnetic impulse, computer disks, computer storage drives, computer tapes, or mechanical, electronic or digital recording or information storage of any kind, and any nonidentical copies (whether different from the original because of notes made on such copies, because of indications that said copies were sent to different individuals than were the originals, or because of any other reason), including but not limited to working papers, preliminary, intermediate or final drafts, correspondence, memoranda, electronic mail, charts notes, records of any sort of meetings, financial calculations, diaries, reports of telephone or other oral conversations, desk calendars, appointment books, and all other writings and recordings of every kind that are in your actual or constructive possession, custody, or control. A Document Request for all Documents concerning a particular subject matter includes within its scope all Communications concerning that subject matter.

18. “First Day Declaration” means 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*, filed on February 14, 2024 [Dkt. No. 21].

19. “Identify,” or any variant thereof, means: (i) in relation to a natural person, to establish a person’s identity such that the identity of the person will be ascertainable distinctly from all other like persons, and to provide the person’s current or last known employer, current or last known mailing address, and current or last known telephone number; or (ii) in relation to a document or item, to establish the document or item’s identity such that the identity of the document or item will be ascertainable distinctly from all other like documents or items, and to state the name and address of the custodian of the document or item, the location of the document or item, and a general description of the document or item.

20. “Invitae” refers to Invitae Corporation and any Affiliates, agents, assigns, directors, employees, officers, parents, partners, representatives, subsidiaries, or any other Persons acting or purporting to act on their behalf, and any predecessor or successor of the foregoing.

21. “March 2023 Exchange” refers to the transaction through which Invitae (i) exchanged \$305.7 million aggregate principal amount of outstanding 2024 Convertible Senior Unsecured Notes for 14,219,859 shares of common stock and \$257.3 million aggregate principal amount of Series A Notes and (ii) issued and sold Series B Notes on or about March 7, 2023.

22. “Material(s)” means materials responsive to the requests contained herein, including without limitation Documents and Communications.

23. “Person” includes both the singular and the plural, and means any natural person business entity, corporation, cooperative, public corporation, partnership, association, joint venture, firm, organization, or other business enterprise or legal entity.

24. “Petition Date” means February 13, 2024.

25. “Plan” means the *Joint Plan of Invitae Corporation and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code*, filed on May 9, 2024 [Dkt. No. 471] and all

exhibits, supplements, appendices, and schedules thereto, as may be altered, amended, supplemented, or otherwise modified.

26. “Proposed Complaint” means the draft adversary complaint attached as Exhibit A to the Standing Motion.

27. “Relating,” “Related,” or “Concerning,” or any variant thereof, means, without limitation, referring to, concerning to, pertaining to, discussing, mentioning, containing, reflecting, constituting, describing, displaying, showing, identifying, proving, disproving, consisting of, arising out of, supporting or contradicting.

28. “Series A Notes” shall have the meaning ascribed in the First Day Declaration.

29. “Series B Notes” shall have the meaning ascribed in the First Day Declaration.

30. “Standing Motion” refers to *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’ Estate and (II) Exclusive Settlement Authority*, filed on May 21, 2024 [Dkt. No. 526], the redacted version of which was filed on May 22, 2024 [Dkt. No. 536].

31. “Uptiering Transaction” means a transaction or series of transactions pursuant to which an existing creditor elevates the seniority of its existing claims (including via lien, structural subordination, or otherwise) as compared to other *pari passu* creditors prior to such transaction.

### **INSTRUCTIONS**

1. Each Document Request shall be answered completely, separately, and fully.
2. Unless instructed otherwise, the time period covered by these Deposition Topics and Document Requests is the period from January 1, 2021, to the present, including any Materials that were created, transmitted, referred to, or used in that period.



3. These Document Requests apply to all Materials in Your possession, custody, or control, regardless of their location and regardless of whether such Materials are held by You or any of Your employees, agents, representatives, attorneys, consultants, advisors including financial advisors, persons, or entities acting on Your behalf.

4. If any portion of any Material is responsive to any of these Document Requests, the entire Material shall be produced, including all attachments, appendices, and exhibits thereto. Materials that in their original condition were stapled, clipped, or otherwise fastened together, or were placed in a file together, shall be produced in such form.

5. Materials produced from the records of individuals should be identified (either by document production number or otherwise) as coming from the records of such particular individuals.

6. To the extent the Materials are maintained or are otherwise available electronically, please produce them in that form, including all metadata.

7. For Materials created by Excel or other spreadsheet programs, PowerPoint, or other special presentation programs, database files, or any other file types that reasonably require viewing in their native format for a full understanding of their content and meaning, produce the files in native and tiff formats. Name the produced native file with the Bates number on the first page of the corresponding tiff production of the file/document. Group native files within incrementally named "NATIVE" directories, separate from images directories.

8. If any Materials are withheld from production on the alleged grounds of privilege or immunity (whether under any common law, statute, or otherwise), You shall identify each such Material on the due date of production by stating: (i) the identity of each person who prepared and/or signed the Material; (ii) the identity of each person designated as an addressee; (iii) the identity of each person who received any copy of the Material; (iv) the date of the Material; (v) the

subject matter of the Material; (vi) the type of Material; and (vii) the basis for withholding the Material. Notwithstanding the assertion of any privilege or other protection, any requested Material that contains responsive, non-privileged or non-protected information should be produced, but that portion of the Material for which privilege or other protection is asserted may be redacted, provided that the redacted portion is identified and described consistently according to the requirements listed herein.

9. If any responsive Material is known to have existed and cannot now be located, or has been destroyed, discarded, or otherwise disposed, set forth a complete statement of the circumstances surrounding such loss, destruction, discarding, or other disposition.

10. These Document Requests are continuing in nature and require further and supplemental production if additional Materials are acquired or located following the time of initial production, to the fullest extent required by the Federal Rules of Civil Procedure, the Bankruptcy Rules, and/or the Local Rules.

11. If You have no Material responsive to a Document Request, You must say so in Your response.

12. To bring within the scope of these Deposition Topics and Document Requests all information that might otherwise be construed to be outside of their scope, (i) the present tense shall be construed to include the past tense and vice versa, (ii) the singular includes the plural and vice versa, and (iii) the terms “and” and “or” are both conjunctive and disjunctive.

13. For the purpose of construing the scope of these Deposition Topics and Document Requests, any undefined terms used shall be given their most expansive and inclusive interpretation.

14. Each reference to a corporation, partnership, joint venture, unincorporated association, government agency, or other fictitious Person shall be deemed to include each and all

of its subsidiaries, affiliates, predecessors, and successors, and with respect to each of such entities, its officers, directors, shareholders, employees, partners, limited partners, representatives, agents, accountants, attorneys, and any other Person who acted or purported to act on its behalf.

15. Each paragraph, subparagraph, clause, and word therein should be construed independently and not by reference to any other paragraph, subparagraph, clause, or word herein for purposes of limitation.

16. If any meaning of any term in any Deposition Topic or Document Request herein is unclear to You, without waiver of the right to seek a full and complete response to the Deposition Topic or Document Request, You shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Document Request according to the assumed meaning.

17. These Deposition Topics and Document Requests shall not be construed as a waiver or abridgment of, and are not intended to waive, any argument or defense, or any objection to any of Your discovery requests, nor shall they be construed as an admission of any fact.

### **DEPOSITION TOPICS**

1. All current and historical debt or equity positions held by You in the Debtors and all actual or potential offers, bids, or indications of interest, made, received, considered, or discussed by You to purchase or sell debt or equity of the Debtors.

2. All actual or potential offers made, considered, or discussed by You to provide debt or equity financing to the Debtors, including, without limitation, those discussed in paragraphs 66, 72, 74, 88, 89, 90, 92, and 93 of the Proposed Complaint.

3. All contemplated or consummated transactions or strategic alternatives involving the Debtors, including, without limitation, Your decision not to participate in any such contemplated or consummated transactions or strategic alternatives.

4. The March 2023 Exchange, including, without limitation, Your participation in the March 2023 Exchange.

5. Your assessments, analyses, and evaluations, including, without limitation, solvency analyses, concerning the Debtors.

6. Your Communications with Your investors concerning Invitae.

7. Your participation in any Uptiering Transactions not involving the Debtors.

### **DOCUMENT REQUESTS**

1. All Materials responsive to or relating to the foregoing Deposition Topics.

2. All Materials concerning any current and historical debt or equity positions held by You in the Debtors and all actual or potential offers, bids, or indications of interest, made, received, considered, or discussed by You to purchase or sell debt or equity of the Debtors.

3. All Materials concerning any actual or potential offers made, considered, or discussed by You to provide debt or equity financing to the Debtors, including, without limitation, those discussed in paragraphs 66, 72, 74, 88, 89, 90, 92, and 93 of the Proposed Complaint.

4. All Materials concerning contemplated or consummated transactions or strategic alternatives involving the Debtors, including, without limitation, Your decision not to participate in any such contemplated or consummated transactions or strategic alternatives.

5. All Materials concerning the March 2023 Exchange, including, without limitation, Your participation in the March 2023 Exchange.

6. All Materials concerning the 2024 Convertible Senior Unsecured Notes, including, without limitation, all Communications with the Debtors or other holders of the 2024 Convertible Senior Unsecured Notes concerning the 2024 Convertible Senior Unsecured Notes.

7. All Materials concerning the 2028 Convertible Senior Unsecured Notes, including, without limitation, all Communications with the Debtors or other holders of the 2028 Convertible Senior Unsecured Notes concerning the 2028 Convertible Senior Unsecured Notes.

8. All Materials concerning the 2028 Convertible Senior Secured Notes, including, without limitation, all Communications with the Debtors or other holders of the 2028 Convertible Senior Secured Notes concerning the 2028 Convertible Senior Secured Notes.

9. All Materials concerning the filing of these Bankruptcy Cases.

10. All assessments, analyses, and evaluations, including, without limitation, solvency analyses, concerning the Debtors.

11. All Materials concerning Your Communications with Your investors relating to Invitae.

12. All Materials concerning Your participation in any Uptiering Transactions not involving the Debtors.

13. Documents sufficient to identify the names and positions of all individuals who provided advice in connection with current and historical debt or equity position held by You in the Debtors.

# **EXHIBIT 2**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

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

**BAKER BROS. ADVISORS LP’S RESPONSES AND OBJECTIONS TO  
DEERFIELD PARTNERS, L.P.’S SUBPOENA**

Baker Bros. Advisors LP (“BBA”), by and through its undersigned counsel, hereby responds (the “Responses”) and makes the following objections to the requests for production (each a “Request”, and collectively the “Requests”) attached as Exhibit A to the subpoena served by Deerfield Partners, L.P. (“Deerfield”) dated May 31, 2024 (the “Subpoena”) in connection with *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 “Committee’s Standing Motion”). Capitalized terms not defined herein shall have the same meanings given to them in the Requests.

**GENERAL OBJECTIONS AND RESERVATION OF RIGHTS**

In addition to and without limiting the specific objections and responses (“Specific Objections and Responses”) set forth herein, BBA makes the following reservation of rights and certain general objections (“General Objections”) to the Requests under the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, the Local Rules of this Bankruptcy

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

Court (as defined below), the Federal Rules of Evidence, and any other applicable law or statute:

1. The Responses are based on information available as of the date hereof. BBA reserves all rights to supplement these Responses, if necessary, to reflect additional information as it becomes available.

2. BBA objects to the Subpoena in its entirety as lacking relevance to the Committee's Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Official Committee of Unsecured Creditors of Invitae Corporation, *et al.* (the "Committee") or a party to the Committee's Standing Motion or the [*Proposed*] *Adversary Complaint* attached as Exhibit A to the Committee's Standing Motion (the "Proposed Complaint"). To the extent BBA possesses any Documents or Communications responsive to the Requests, they would not be relevant to the Court's evaluation of the Committee's Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Federal Rule 12(b)(6)"). Based on this General Objection, BBA will not produce Documents or Communications in response to the Subpoena. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

3. BBA further objects to the Subpoena and Requests therein as unduly burdensome and disproportionate to the needs of the Committee's Standing Motion. BBA is a non-party to the Committee's Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of reviewing and producing Documents and Communications concerning a dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee's Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate



target. Based on this General Objection, BBA will not produce Documents or Communications in response to the Subpoena. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

4. BBA objects to the Requests to the extent they seek the discovery of Documents, Communications, or information protected by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, or any other applicable privilege or protection under federal and state law. For the avoidance of doubt, BBA will not produce any Documents, Communications, or information subject to such privilege, and any privileged documents or information will be withheld from production. Any inadvertent production of any protected Documents or Communications or disclosure of any protected information is not intended to be, and will not operate as a waiver of, the applicable privilege, and any inadvertent production shall be treated pursuant to Federal Rule 26(b)(5)(B) and Federal Rule of Evidence 502(b). Based on this General Objection, BBA will not produce Documents or Communications in response to the Subpoena. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

5. BBA objects to each Request to the extent it seeks discovery of confidential, proprietary, trade secret, or competitively sensitive documents or information concerning BBA, any affiliates of BBA, or any of BBA's officers, directors, shareholders, agents, employees, or representatives.

6. BBA objects to the Requests to the extent any Request is overly broad, unduly burdensome, and disproportionate to the needs of the Committee's Standing Motion and Proposed Complaint, including but not limited to the extent any Request calls for the production of "all," "each," or "every" Document or Communication responsive to a Request.

7. BBA objects to the Requests to the extent any Request is vague, ambiguous, and/or

uses undefined or unexplained terminology.

8. BBA objects to the Requests to the extent they fail to describe with reasonable particularity each item or category of items to be inspected, as Rule 34(b)(1)(A) of the Federal Rules of Civil Procedure requires.

9. BBA objects to the Requests to the extent they seek Materials that are already known to Deerfield, already in the possession of or equally available to Deerfield or Deerfield's advisors or counsel, including information that is publicly available. BBA will not produce Documents that are already in Deerfield's possession, custody, or control.

10. BBA objects to any instruction, definition, or Request that attempts to place requirements on BBA that exceed what is required under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules of this Court.

11. Notwithstanding the Responses contained herein, BBA is prepared to meet and confer with Deerfield regarding the propriety of the Subpoena.

### **OBJECTIONS TO INSTRUCTIONS**

1. BBA objects to Instruction No. 1 as disproportionate to the needs of the case, overbroad, and unduly burdensome. To the extent BBA agrees to or is ordered to produce any Documents or Communications in response to the Requests, BBA will apply date parameters that are reasonable and proportional under the circumstances.

2. BBA objects to Instruction No. 3 as overbroad and unduly burdensome as it purports to require BBA to search for "all" Materials. It is impossible to represent, even after a reasonable and diligent search, that all, each, or every piece of information falling within any description can be, or has been, assembled. Moreover, the production of "all" documents responsive to each Request would pose an undue burden on BBA that is not proportional to the

needs of the case. To the extent BBA agrees to or is ordered to produce Documents and Communications in response to the Requests, assuming responsive non-privileged Documents and Communications exist, BBA will conduct a reasonable and diligent search in a manner proportionate to the needs and exigencies of the case.

3. BBA objects to Instruction No. 8 as unduly burdensome and disproportionate to the needs of the case. BBA will not submit detailed descriptions of privileged Documents. To the extent BBA agrees to or is ordered to produce Documents and Communications in response to the Requests, BBA agrees to meet and confer with Deerfield on the scope of a potential privilege log, assuming relevant privileged documents are discovered pursuant to a reasonable search that are responsive to the Requests.

### **SPECIFIC RESPONSES AND OBJECTIONS**

BBA incorporates the General Objections as if fully set forth in each and every Specific Response and Objection to the Requests.

#### **DOCUMENT REQUEST NO. 1**

All Materials responsive to or relating to the foregoing Deposition Topics.

#### **RESPONSE TO DOCUMENT REQUEST NO. 1**

BBA objects to this Request in its entirety as lacking relevance to the Committee's Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee's Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee's Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee's Standing Motion. BBA is a non-party to the Committee's Standing Motion and Proposed

Complaint and has not taken any position in this dispute. To the extent discovery is necessary— which BBA does not contend given the standard relevant to the Committee’s Standing Motion— BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. BBA also objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

**DOCUMENT REQUEST NO. 2**

All Materials concerning any current and historical debt or equity positions held by You in the Debtors and all actual or potential offers, bids, or indications of interest, made, received, considered, or discussed by You to purchase or sell debt or equity of the Debtors.

**RESPONSE TO DOCUMENT REQUEST NO. 2**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—

which BBA does not contend given the standard relevant to the Committee’s Standing Motion— BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

**DOCUMENT REQUEST NO. 3**

All Materials concerning any actual or potential offers made, considered, or discussed by You to provide debt or equity financing to the Debtors, including, without limitation, those discussed in paragraphs 66, 72, 74, 88, 89, 90, 92, and 93 of the Proposed Complaint.

**RESPONSE TO DOCUMENT REQUEST NO. 3**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary— which BBA does not contend given the standard relevant to the Committee’s Standing Motion—

BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

#### **DOCUMENT REQUEST NO. 4**

All Materials concerning contemplated or consummated transactions or strategic alternatives involving the Debtors, including, without limitation, Your decision not to participate in any such contemplated or consummated transactions or strategic alternatives.

#### **RESPONSE TO DOCUMENT REQUEST NO. 4**

BBA objects to this Request in its entirety as lacking relevance to the Committee's Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee's Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee's Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee's Standing Motion. BBA is a non-party to the Committee's Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee's Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks

discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials “concerning contemplated or consummated transactions or strategic alternatives involving the Debtors,” without any limitation to the transactions at issue in the Proposed Complaint. BBA objects to this Request to the extent it requires BBA to respond on behalf of any person or entity other than BBA. BBA further objects to this Request because the phrase “contemplated or consummated transactions or strategic alternatives involving the Debtors” is vague and ambiguous.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

#### **DOCUMENT REQUEST NO. 5**

All Materials concerning the March 2023 Exchange, including, without limitation, Your participation in the March 2023 Exchange.

#### **RESPONSE TO DOCUMENT REQUEST NO. 5**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—

which BBA does not contend given the standard relevant to the Committee’s Standing Motion— BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

**DOCUMENT REQUEST NO. 6**

All Materials concerning the 2024 Convertible Senior Unsecured Notes, including, without limitation, all Communications with the Debtors or other holders of the 2024 Convertible Senior Unsecured Notes concerning the 2024 Convertible Senior Unsecured Notes.

**RESPONSE TO DOCUMENT REQUEST NO. 6**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary— which BBA does not contend given the standard relevant to the Committee’s Standing Motion—



BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

**DOCUMENT REQUEST NO. 7**

All Materials concerning the 2028 Convertible Senior Unsecured Notes, including, without limitation, all Communications with the Debtors or other holders of the 2028 Convertible Senior Unsecured Notes concerning the 2028 Convertible Senior Unsecured Notes.

**RESPONSE TO DOCUMENT REQUEST NO. 7**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover,

BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

### **DOCUMENT REQUEST NO. 8**

All Materials concerning the 2028 Convertible Senior Secured Notes, including, without limitation, all Communications with the Debtors or other holders of the 2028 Convertible Senior Secured Notes concerning the 2028 Convertible Senior Secured Notes.

### **RESPONSE TO DOCUMENT REQUEST NO. 8**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-

client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials. BBA also objects that this Request is duplicative of Request No. 7.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

### **DOCUMENT REQUEST NO. 9**

All Materials concerning the filing of these Bankruptcy Cases.

### **RESPONSE TO DOCUMENT REQUEST NO. 9**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive.

BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “[a]ll Materials concerning the filing of these Bankruptcy Cases,” without any limitation to the allegations at issue in the Proposed Complaint. BBA further objects to this Request because it is vague and ambiguous.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

#### **DOCUMENT REQUEST NO. 10**

All assessments, analyses, and evaluations, including, without limitation, solvency analyses, concerning the Debtors.

#### **RESPONSE TO DOCUMENT REQUEST NO. 10**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks

discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “[a]ll assessments, analyses, and evaluations,” without any limitation to the allegations at issue in the Proposed Complaint. BBA objects to this Request to the extent that it requires BBA to respond on behalf of any person or entity other than BBA. BBA further objects to this Request because the phrase “assessments, analyses, and evaluations” is vague and ambiguous.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

**DOCUMENT REQUEST NO. 11**

All Materials concerning Your Communications with Your investors relating to Invitae.

**RESPONSE TO DOCUMENT REQUEST NO. 11**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-

client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials without any limitation to the allegations in the Proposed Complaint.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

### **DOCUMENT REQUEST NO. 12**

All Materials concerning Your participation in any Uptiering Transactions not involving the Debtors.

### **RESPONSE TO DOCUMENT REQUEST NO. 12**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks

discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive. BBA also objects to this Request as unduly burdensome and unnecessarily cumulative in that it seeks “all” Materials without any limitation to the allegations in the Proposed Complaint.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

### **DOCUMENT REQUEST NO. 13**

Documents sufficient to identify the names and positions of all individuals who provided advice in connection with current and historical debt or equity position held by You in the Debtors.

### **RESPONSE TO DOCUMENT REQUEST NO. 13**

BBA objects to this Request in its entirety as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis or necessity for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion and Proposed Complaint, particularly in light of the standard relevant to the Committee’s Standing Motion, which asks only if the Committee has asserted a colorable claim under the liberal pleading standard of Federal Rule 12(b)(6). BBA further objects to this Request as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. To the extent discovery is necessary—which BBA does not contend given the standard relevant to the Committee’s Standing Motion—BBA is not the appropriate target, which are propounded under Bankruptcy Rule 9014. Moreover, BBA objects to the extent this Request calls for the production of documents protected by attorney-client privilege or work product doctrine. BBA objects to this Request to the extent it seeks discovery of Materials that are confidential, proprietary, trade secrets, or competitively sensitive.

BBA also objects to this Request as unduly burdensome and unnecessarily cumulative because it is not limited to the allegations in the Proposed Complaint.

Based on the foregoing objections, BBA responds that it will not produce Materials in response to this Request. BBA is available to meet and confer with Deerfield regarding the propriety of the Subpoena.

Dated: June 10, 2024

*/s/ Joseph L. Sorkin*

**AKIN GUMP STRAUSS HAUER & FELD LLP**

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*Counsel to Baker Bros. Advisors LP*



# **EXHIBIT 3**

**Souza, Matthew T.**

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**From:** DeCamp, Justin J.  
**Sent:** Friday, June 14, 2024 5:19 PM  
**To:** Sorkin, Joseph L.  
**Cc:** Blaut, Ari B.; Beller, Benjamin S.; jlawlor@wmd-law.com; Dublin, Philip; Nolan, Sean; Soni, Nik  
**Subject:** RE: Invitae - Baker Bros. Advisors LP Response to Deerfield Document Requests

Thanks. We will file our motion and include what you were willing to do. Given the schedule, we can't put off the issue of whether there will be a deposition until after production.

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**From:** Sorkin, Joseph L. <jorkin@AkinGump.com>  
**Sent:** Friday, June 14, 2024 5:03 PM  
**To:** DeCamp, Justin J. <decampj@sullcrom.com>  
**Cc:** Blaut, Ari B. <Blauta@sullcrom.com>; Beller, Benjamin S. <bellerb@sullcrom.com>; jlawlor@wmd-law.com; Dublin, Philip <pdublin@AkinGump.com>; Nolan, Sean <snolan@akingump.com>; Soni, Nik <nsoni@akingump.com>  
**Subject:** [EXTERNAL] Re: Invitae - Baker Bros. Advisors LP Response to Deerfield Document Requests

Justin – While there may be some room to reach agreement either today or in the near future around certain issues (e.g. deciding on the necessity for a deposition after production, the correct date range, the right search terms), we cannot agree to produce “internal analyses and communications (including solvency analyses).” We disagree that they are relevant or proportional to the needs of the standing motion, and believe as well that they are also protected in many instances because they reflect advice from attorneys.

Please confirm that any motion you file with the court will reflect what Baker Bros. was prepared to produce and continue to negotiate over.

Best,

Joseph L. Sorkin

**Akin**

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Fax: +1 212.872.1002 | [jsorkin@akingump.com](mailto:jsorkin@akingump.com) | [akingump.com](http://akingump.com) | [akingump.com](http://akingump.com) | [Bio](http://akingump.com)

On Jun 14, 2024, at 1:35 PM, DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)> wrote:

Joseph,

With all rights reserved, with respect to the document requests, we are willing to agree to: (1) carve out Baker's communications with anyone using an invitae.com email address; (2) carve out Baker's internal communications that include identified attorneys for Baker on the e-mail chain; and (3) work with you to come up with a targeted list of reasonable custodians and search terms.

Among other things, the Standing Motion challenges Invitae's solvency and argues that Deerfield "pushed" the Company into Chapter 11, while ignoring alternatives offered by 2028 Noteholders. Because Baker was both a participant in the March Exchange and a member of an ad hoc group of 2028 Noteholders proposing alternatives to the Company leading up to the Petition Date, we believe that Baker's internal analyses and communications (including solvency analyses) are relevant, and the appropriate timeframe for discovery should be October 2022 to the Petition Date.

We'd also note that "whether the claims against the identified defendants . . . survive a motion to dismiss" is not "[t]he only relevant question for purposes of the standing motion." Colorability is but one aspect of a multi-prong analysis, and other elements of derivative standing requires the assessment of the merits of the Committee's Proposed Claims. As such, we believe that our requests are plainly relevant to the Committee's Proposed Claims and Deerfield's potential defenses.

We also will want to depose one corporate representative designated by Baker but are happy to further confer with you on the length, medium, and format of the deposition.

Please let us know by 5 pm today if you are amenable to our proposal. In light of the compressed litigation schedule, if we cannot reach agreement, we will file a motion to compel later today.

Regards,

Justin

**Justin J. DeCamp**  
**SULLIVAN & CROMWELL LLP**  
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**From:** Sorkin, Joseph L. <[jsorkin@AkinGump.com](mailto:jsorkin@AkinGump.com)>  
**Sent:** Friday, June 14, 2024 10:18 AM  
**To:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
**Cc:** Dublin, Philip <[pdublin@AkinGump.com](mailto:pdublin@AkinGump.com)>; Nolan, Sean <[snolan@akingump.com](mailto:snolan@akingump.com)>; Soni, Nik <[nsoni@akingump.com](mailto:nsoni@akingump.com)>  
**Subject:** [EXTERNAL] RE: Invitae - Baker Bros. Advisors LP Response to Deerfield Document Requests

Justin – We continue to believe our objections are appropriate and do not believe you are entitled to any discovery from Baker Bros. That said, and solely in the interest of avoiding the expense of motion practice, we are prepared to produce responsive, non-protected communications between Baker Bros. and third parties (including advisors to the Debtors but not including the Debtors' officers, directors and employees) from October 2022 through March 2023, if you withdraw the other document requests and deposition. Our understanding of the information you are

requesting and the reason we believe this is a reasonable, proportionate and appropriate resolution are described further below.

The documents you requested generally fall into three categories: (1) Baker Bros' internal communications, analysis, and valuations; (2) communications between Baker Bros and the Debtors' officers, directors and employees; and (3) communications between Baker Bros and third parties.

Baker Bros.' internal communications and analyses are simply not relevant to the UCC's standing motion. The only relevant question for purposes of the standing motion is whether the claims against the identified defendants, including Deerfield, survive a motion to dismiss. That has everything to do with the conduct and communications involving the proposed defendants and nothing to do with Baker Bros. and its internal views of its position in Invitae or the potential transactions at issue. Further, much of the internal information sought, including internal evaluations and economic modeling (if any exist) are plainly irrelevant and not discoverable. *See, e.g., In re Energy Future Holdings Corp.*, 513 B.R. 651, 661–62 (Bankr. D. Del. 2014); Hr'g Tr. 16:5-12, *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Apr. 8, 2024); Hr'g Tr. at 10:3-10, 22:6–14, *In re The Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. May 12, 2014) [D.I. 284]. Finally, many of the communications at issue involved an in house attorney and contain legal advice provided or work product created by members of Baker Bros.' internal legal team. The privilege review that would be required for such documents would be unduly burdensome and not proportional to the needs of the standing motion, particularly in light of the timing here.

We are also not agreeing to produce Baker Bros.' communications with the Debtors' officers, directors and employees. We understand that Deerfield already has access to all productions made by the Debtors, which should include communications between the Debtors' officers, directors and employees and Baker Bros. Baker Bros. should not be subjected to the burden and expense of reviewing and producing documents that are already in your possession. If our understanding is somehow incorrect, please let us know.

As for the third category—communications between Baker Bros and other parties not including the Debtors' officers, directors and employees—we are willing to review and produce responsive, non-protected documents for two custodians, Julian Baker and Scott Lessing, between October 2022 and March 2023. The review will, of course, be done pursuant to reasonable search criteria. For the avoidance of doubt, we are proposing to exclude from review and production communications between Baker Bros. on the one hand and those including an “invitae.com” email address on the other. We will review and produce communications that do not include an “inivitae.com” email address.

We remain available to discuss and reserve all rights to raise any and all objections in the event we are not able to consensually resolve this discovery dispute.

Best,

**Joseph L. Sorkin**

**Akin**

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**From:** Sorkin, Joseph L.  
**Sent:** Tuesday, June 11, 2024 4:03 PM  
**To:** 'DeCamp, Justin J.' <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; Beller, Benjamin (External) <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
**Cc:** Dublin, Philip <[pdublin@AkinGump.com](mailto:pdublin@AkinGump.com)>; Nolan, Sean <[snolan@akingump.com](mailto:snolan@akingump.com)>  
**Subject:** RE: Invitae - Baker Bros. Advisors LP Response to Deerfield Document Requests

Justin – Tomorrow at 3 works.

Best,

Joseph L. Sorkin

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Fax: +1 212.872.1002 | [jsorkin@akingump.com](mailto:jsorkin@akingump.com) | [akingump.com](http://akingump.com) [[akingump.com](http://akingump.com)] | [Bio \[akingump.com\]](http://Bio.akingump.com)

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**From:** DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Sent:** Tuesday, June 11, 2024 3:50 PM  
**To:** Sorkin, Joseph L. <[jsorkin@AkinGump.com](mailto:jsorkin@AkinGump.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; Beller, Benjamin (External) <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
**Cc:** Dublin, Philip <[pdublin@AkinGump.com](mailto:pdublin@AkinGump.com)>; Nolan, Sean <[snolan@akingump.com](mailto:snolan@akingump.com)>  
**Subject:** RE: Invitae - Baker Bros. Advisors LP Response to Deerfield Document Requests

**\*\*EXTERNAL Email\*\***

Please let us know if you are available to confer tomorrow at 3 or 3:30 and, if not, provide other times when you are available. Thanks.

Justin

**Justin J. DeCamp**  
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**From:** Sorkin, Joseph L. <[jsorkin@AkinGump.com](mailto:jsorkin@AkinGump.com)>  
**Sent:** Monday, June 10, 2024 8:38 PM  
**To:** Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
**Cc:** Dublin, Philip <[pdublin@AkinGump.com](mailto:pdublin@AkinGump.com)>; Nolan, Sean <[snolan@akingump.com](mailto:snolan@akingump.com)>  
**Subject:** [EXTERNAL] Invitae - Baker Bros. Advisors LP Response to Deerfield Document Requests

All – See attached responses and objections on behalf of Baker Bros. Advisors LP.

Best,

Joseph L. Sorkin

**Akin**

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Fax: +1 212.872.1002 | [jsorkin@akingump.com](mailto:jsorkin@akingump.com) | [akingump.com](http://akingump.com) [[akingump.com](http://akingump.com)] | Bio [[akingump.com](http://akingump.com)]

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**\*\*This is an external message from: [jsorkin@AkinGump.com](mailto:jsorkin@AkinGump.com) \*\***

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# **EXHIBIT 4**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY**

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

**BAKER BROS. ADVISORS LP’S RESPONSES AND OBJECTIONS TO  
DEERFIELD PARTNERS, L.P.’S DEPOSITION TOPICS**

Baker Bros. Advisors LP (“BBA”), by and through its undersigned counsel, hereby responds (the “Responses”) and makes the following objections to the deposition topics (each a “Topic”, and collectively the “Topics”) attached as Exhibit A to the subpoena served by Deerfield Partners, L.P. (“Deerfield”) dated May 31, 2024 (the “Subpoena”) in connection with *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 “Committee’s Standing Motion”). Capitalized terms not defined herein shall have the same meanings given to them in the Subpoena.

**GENERAL OBJECTIONS AND RESERVATION OF RIGHTS**

In addition to and without limiting the specific objections and responses (“Specific Objections and Responses”) set forth herein, BBA makes the following reservation of rights and certain general objections (“General Objections”) to the Topics under the Federal Rules of Bankruptcy Procedure, the Federal Rules of Civil Procedure, the Local Rules of this Bankruptcy

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



Court, the Federal Rules of Evidence, and any other applicable law or statute:

1. The Responses are based on information available as of the date hereof. BBA reserves all rights to supplement these Responses, if necessary, to reflect additional information as it becomes available.

2. BBA objects to the Subpoena in its entirety as lacking relevance to the Committee's Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Official Committee of Unsecured Creditors of Invitae Corporation, *et al.* (the "Committee") or a party to the Committee's Standing Motion or the [*Proposed*] *Adversary Complaint* attached as Exhibit A to the Committee's Standing Motion (the "Proposed Complaint"). To the extent testimony from a BBA representative could elicit information responsive to the Topics, it would not be relevant to the Court's evaluation of the Committee's Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Federal Rule 12(b)(6)"). Based on this General Objection, BBA will not produce a witness in response to the Subpoena. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

3. BBA further objects to the Subpoena and Topics therein as unduly burdensome and disproportionate to the needs of the Committee's Standing Motion. BBA is a non-party to the Committee's Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee's Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. Based on this General Objection, BBA

will not produce a witness in response to the Subpoena. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

4. BBA objects to the Topics to the extent they seek the discovery of information protected by the attorney-client privilege, work product doctrine, common interest doctrine, joint defense privilege, or any other applicable privilege or protection under federal and state law.

5. BBA objects to each Topic to the extent it seeks discovery of confidential, proprietary, trade secret, or competitively sensitive documents or information concerning BBA, any affiliates of BBA, or any of BBA's officers, directors, shareholders, agents, employees, or representatives.

6. BBA objects to the Topics to the extent any Topic is overly broad, unduly burdensome, and disproportionate to the needs of the Committee's Standing Motion and Proposed Complaint, including but not limited to the extent any Topic calls for "all" information responsive to a Topic.

7. BBA objects to the Topics to the extent any Topic is vague, ambiguous, and/or uses undefined or unexplained terminology.

8. BBA objects to the Topics to the extent they seek information that is already known to Deerfield or already in the possession of or equally available to Deerfield or Deerfield's advisors or counsel, including information that is publicly available.

9. BBA objects to any instruction, definition, or Topic that attempts to place requirements on BBA that exceed what is required under the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules of this Court.

10. Notwithstanding the Responses contained herein, BBA is prepared to meet and confer with Deerfield regarding the propriety of the Subpoena.

### **OBJECTIONS TO INSTRUCTIONS**

1. BBA objects to Instruction No. 2 as overbroad, unduly burdensome, and disproportionate to the needs of the case. To the extent BBA agrees to produce a BBA representative for deposition, BBA will apply date parameters that are reasonable and proportional under the circumstances.

2. BBA objects to Instruction No. 13 as overbroad to the extent it requires BBA to give any “undefined terms” “their most expansive and inclusive interpretation.” BBA will interpret any undefined terms with their reasonable meaning, and consistent with any applicable rule, including the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, or the Local Rules of this Court.

### **SPECIFIC RESPONSES AND OBJECTIONS**

BBA incorporates the General Objections as if fully set forth in each and every Specific Response and Objection to the Topics.

#### **TOPIC NO. 1**

All current and historical debt or equity positions held by You in the Debtors and all actual or potential offers, bids, or indications of interest, made, received, considered, or discussed by You to purchase or sell debt or equity of the Debtors.

#### **RESPONSE TO TOPIC NO. 1**

BBA objects to this Topic as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court’s evaluation of the Committee’s Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects

to this Topic as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee’s Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA also objects to this Topic because the phrase “actual or potential offers, bids, or indications of interest, made, received, considered, or discussed” is vague and ambiguous. BBA also objects to this Topic as overbroad, unduly burdensome, and unnecessarily cumulative in that it seeks information related to “all” historical debt and equity positions and “all” actual or potential offers, bids, or indications of interest without any limitation to the transactions at issue in the Proposed Complaint.

Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

**TOPIC NO. 2**

All actual or potential offers made, considered, or discussed by You to provide debt or equity financing to the Debtors, including, without limitation, those discussed in paragraphs 66, 72, 74, 88, 89, 90, 92, and 93 of the Proposed Complaint.

**RESPONSE TO TOPIC NO. 2**

BBA objects to this Topic as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court’s evaluation of the

Committee’s Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects to this Topic as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee’s Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA also objects to this Topic because the phrase “actual or potential offers made, considered, or discussed” is vague and ambiguous. BBA also objects to this Topic as overbroad, unduly burdensome, and unnecessarily cumulative in that it seeks information related to “all” actual or potential offers “including, without limitation” to the transactions at issue in the Proposed Complaint. BBA also objects to this Topic because the phrase “including, without limitation” is too broad to comply with Rule 30(b)(6) and does not provide the deposed party with adequate notice to prepare a witness.

Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

**TOPIC NO. 3**

All contemplated or consummated transactions or strategic alternatives involving the Debtors, including, without limitation, Your decision not to participate in any such contemplated or consummated transactions or strategic alternatives.

**RESPONSE TO TOPIC NO. 3**

BBA objects to this Topic as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery

from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court’s evaluation of the Committee’s Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects to this Topic as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee’s Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA also objects to this Topic because the phrase “contemplated or consummated transactions or strategic alternatives involving the Debtors” is vague and ambiguous. BBA also objects to this Topic as overbroad, unduly burdensome, and unnecessarily cumulative in that it seeks information related to “all” contemplated or consummated transactions or strategic alternatives involving the Debtors “including, without limitation” to the transactions at issue in the Proposed Complaint. BBA objects to this Topic to the extent it requires BBA to respond on behalf of any person or entity other than BBA. BBA also objects to this Topic because the phrase “including, without limitation” is too broad to comply with Rule 30(b)(6) and does not provide the deposed party with adequate notice to prepare a witness.

Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

**TOPIC NO. 4**

The March 2023 Exchange, including, without limitation, Your participation in the March 2023 Exchange.

**RESPONSE TO TOPIC NO. 4**

BBA objects to this Topic as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court’s evaluation of the Committee’s Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects to this Topic as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee’s Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA also objects to this Topic because the phrase “including, without limitation” is too broad to comply with Rule 30(b)(6) and does not provide the deposed party with adequate notice to prepare a witness.

Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

**TOPIC NO. 5**

Your assessments, analyses, and evaluations, including, without limitation, solvency analyses, concerning the Debtors.

**RESPONSE TO TOPIC NO. 5**

BBA objects to this Topic as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court’s evaluation of the Committee’s Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects to this Topic as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee’s Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA further objects that this Topic seeks information protected by attorney client privilege, work product doctrine, or common interest doctrine. BBA also objects to this Topic because the phrase “assessments, analyses, and evaluations” is vague and ambiguous. BBA also objects to this Topic because the phrase “including, without limitation” is too broad to comply with Rule 30(b)(6) and does not provide the deposed party with adequate notice to prepare a witness.



Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

**TOPIC NO. 6**

Your Communications with Your investors concerning Invitae.

**RESPONSE TO TOPIC NO. 6**

BBA objects to this Topic as lacking relevance to the Committee’s Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee’s Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court’s evaluation of the Committee’s Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects to this Topic as unduly burdensome and disproportionate to the needs of the Committee’s Standing Motion. BBA is a non-party to the Committee’s Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee’s Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA further objects that this Topic seeks information protected by attorney client privilege, work product doctrine, or common interest doctrine. BBA also objects to this Topic as unduly burdensome and unnecessarily cumulative in that it seeks information regarding Communications “concerning Invitae” without any limitation to the allegations in the Proposed Complaint.

Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

**TOPIC NO. 7**

Your participation in any Uptiering Transactions not involving the Debtors.

**RESPONSE TO TOPIC NO. 7**

BBA objects to this Topic as lacking relevance to the Committee's Standing Motion and as improperly seeking discovery from BBA. There is no valid basis for Deerfield to seek discovery from BBA, which is not a member of the Committee or a party to the Committee's Standing Motion or the Proposed Complaint. To the extent testimony from a BBA representative could elicit information responsive to this Topic, it would not be relevant to the Court's evaluation of the Committee's Standing Motion, particularly in light of the relevant legal standard, which asks only if the Committee has asserted a colorable claim under Federal Rule 12(b)(6). BBA further objects to this Topic as unduly burdensome and disproportionate to the needs of the Committee's Standing Motion. BBA is a non-party to the Committee's Standing Motion and Proposed Complaint and has not taken any position in this dispute. As a non-party, BBA should not be subjected to the costly and burdensome exercise of producing a witness related to this dispute in which it is not involved. To the extent discovery is necessary at all to resolve the Committee's Standing Motion—which BBA does not contend given the relevant standard—BBA is not the appropriate target. BBA objects to this Topic as seeking information that is confidential, proprietary, a trade secret, or competitively sensitive. BBA further objects that this Topic seeks information protected by attorney client privilege, work product doctrine, or common interest doctrine.

Based on the foregoing objections, BBA will not produce a witness on this Topic. BBA is available to meet and confer with Deerfield on the propriety of the Subpoena.

Dated: June 14, 2024

*/s/ Joseph L. Sorkin*

**AKIN GUMP STRAUSS HAUER & FELD LLP**

Joseph L. Sorkin

Sean M. Nolan

One Bryant Park

New York, NY 10036-6745

Telephone: (212) 872-1000

Facsimile: (212) 872-1002

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[snolan@akingump.com](mailto:snolan@akingump.com)

*Counsel to Baker Bros. Advisors LP*

# **EXHIBIT 5**

**Souza, Matthew T.**

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**From:** Chase, Ashley <ashley.chase@whitecase.com>  
**Sent:** Thursday, March 28, 2024 2:09 PM  
**To:** DeCamp, Justin J.; Souza, Matthew T.; Hershey, Samuel; Beller, Benjamin S.; Blaut, Ari B.; jlawlor@wmd-law.com; JPacelli@WMD-LAW.com  
**Cc:** Invitae UCC - W&C Team; Porzio UCC Invitae  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks. We will review and revert.

**Ashley Chase** | Associate

T +1 212 819 7624 M +1 631 926 1797 E [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

White & Case LLP | 1221 Avenue of the Americas | New York, NY 10020-1095

---

**From:** DeCamp, Justin J. <decampj@sullcrom.com>  
**Sent:** Thursday, March 28, 2024 2:07 PM  
**To:** Chase, Ashley <ashley.chase@whitecase.com>; Souza, Matthew T. <souzam@sullcrom.com>; Hershey, Samuel <sam.hershey@whitecase.com>; Beller, Benjamin S. <bellerb@sullcrom.com>; Blaut, Ari B. <Blauta@sullcrom.com>; jlawlor@wmd-law.com; JPacelli@WMD-LAW.com  
**Cc:** Invitae UCC - W&C Team <InvitaeWCall@whitecase.com>; Porzio UCC Invitae <PorzioUCCInvitae@pbnlaw.com>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ashley,

Below please find our proposed search terms and custodians, and our position on the production of Deerfield's internal analyses.

**Search Terms**

We propose the following search terms for our document review. As we've yet to receive a hit report running the proposed search terms across all data load, we reserve the ability to propose modifications in case any search term returns an unreasonably large hit count.

- **Request 1**
  - ("Invitae" OR "NVTAQ" OR "NVTA") AND ("equity" OR "debt" OR "shares" OR "notes" OR "loan" OR "investment" OR "position" OR "holding" OR "convert" OR "1L")
- **Request 2**
  - ("Invitae" OR "NVTAQ" OR "NVTA") AND ("agreement" OR "indenture")
- **Request 3**
  - ("Invitae" OR "NVTAQ" OR "NVTA") AND "pay\*" AND ("term loan" OR "TL")
- **Requests 4–14, 16**
  - ("Invitae" OR "NVTAQ" OR "NVTA") AND ("transaction" OR "exchange" OR "unsecured" OR "unsec" OR "secured" OR "liquidity" OR "solvency" OR "bankruptcy" OR "TSA" OR "chapter 11" OR "restructur\*")
- **Request 15**
  - ("Invitae" OR "NVTAQ" OR "NVTA") AND "Perella" AND ("engagement" OR "retention") AND ("letter" OR "agreement")

**Custodians**

We propose the following custodians who in our view are most likely to possess responsive documents.

- **Sumner Anderson** – Partner, Public Structured Finance
- **Wenxi Chen** – Principal, Medical Technologies
- **James Flynn** – Managing Partner
- **Terence Fox-Karnal** – Partner, Head Equity Linked and Credit Trader
- **Abraham “Avi” Kometz** – Partner, Medical Technologies
- **Elliot Press** – Partner

### **Internal Analyses**

Without prejudice to our R&Os, in the interest of good faith compromise and to avoid bringing issues to the Court, we are willing to produce, in response to Requests Nos. 13 and 14, non-privileged internal Deerfield memoranda and presentations that contain solvency analyses of Invitae or analyses of the 2023 exchange transactions to the extent that such documents exist and are identified based on a reasonable search.

Please let us know if you would like to discuss.

Regards,

Justin

### **Justin J. DeCamp**

Sullivan & Cromwell LLP  
125 Broad Street | New York, NY 10004-2498  
+1 212 558 1688 (T) | +1 917 660 2445 (M)  
[decampj@sullcrom.com](mailto:decampj@sullcrom.com) | [www.sullcrom.com](http://www.sullcrom.com)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Sent:** Thursday, March 28, 2024 2:02 PM

**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ben,

During our meet and confer on Tuesday, you agreed to let us know by noon today whether Deerfield will produce internal materials responsive to our document requests; namely, Requests 13 and 14. You also agreed to simultaneously propose custodians and search terms. Please send your response and proposal as soon as possible.

Best,

**Ashley Chase** | Associate

**T** [+1 212 819 7624](tel:+12128197624) **M** [+1 631 926 1797](tel:+16319261797) **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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**From:** Chase, Ashley  
**Sent:** Sunday, March 24, 2024 7:29 PM  
**To:** 'Souza, Matthew T.' <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, let's do 2:30. I will send a calendar invite shortly.

**Ashley Chase** | Associate  
**T** [+1 212 819 7624](tel:+12128197624) **M** [+1 631 926 1797](tel:+16319261797) **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Sent:** Sunday, March 24, 2024 5:23 PM  
**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Ashley, we are available on Tuesday between 2:00 p.m. and 4:30 p.m. Thank you.

**Matthew T. Souza**  
[+1 212 558 4109](tel:+12125584109) (T)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>  
**Sent:** Saturday, March 23, 2024 10:01 AM  
**To:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>; Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, Matthew. Please let us know when you are available to meet and confer next week.

Best,  
Ashley

**Ashley Chase** | Associate  
**T** [+1 212 819 7624](tel:+12128197624) **M** [+1 631 926 1797](tel:+16319261797) **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)  
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---

**From:** Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Sent:** Friday, March 22, 2024 6:38 PM  
**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Good afternoon, please find attached Deerfield's R&Os to the Committee's requests. Thank you.

**Matthew T. Souza**  
[+1 212 558 4109](tel:+12125584109) (T)

---

**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>  
**Sent:** Tuesday, March 19, 2024 11:56 AM  
**To:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

The tight timeline for the Committee's investigation, which your client demanded and, I'm sure, does not want to see slip. If we can accelerate the process by discussing issues before you formally serve R&Os, we are available to do so.

**Samuel P. Hershey** | Partner  
**T** [+1 \(212\) 819-2699](tel:+12128192699) **M** [+1 \(914\) 582-1628](tel:+19145821628) **E** [sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)  
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**WHITE & CASE**

---

**From:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>  
**Sent:** Tuesday, March 19, 2024 11:44 AM  
**To:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** [EXT] RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Tight timeline for what? You served 2004 discovery. We are happy to meet and confer once we've served our R&Os which we will do in due course.

**Benjamin S. Beller**  
[+1 212 558 3334](tel:+12125583334) (T) | [+1 917 660 0174](tel:+19176600174) (M)

---

**From:** Hershey, Samuel <[sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)>  
**Sent:** Monday, March 18, 2024 11:41 PM  
**To:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>; Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>; [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com); [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com); DeCamp, Justin J. <[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>; Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>  
**Cc:** Invitae UCC - W&C Team <[InvitaeWCall@whitecase.com](mailto:InvitaeWCall@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>  
**Subject:** RE: RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Thanks, Ben. Can we also find a time this week to meet and confer regarding the requests? Given the tight timeline it is in both of our interests to address any issues now rather than waiting.

**Samuel P. Hershey** | Partner  
**T** [+1 \(212\) 819-2699](tel:+12128192699) **M** [+1 \(914\) 582-1628](tel:+19145821628) **E** [sam.hershey@whitecase.com](mailto:sam.hershey@whitecase.com)  
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**WHITE & CASE**



**From:** Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>

**Date:** Monday, Mar 18, 2024 at 18:49

**To:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>, Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>, [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
<[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>, [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com) <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>, DeCamp, Justin J.  
<[decampj@sullcrom.com](mailto:decampj@sullcrom.com)>, Souza, Matthew T. <[souzam@sullcrom.com](mailto:souzam@sullcrom.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** [EXT] RE: [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

Yes we accept service on behalf of Deerfield.

**Benjamin S. Beller**

Sullivan & Cromwell LLP

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[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com) | [www.sullcrom.com](http://www.sullcrom.com)

---

**From:** Chase, Ashley <[ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)>

**Date:** Monday, Mar 18, 2024 at 12:40 PM

**To:** Blaut, Ari B. <[Blauta@sullcrom.com](mailto:Blauta@sullcrom.com)>, Beller, Benjamin S. <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>, [jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)  
<[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>, [JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com) <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>, Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** [EXTERNAL] RE: In re Invitae Corporation, No. 24-11362-MBK

All,

Following up on the below. Do you agree to accept service of the attached subpoena we sent on March 14?

Thanks,  
Ashley

**Ashley Chase** | Associate

**T** [+1 212 819 7624](tel:+12128197624) **M** [+1 631 926 1797](tel:+16319261797) **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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---

**From:** Chase, Ashley

**Sent:** Thursday, March 14, 2024 11:25 PM

**To:** 'blauta@sullcrom.com' <[blauta@sullcrom.com](mailto:blauta@sullcrom.com)>; 'bellerb@sullcrom.com' <[bellerb@sullcrom.com](mailto:bellerb@sullcrom.com)>; 'jlawlor@wmd-law.com' <[jlawlor@wmd-law.com](mailto:jlawlor@wmd-law.com)>; 'JPacelli@WMD-LAW.com' <[JPacelli@WMD-LAW.com](mailto:JPacelli@WMD-LAW.com)>

**Cc:** Invitae UCC - W&C Team <[InvitaeWCALL@whitecase.com](mailto:InvitaeWCALL@whitecase.com)>; Porzio UCC Invitae <[PorzioUCCInvitae@pbnlaw.com](mailto:PorzioUCCInvitae@pbnlaw.com)>

**Subject:** In re Invitae Corporation, No. 24-11362-MBK

Counsel,

Attached please find a subpoena to Deerfield pursuant to Rule 2004. Please confirm whether you accept service on behalf of Deerfield.

Best,  
Ashley

**Ashley Chase** | Associate

**T** [+1 212 819 7624](tel:+12128197624) **M** [+1 631 926 1797](tel:+16319261797) **E** [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com)

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=====  

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**\*\*This is an external message from: [ashley.chase@whitecase.com](mailto:ashley.chase@whitecase.com) \*\***

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=====

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

**WOLLMUTH MAHER & DEUTSCH LLP**

James N. Lawlor, Esq.  
500 Fifth Avenue  
New York, New York 10110  
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Facsimile: (212) 382-0050  
jlawlor@wmd-law.com

**SULLIVAN & CROMWELL LLP**

Ari Blaut (admitted *pro hac vice*)  
Justin DeCamp (admitted *pro hac vice*)  
Benjamin Beller (admitted *pro hac vice*)  
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In re:

INVITAE CORPORATION, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No.: 24-11362 (MBK)

Judge: Hon. Michael B. Kaplan

(Jointly Administered)

**ORDER GRANTING MOTION OF DEERFIELD PARTNERS, L.P. FOR AN ORDER TO  
COMPEL DEPOSITION AND PRODUCTION OF DOCUMENTS BY BAKER BROS. ADVISORS LP**

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

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

(Page 2)

Debtor: Invitae Corporation

Case No.: 24-11362(MBK)

Caption: Order Granting Motion of Deerfield Partners, L.P. for an Order to Compel Deposition and Production of Documents by Baker Bros. Advisors LP

This matter coming before the Court on Deerfield Partners, L.P.'s ("Deerfield") Motion to Compel Deposition and Production of Documents by Baker Bros. Advisors LP (the "Motion");<sup>2</sup> the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing Order of Reference, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion and the Hearing was sufficient under the circumstances, and (e) cause exists under Fed. R. Civ. P. 37 and 45, made applicable to this bankruptcy proceeding by Fed. R. Bankr. P. 7037 and 9016, respectively, and D.N.J. LBR 7037-1 to grant the relief requested in the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED in its entirety.
2. Baker is hereby commanded to fully comply with the Subpoena within ten (10) days of entry of this Order.
3. Deerfield must serve a copy of this Order, and all related documents to all parties in interest on the Master Service List established by the Court's *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [Dkt. No. 62] by either regular mail or email, as applicable.

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed in the Motion.